



# Human Rights Grievance-Handling in the Indian Tea Sector

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## About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project, which draws on the findings of five years of research. The findings are based on over 587 interviews, with 1,100 individuals, across the countries and case studies covered by the research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project is on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by businesses throughout their operations, supply chains and other business relationships.

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## Acronyms

|          |   |
|----------|---|
| ABITA    | Assam Branch of India Tea Association   |
| ACMS     | Assam Chah Mazdoor Sangha   |
| AICCTU   | All India Central Council of Trade Unions   |
| AITUC    | All India Trade Union Congress  |
| AASAA    | All Adivasi Students' Association of Assam  |
| APPL     | Amalgamated Plantations Private Ltd   |
| ATLU     | Assam Tea Labour Union  |
| BDO      | Block Development Office  |
| BHRPC    | Barak Human Rights Protection Committee   |
| BMS      | Bharatiya Mazdoor Singh   |
| CAO      | Compliance Advisor Ombudsman  |
| CIE      | Commonwealth of Independent States  |
| CITU     | Centre of Indian Trade Unions   |
| CPI(ML)  | Communist Party of India (Marxist-Leninist)   |
| FIAN     | FoodFirst Information and Action Network  |
| FLO      | Fairtrade Labelling Organizations International   |
| FLO-CERT | Fairtrade Labelling Organizations International Certification Body  |
| GoI      | Government of India   |
| HUL      | Hindustan Unilever  |
| ICN      | India Committee of the Netherlands  |
| IFC      | International Finance Corporation   |
| ILO      | International Labour Organization   |
| IUF      | International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations |
| ISEAL    | International Social Environmental Accreditation and Labelling Alliance   |
| ITUC     | International Trade Union Confederation   |
| KDHP     | Kanan Devan Hills Plantation Co.  |
| MIGA     | Multilateral Investment Guarantee Agency  |
| NCLR     | National Campaign on Labour Rights  |
| NCP      | National Contact Point  |

|        |  |
|--------|--|
| NGO    | Non-Governmental Organization  |
| NJM    | Non Judicial Mechanism   |
| OECD   | Organization for Economic Cooperation and Development  |
| PAD    | People's Action for Development  |
| PAJHRA | Promotion and Advancement of Justice, Harmony and Rights of Adivasis                                 |
| PLA    | Plantation Labour Act  |
| PS2    | IFC Performance Standard   |
| PoI    | Parliament of India  |
| RA     | Rainforest Alliance  |
| SAAS   | Sustainable Agriculture Auditing Services  |
| SAN    | Sustainable Agriculture Network  |
| SDBSS  | Diocesan Board of Social Services  |
| SOMO   | Stichting Onderzoek Multinationale Ondernemingen (Centre for Research on Multinational Corporations) |
| TCC    | Tropical Commodity Coalition   |
| TUAC   | Trade Union Advisory Committee to the OECD   |
| UAE    | United Arab Emirates   |
| UK     | United Kingdom   |
| UN     | United Nations   |
| UPASI  | United Planters Association of South India   |
| USSR   | Union of Soviet Socialist Republics  |
| UTZ    | UTZ Certified (formerly Utz Kapeh Foundation)  |

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## Executive Summary

### Overview of the case

This case study focuses on the role of transnational non-judicial grievance mechanisms in remedying human rights grievances of workers on tea plantations in India who are linked to transnational supply chains.

**Business activity:** This research spans numerous individual business enterprises in the tea sector. Indian tea production is dispersed across many individual plantations in different parts of the country. Our research focused in particular on plantations located in Tamil Nadu, Darjeeling and Assam. Many plantations are owned by individuals or families, though some large companies own multiple plantations.

**Transnational connections:** Direct ownership and management of plantations is generally carried out by Indian nationals, and large India-based companies such as the Tata Group are involved in both tea production and processing. However significant proportions of tea produced in India are exported to foreign markets, giving rise to extensive links through supply chains to international buyers, who sell the tea on foreign markets.

**Human rights issues:** Many of the human rights issues affecting tea plantation workers are related to labour rights. These include concerns about wage levels, precariousness of employment, health and safety issues, and gender or caste discrimination. Also important are concerns regarding the adequacy of provision of social infrastructure and services on farms.

**Available grievance mechanisms:** When human rights problems arise, a number of grievance mechanisms are formally available to workers. The grievance arrangements most commonly used by workers are located at the local level, encompassing both mechanisms operated by estate management, and those associated with standard administrative and legal processes of labour regulation.

