

24<sup>th</sup> November 2014

To

Chairperson,  
National Human Rights Commission  
Manavadhikar Bhawan  
New Delhi

**Subject: *Government of Assam violating the Minimum Wages Act and the Plantation Labor Act with regards to the wage paid to tea workers.***

Respected Sir,

We the undersigned ---- would like to submit this memorandum to draw your kind attention to the illegal wage of Rs. 94/day being paid to tea plantation workers in Assam. This wage is far below the legal minimum wage set by the State of Assam of Rs. 169/day, and the National Floor Level Minimum Wage, Rs. 137/day. As a result, the current wage agreement violates binding statutory law, namely the Minimum Wages Act, 1948 and the Plantation Labor Act, 1951, and Article 23 of the Constitution of India, which protects citizens from forced labour. By allowing the current wage to be fixed below the legal minimum, the State of Assam is failing to protect the rights of tea plantation workers, and critically permitting a state of forced labour to continue. **The latest round of wage negotiation, currently ongoing, is due to be closed by December 2014. As such, urgent attention and action is requested by the Honorable Commission, to end forced labour of tea garden workers in Assam.**

With more than 1.2 million permanent workers, and hundreds of thousands of seasonal workers, the tea industry is the largest private sector employer in India.<sup>1</sup> The tea industry has been growing at an annual rate of about 15% in recent years, with an expected turnover of Rs 33,000 crore by 2015.<sup>2</sup> One out of every 7 workers in India's organized sector is a tea plantation worker.<sup>3</sup> More than 50 percent of these workers are women.<sup>4</sup> Assam leads the country in tea production, with more than 52% of India's total tea produced in the State.<sup>5</sup> The tea garden

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<sup>1</sup> D. Mishra et. al, *Unfolding Crisis in Assam's Tea Plantations: Employment and Occupational Mobility*, Routledge, (2012), p. 3.

<sup>2</sup> The Economic Times, *Tea industry's annual turnover to reach Rs 33K crore by 2015: ASSOCHAM*, (available at [http://articles.economictimes.indiatimes.com/2011-12-17/news/30528703\\_1\\_indian-tea-industry-tea-production-tea-estates](http://articles.economictimes.indiatimes.com/2011-12-17/news/30528703_1_indian-tea-industry-tea-production-tea-estates))

<sup>3</sup> Tea Board of India, *Tea Statistics 2003-04* (31 Dec., 2004 total number of tea workers estimated at 1,257,610 and number of dependents of resident workers estimated at 1,229,730).

<sup>4</sup> As of December 2011, data for which was available from 655 of the 794 registered gardens, there were a total of 796,712 workers comprising 452,305 permanent workers and 344,407 temporary workers. Information provided by the Chief Inspector of Plantations, Government of Assam, Guwahati

<sup>5</sup> Tea Board 2004. I 2009-2010 Economic Survey, there were 43, registered tea gardens with the Tea Board. This includes both small and large tea gardens.

workers, mostly tribals (Adivasi) and lower castes, are fourth generation descendants of indentured immigrants brought by the colonial planters 150 years back from the tribal tracts of Bengal, Bihar, Orissa and Madhya Pradesh. Today, over 24 lakh families live in the gardens in a state of poverty, isolation, and deprivation due to inadequate access to services and facilities guaranteed under the Constitution of India, Plantation Labor Act, 1951, and other relevant statutes and policies.<sup>6</sup>

Wages of tea workers are negotiated every three years through a bi-partite agreement between the tea industry representatives, the **Consultative Committee for Planters Association (CCPA)**, and the workers representatives, **Assam Chah Mazdoor Sangha (ACMS)**, **the only legally recognized** trade union). Despite a bi-partite negotiation process, the Government of Assam, through the Labor and Employment Department, has the duty to ensure that the wage agreed upon by the parties is consistent with national laws.

Under the provisions of the Minimum Wages Act, 1948, both the Central and State Governments are appropriate Governments to fix, review and revise the minimum wages of the workers employed in the scheduled employments under their respective jurisdictions. Governments have also been empowered to notify any employment in the schedule where the number of employees is 1000 or more, and fix the rates of minimum wages in respect of the employees employed therein. In this context, the State of Assam has established the minimum wage at Rs. 169 per day and has notified tea plantations under the State's list of scheduled employments.<sup>7</sup>

In addition, in order to have a uniform wage structure and to reduce the disparity in minimum wages across the country, a concept of National Floor Level Minimum Wage was developed on the basis of the recommendations of the National Commission on Rural Labour (NCRL) in 1991. The NFLMW currently stands at Rs. 137 per day.

The Minimum Wages Act (Section 19) also empowers Governments to oversee implementation of the Act by appointing inspectors 'to inspect any register, record of wages or notices,' and, for claiming arising from non-implementation of the Act, Section 20 provides for

'payment to the employee of the amount by which the minimum wage applicable exceeds the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess.'