A number of **transnational** grievance handling mechanisms are also formally available to those tea workers whose employer estates are linked to transnational investors or buyers. These include:

- **Grievance mechanisms linked to international certification bodies:** In the Indian tea sector, many transnational companies participate in international certification schemes, which incorporate complaint systems. The social and environmental certification schemes Rainforest Alliance and Fairtrade are particularly prominent. Our analysis encompasses a general overview of these complaint systems, and documentation of one instance in which Rainforest Alliance conducted a Research Audit in response to an NGO report documenting alleged violations of Rainforest Alliance certification standards.
- **Complaints to the CAO:** The CAO (explored in detail in another report in this series) has rarely been used as an avenue for pursuing grievances in the tea sector. This reflects both the restriction of the CAO's mandate to the small number of plantations linked to

companies receiving IFC finance, and multiple informal barriers to worker access. Nonetheless, we document two instances in Assam in which the CAO has been involved.

- **Complaints to OECD National Contact Points:** We found no cases in which tea plantation workers have made complaints to OECD National Contact Points (NCPs), a form of grievance mechanism that is explored in detail in another report in this series. However, a complaint was once made to the UK NCP by Indian tea factory workers.
- **The Ethical Trading Initiative (ETI):** The ETI (discussed in detail in another report in this series) operates programmes designed to address systemic violations of the ETI Base Code on issues such as living wages that are of relevance to the Indian tea sector. A number of tea growing and/or packing companies are currently members of the ETI, including Finlays, Keith Spicer and Typhoo tea. The ETI has convened discussions between ETI members and non-members regarding concerns raised about standards in the Indian tea sector, particularly in tea estates in Assam and West Bengal. However, to our knowledge, the ETI has not investigated specific allegations of ETI code violations in the tea sector.

## Performance and limitations of grievance mechanisms

The evidence we present regarding existing grievance handling mechanisms in the Indian tea sector paints a rather sobering picture of the limited capacity of both local and transnational grievance handling systems to provide remedy for human rights shortfalls experienced by workers in this sector.

### Local grievance handling mechanisms

Workers experiencing human rights grievances rely primarily on complaint handling processes facilitated by supervisors and managers on tea estates. In some instances, workers pursue formal complaints through the government Labour Department, usually with the assistance of a trade union.

- **Estate-level complaint-handling mechanisms** have the advantage of being much more accessible to workers than other alternatives, and these play an important role in facilitating responses by management to some day to day problems. However, workers have very little bargaining power in their engagements with employers, and responses by management to address complaints are highly discretionary. The adequacy of responses to worker complaints varies substantially across individual estates and across different kinds of complaints. While such mechanisms can help to deal with small, routine problems such as a missed payment, they do not enable workers to challenge more systematic issues such as wage levels, or the overall adequacy of social infrastructure or health and education facilities provided on estates.
- **Legal and administrative complaint-handling mechanisms** are an extremely important means of enabling workers to pursue formal remedies for disputes concerning individual grievances such as alleged non-payment of bonuses or other statutory entitlements. However, they have significant entry barriers and are slow and costly to use.



The Nilgiris District, Tamil Nadu.

Photo: Souparna Lahiri

- Where **trade unions** have both presence and organizing strength in a particular plantation or tea growing region, they can play an important role in facilitating worker access and bargaining power within both estate-based and government complaint mechanisms. However, union presence, cohesion and strength is highly variable across different districts in which tea is grown.

### **Transnational grievance handling mechanisms**

Despite the importance of international trade in tea, and thus extensive connections between Indian tea producers and international supply chains, transnational grievance processes have rarely been used by tea workers to make complaints, and only ever in the presence of unusual levels of support for workers from local NGOs or trade unions. Where they have been used, their effects on human rights have been small and indirect. The limited effectiveness of existing grievance-handling mechanisms needs to be understood in light of social and economic conditions that are external to the design and operation of the grievance mechanisms themselves, but which have a significant impact on their functioning:

- Marginalized workers experience **pervasive and multiple barriers** to access to transnational grievance mechanisms, as a result of a lack of information about the existence and procedures of available mechanisms and/or means of contacting them; weak or-

ganizations at the local level to provide advice and support; lack of trust or confidence in complaint systems; lack of time and other resources required to pursue a complaint; and broader weakness of rights-consciousness amongst workers.

- Such barriers highlight the difficulties of establishing well-functioning grievance mechanisms in the absence of strong **rights consciousness and organizational capacity** amongst affected groups.
- Local trade unions, NGOs, or other grassroots organizations with a physical local presence and established relationships with affected workers play a critical role as intermediaries in **facilitating worker access** to available grievance systems.
- In turn, local organizations with direct connections to workers usually depend on relationships with national or international NGOs who possess prior knowledge of transnational grievance mechanisms, and can provide required information and advice. Such organizations also play a significant role in providing **ongoing information and support** to workers once a complaint has been made and a grievance-handling process initiated.
- The ability of transnational grievance mechanisms to influence the resolution of individual grievances, or wider patterns of human rights practices in the sector, is importantly constrained both by **limits to their leverage**, both directly over the transnational companies they regulate, and indirectly over local producers.
- The influence of transnational grievance handling mechanisms on local human rights practices is further constrained by the need of transnational mechanisms to establish their legitimacy as voices within local political debates concerning human rights practices in the tea sector. The authority of international bodies has often been challenged by accusations of ‘foreign interference’ when outside organizations become involved in local labour disputes.
- Where small or indirect forms of influence over disputes have been exercised by transnational grievance mechanisms, such effects have usually depended on the ability of these mechanisms to **support worker organizing** efforts or **strengthen the bargaining power of workers** within negotiation or mediation processes.

## Lessons for the design, operation, and broader role of non-judicial grievance systems

Practical lessons for the design and operation of transnational non-judicial grievance handling systems highlight the importance of:

- Providing outreach and external support to marginalized workers to facilitate access;
- Mitigating and accommodating power imbalances between workers and companies;
- Building cumulative leverage over wider human rights practices via coalition building.



### Providing outreach and external support to marginalized workers to facilitate access

The accessibility of grievance systems for marginalized workers could be strengthened both by direct outreach activities to provide information and support to affected workers, and by support for the emergence and operation of trade union and civil society networks in targeted sectors and locations.

- More **extensive and proactive outreach and capacity building** activities supported by certification organizations or financial institutions to which transnational grievance handling mechanisms are connected could make a significant contribution to facilitating worker access to available mechanisms.
- To be effective, outreach would need to go significantly beyond the simple provision of information—also **facilitating connections between communities of workers and individuals or organizations able to play an ongoing liaison and support role.**
- Transnational grievance handling mechanisms could also more pro-actively **support the emergence and operation of networks** of local, national and/or international trade unions and NGOs through which such liaison and support functions can be provided.

### Mitigating and accommodating capacity imbalances between workers and companies

In the rare cases where a group of workers gets to the point of submitting a complaint, capacity gaps and power imbalances between workers and companies in the grievance-handling process itself also need to be addressed.

- There would be value in greater provision of **support for organizational and collective decision making processes amongst workers** at the local level. The forms of support required would vary between contexts, potentially including support for: strengthening local worker organizations; supporting record keeping and evidence gathering in relation to prospective grievances; strengthening networks and relationships between groups of workers; and building rights-awareness amongst affected workers and communities.
- Such support could be provided, as appropriate, by grievance handling bodies or the organizations that establish them, or by local intermediary organizations such as NGOs, trade unions or other grassroots organizations. Any provision of capacity building to marginalized complainants by grievance handling bodies themselves would need to appropriately **balance responsiveness to entrenched power imbalances with a commitment to principles of procedural impartiality.**
- In some cases, it may be appropriate for local intermediary organizations such as trade unions or NGOs to not only support but also actively **represent directly affected workers** within grievance processes. **Clear guidelines would be required to govern any proposed instance of worker representation,** to ensure workers were properly represented and empowered within the process.

- Even in the presence of active measures to mitigate power imbalances between workers and companies, significant imbalances are likely to persist. Such **power imbalances should be publicly recognized and appropriately accommodated** by the procedures of transnational grievance handling mechanisms. Such accommodation may include: a willingness to accept diverse forms of evidence, and recognition of the potential legitimacy of aggrieved workers continuing to pursue their claims through parallel avenues while mediation processes are ongoing.

## Building cumulative leverage over wider human rights practices via coalition-building

### *Indirect effects on systemic change*

Transnational non-judicial mechanisms tend to have the biggest impact when their interventions **interact with and reinforce broader pressures for change**. Such interactive forms of influence are often very indirect, and sometimes unplanned.