The Plantation Labor Act, 1951, is the prime national law governing tea plantations. It regulates all aspects of plantations across the country, including welfare of workers and labor standards. The PLA spells out free benefits and services that tea garden managers must provide to workers, including but not limited to housing quarters, medical facilities, crèches and educational facilities. With regards to wage, Chapter 2, Section 3 states that:

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<sup>6</sup> Other relevant statutes include, but are not limited to, Minimum Wages Act, 1948, Maternity Benefits Act, Provident Fund Scheme Act, 1952, Payment of Bonus Act, 1965.

<sup>7</sup> Government of Assam Notification NO.ACL.43/2004/1989-2022, March 1, 2013 (with effect from March 1, 2013); Government of India, Ministry of Labour and Employment Labour Bureau, *Report On The Working Of The Minimum Wages Act, 1948 For The Year 2012*, p. 29 dated 4 April, 2014.

‘(i)“Wages” has the meaning assigned to it in clause (h) of Section 2 of the Minimum Wages Act, 1948 (11 of 1948)’

However, despite fixing a minimum wage of Rs. 169/day for unskilled workers per the directives of the Minimum Wages Act, and notifying tea plantations as unskilled workers under the State’s list of scheduled employments, workers are paid a mere Rs 94/day.<sup>8</sup> Put another way, notwithstanding clear obligations placed on the Government of Assam to ensure payment of minimum wages to tea workers, *all previous negotiations* have failed to meet this legal duty.

Critically, Article 23 of the Constitution of India forbids forced labour. The Supreme Court has held in *People’s Union for Democratic Rights v/s. U.O.I.*, 1982 AIR (SC) 1473 that “forced labour” included workers who received wages below minimum wage for their labour even if the workers entered into, or remained in, their employment voluntarily.<sup>9</sup>

*‘We are therefore of the view that where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under Art. 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art. 23.’*

It is a well-settled legal principle that a collective bargaining agreement cannot override constitutional or statutory obligations. However, in this instance the wage negotiation process achieves this impermissible result.

As to wage, the tea industry consistently states that the wage provided to workers is above the statutory minimum wage of the State. In particular, management state that after monetizing costs associated with housing, medical and welfare facilities, holiday pay, sickness benefits, education and maternity benefits, and Provident Fund payments, and adding these costs to the Rs 94/day, the daily wage is over Rs 169/day. This is in clear contrast with the Minimum Wages Act, wherein Section 2 clarifies that:

‘(h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, 1\*[and includes house rent allowance], but does not include--

(i) the value of--

(a) any house-accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate

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<sup>8</sup> Government of Assam Notification NO.ACL.43/2004/1989-2022, March 1, 2013 (with effect from March 1, 2013); Government of India, Ministry of Labour and Employment Labour Bureau, *Report On The Working Of*

*The Minimum Wages Act, 1948 For The Year 2012*, p. 29 dated 4 April, 2014.

<sup>9</sup> See also *Sanjit Roy vs. State of Rajasthan*, 1983 AIR 328 (holding that payment of anything less than the minimum wage to workers even on the account famine or other scarcity conditions constituted ‘forced labour’ in violation of Article 23).

Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;’

Further, ‘costs’ associated with medical, housing, education and welfare facilities are statutory benefits provided to workers under the Plantation Labour Act, and cannot be included in the calculation of daily wage.<sup>10</sup>

Because of low wage, tea labourers are subjected to intolerable living and working conditions. Assam has the highest maternal mortality rate in all of India, and tea garden communities suffer from high malnutrition, anemia, and low literacy. The low earnings contribute to a perpetual state of poverty for workers and their families.

It is the duty of the Government to ensure that the wage negotiations are consistent with binding law. However, the State of Assam has been a silent spectator, enabling thousands of workers to be paid below the notified minimum wage in violation of their constitutional and statutory rights.

This omission is a form of action by the State Government, and we request urgent review and action by the Honorable Commission.

### **Our prayers:**

1. To ensure that the ongoing wage negotiation between the workers representatives (ACMS) and the industry representatives (CCPA) complies with relevant national laws, including the Minimum Wages Act and the Plantation labor Act. This omission is a form of action by the Government and we request urgent intervention by the Honorable Commission.
2. To direct the State Government to take steps to ensure a more transparent wage negotiation process, including engagement with other worker representative groups (trade unions, student organisations) before, during, and after the negotiation process.
3. To direct the State Government to ensure implementation of Plantation Labor Act, 1951, in all of its provisions related to the welfare of tea plantation workers.

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<sup>10</sup> Only daily wage plus costs associated with food rations and dry tea may be included in the calculation of wage.

**Yours faithfully**

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1/33 Double Storey Building, Jangpura 110014 – New Delhi
2. Adv. Joseph Minj, Principal - New Model English Medium School  
Doolahat Bajar, Doolahat, Lakhimpur, Assam
3. Mr. Godwin Hemrom, Administrator, Peoples Action for Development (PAD)  
Seajuli T.E., P.O. Seajuli, Dist. Lakhimpur (Assam)