- To some extent, the mere involvement of a transnational grievance mechanism such as the CAO, regardless of the details of its procedures, can provide some support for marginalized groups making claims, by **enhancing the visibility or credibility** of grievance claims in the eyes of other local or transnational actors.
- Such a complaint may provide a focal point that can help NGOs or other grassroots organizations to **build rights-consciousness and mobilization capacity** amongst workers, or **support networking and relationship building** between organizations.
- Grievance handling mechanisms may also have indirect effects on wider mobilizing efforts to the extent they can **assist local groups to gather and mobilize evidence** to support their claims.

### *Active contributions to systemic change*

In addition to such indirect effects, there is some scope for transnational grievance handling mechanisms to take on a **more active role in supporting wider sectoral change in human rights practices** by contributing to a number of possible activities or functions:

- They may more systematically and extensively **document lessons learned** from specific complaint handling processes regarding both complaint handling processes and underlying drivers of recurring problems, including identification and analysis of external obstacles to change.
- Where appropriate, **proposal of specific policies or guidelines** to support prevention of recurring grievances may be developed and disseminated, which other business or government actors may then choose to take up—though in the tea sector codified standards, both governmental and non-governmental are already extensive.
- Lesson-learning, advisory and associated capacity-building functions may sometimes

seek additional support from **external aid and development organizations**—bilateral, multilateral or non-governmental—working to build capacity or otherwise promote wider change in relevant sectors.

- Such functions are often inherently political, even if not presented as such, and transnational bodies taking on such roles would need to **establish legitimacy for these roles with local audiences** in any specific national or subnational jurisdiction. This is often very challenging, in the presence of significant sensitivities around perceptions of foreign interference in local political processes.

### *Capacity of grievance handling mechanisms to support wider change*

The extent to which a given transnational grievance handling mechanism can contribute to wider sectoral change through making such active contributions to promoting wider change depends on a number of factors, including: its own internal capacity and resourcing; its visibility, profile and perceived legitimacy in a specific location and sector; and its existing networks and relationships.

- **The CAO** may often be particularly well placed to make such contributions given its relatively strong organizational resourcing and high visibility. Taking on such a role would require the CAO to broaden the mandate of its existing advisory function to encompass externally oriented advisory activities—within the limits of its external legitimacy in a given local political setting. The CAO's broad geographical and sectoral focus means that such a contribution could appropriately focus on more general lessons regarding human rights grievance handling and prevention approaches.
- **Private standard-setting bodies** may be able to carry out some similar functions in particular locations or sectors where they have strong local presence and legitimacy—in some cases building on existing organizational systems and relationships. A more detailed focus on recurring drivers of grievance in particular sectors and geographical locations may be feasible and appropriate for such bodies.



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## Overview of the case

|  |  |
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| <p><i>Business activity and companies</i></p>                | <ul style="list-style-type: none"> <li>• The focus of this report is on human rights issues affecting workers on tea plantations in India.</li> <li>• Most plantations are owned and managed by Indian nationals. Many are owned by individuals or families, though some large companies own multiple plantations.</li> <li>• There are significant links through supply chains to international buyers, who sell the tea on foreign markets. Many small international companies are involved in these supply chains, but some large international companies have significant influence in the Indian market, including the India-based Tata Group and UK-based Unilever.</li> </ul> |
| <p><i>Affected people</i></p>                                | <p>Our research focused on the working and living conditions of tea plantation workers and their families in Tamil Nadu, Darjeeling and Assam. We did not examine smallholder tea producers as part of this study.</p>   |
| <p><i>Human rights and related concerns</i></p>              | <ul style="list-style-type: none"> <li>• Labour rights issues (particularly wages, insecurity of employment and health and safety issues)</li> <li>• Social infrastructure and services on plantations for workers and their families</li> </ul>   |
| <p><i>Consultation and grievance handling mechanisms</i></p> | <ul style="list-style-type: none"> <li>• Worker grievances are most commonly handled informally by line supervisors and managers on plantations.</li> <li>• Formal complaints procedures operated by government labour department officials are sometimes used by workers to pursue particular kinds of grievances, such as those relating to non-payment of bonuses or other statutory entitlements.</li> <li>• Transnational grievance mechanisms are used very rarely, because of significant access barriers.</li> <li>• Nonetheless, there are isolated examples where transnational mechanisms have played a role, most notably:</li> </ul>                                    |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>- An instance in which Rainforest Alliance conducted a Research Audit in response to an NGO report documenting alleged violations of Rainforest Alliance certification standards</li> <li>- A complaint taken to the CAO</li> </ul>   |
| <p><i>Impact of transnational grievance mechanisms on human rights</i></p> | <ul style="list-style-type: none"> <li>• The value for tea workers of available transnational grievance mechanisms has been significantly constrained by the multiple barriers workers experience in practically accessing these mechanisms.</li> <li>• Where transnational grievance mechanisms have been used, their effects on human rights (with regard to both individual remedy and preventing recurring human rights problems in the sector) have been small and indirect.</li> </ul> |

## Methodology

The case study reported here is part of a broader study analyzing the effectiveness of non-judicial grievance mechanisms in responding to human rights violations within transnational business supply chains. This report is the companion to another report in this series: The IFC Compliance Advisor Ombudsman.

For this case study of grievances in the Indian tea sector, researchers travelled in 2012 and 2013 to the Nilgiris district of Tamil Nadu, to Darjeeling, in West Bengal, and to Assam. Research in Tamil Nadu and West Bengal was carried out by Australian researchers, working in each location with an Indian researcher with local expertise. The research in Assam was carried out by an Indian researcher working alone. Interviews were carried out with a wide range of stakeholders in the Indian tea sector, including government officials, plantation owners and managers, union representatives, NGO officials, and tea workers. 41 interviews and focus groups including 110 individuals took place in 2012 and 2013. Analysis also drew on a series of 51 interviews and focus groups involving 92 individuals that were carried out in 2010 by the same two Australian researchers and another Indian researcher. These were conducted primarily in the Nilgiris region of Tamil Nadu, with supplementary interviews carried out in Chennai, Bangalore and Kolkata. These earlier interviews were with estate workers, smallholders, representatives of unions and other activist organisations, lawyers, estate managers, tea trading companies, government regulators, industry bodies, auditors, and representatives of international certification bodies. In total, the analysis presented in this case study thus draws on 92 semi-structured interviews and focus group discussions involving 202 individuals. Where possible, we attempted

to capture the distinctive perspectives of both men and women through our interviews. Numbers of men and women workers we spoke with were roughly similar. However, interviewees in many other categories (such as estate managers, trade union officials and government officials) were disproportionately male, meaning that overall, about two thirds of all interviews were with men. To ensure confidentiality for research participants, all quotes and citations from interviews have been anonymized.

## Introduction to the case

This report analyses the operation of a range of grievance-handling mechanisms available to workers in the Indian tea sector seeking redress for human rights problems linked to the activities of transnational businesses. Analysis examines the situation of workers across a range of plantations in several tea growing regions of India, and is not focused on a single company or investment project.

### History and evolution of the Indian tea sector

Tea is a production sector of both historical and contemporary importance in India, which is second only to China as the world's largest tea producer (van der Wal 2011).

The Indian tea industry has its origins in the British colonial period, where it formed an important part of the colonial economy. Tea production in India was initiated by the British in 1835 (Misra 1986). Tea cultivation rapidly expanded first in Assam, and then in Darjeeling and in areas of north Bengal, and subsequently in the Nilgiris and other districts in south India (Mitra 1991). Much of the tea labour force in many locations was brought in from other parts of India, or from outside the country, as in the case of Darjeeling.

In the contemporary era, the tea industry is currently the second largest provider of formal sector employment in India, providing employment to over a million families on tea estates. Almost as many again work as casual workers or on smallholdings. It has been estimated that the sector generates indirect forms of employment for another 10 million people (van der Wal 2011). The sector's economic importance is particularly pronounced in major tea growing regions of the country. In Assam, for example, it has been estimated that approximately 17% of all workers are engaged in the tea industry (van der Wal 2011).

The Indian tea industry suffered a major crisis at the end of the 1990s, resulting from a steep fall in producer prices, rising labour costs, and under-investment in operation and management of plantation estates. This led to the closure or abandonment of many tea estates, on the basis that they were insufficiently profitable. Given the importance of tea to the local economies of tea growing regions, this crisis had a devastating social impact on communities of affected workers. During this period, hundreds of people from tea worker families died of hunger on tea estates that had been closed or abandoned, and some starvation deaths continued into the 2000s (van der Wal 2011).

Tea in India is grown both on large estates and by smallholders. Technically large estates are defined as those more than 10.1 hectares in size, though generally they are much larger, between 100 to 600 hectares (van der Wal, 2011, p.70). Precise figures vary, but it is estimated that around three quarters of India's tea is produced on larger estates, and a quarter by smallholders (GoI 2007; TCC 2010). Large estates employ hired wage labour, while the smallholder sector relies mainly on family labour, supplemented by casual labour during harvesting seasons. It is estimated that there are over 1600 large tea estates in India, and tens of thousands of smallholder plantations (GoI 2007). Most individual tea plantations are Indian owned and operated. Many estates are family owned, while others are part of larger corporate groups of plantations, such as Amalgamated Plantations Private Ltd (APPL), which owns and manages plantations in Assam and West Bengal.

This report focuses on human rights grievances on large tea estates, and in particular, on large plantations in Tamil Nadu, Darjeeling, and Assam. Over half a million hectares of land are estimated to be devoted to tea production in India, of which around three quarters are located in East and North East India (encompassing both Darjeeling and Assam), and around a quarter in Southern India (encompassing Tamil Nadu) (van der Wal 2008). There are approximately 850 plantations in Assam (50% of national tea production as per June 2015), 87 in Darjeeling (>1% of national production, June 2015) and over 200 in the Nilgiris, in Tamil Nadu (13% of national production, June 2015) (GoI Tea Board of India 2016). Each of these growing regions is situated in distinct political and historical contexts. By examining human rights grievances of workers from all three regions, we gain some sense of those issues that recur across the sector as a whole, as well as the influence of localized historical or political conditions on dynamics of human rights grievance.

### Transnational business activity

The organization of the tea supply chain begins with the growing, plucking and processing of tea. Because of the need for tea to be processed within 24 hours of plucking, large estates typically have their own processing factories onsite (Asopa 2006). After processing, the tea is traded, then blended and packed.

Relationships between companies involved in production, processing and trading of tea in the Indian sector have undergone significant structural change over time. In the past, there was more extensive direct ownership of plantations by major international companies such as the Tata Group and Hindustan Unilever (HUL). The latter is a subsidiary of Unilever, with Unilever owning 67% of its capital, as of 2005. In 2005, HUL was reported to be the largest tea buyer in India (Action Aid, 2005), purchasing around 10% of all tea produced nationally (Goddard 2005). Similarly, in 2002, Tata Tea directly controlled 54 tea estates in India (around half in Northern India and half in the South), as well as a number of large blending and packaging factories (Oxfam 2002). However, these companies have now withdrawn from direct involvement in tea production to focus on the more profitable business of tea packaging. HUL withdrew in 2005-06—most gardens being acquired by McLeod Russell, with its headquarters in Kolkata (van der Wal 2011; Neilson & Pritchard 2008; van der Wal 2008). In 2005 Tata sold off many of its tea estates to a newly constituted company, Kanan Devan Hills Plantation Co. (KDHP), which was capitalized through loans and share purchases from local Tata Tea employees (Neilson &



Pritchard 2008; van der Wal 2011; Oxfam 2002). Both Tata Tea and HUL remain major players in the sector, both as purchasers of tea and shareholders in major estates (Gothoskar et al 2010; Bhalla 2014; Chamberlain 2014).

According to some sources, as of 2005, around half of India's tea market was controlled by Unilever, Tata Tea and their subsidiaries, which buy and blend tea leaves for prominent brands such as Tetley (owned by Tata) and PG Tips (owned by Unilever)(Action Aid 2005). In 2001, Unilever was the world's largest integrated tea company, commanding 17% of global sales (Slater 2001). Retailers and supermarkets in the UK, Australia and other western markets play an important role as buyers of Indian tea, in addition to national and other Asian markets. The largest export markets for Indian tea in 2009 were, in descending order of importance, the countries of the Commonwealth of Independent States (CIS, formerly the USSR), the United Arab Emirates (UAE), Iraq, and the United Kingdom (van der Wal 2011). India itself is also a very important consumer market for Indian produced tea, including tea sold under major international brands. In 2008, 82% of India's total tea production went to domestic consumption (van der Wal 2011). It is estimated that India consumes a quarter to a third of the tea that Unilever sells worldwide (Braga et al 2010; Slater 2001).

Identifying the precise origins of tea sold into UK and other western markets is sometimes challenging, owing to a frequent lack of supply chain transparency. Although some specialty tea is directly sourced and marketed on the basis of its origin, the vast majority of blended tea is not clearly labelled according to source. For example, it is known that major UK tea brands such as PG Tips, Tetleys and Twinings source from parts of India including Assam (Rowlatt & Deith 2015), but little information is available about which gardens in Assam are producing for which companies in the UK (interview with Participant A3 December 2015).

### Affected people

It has been estimated that tea plantations provide employment to over a million workers in India (GoI 2007; GoI 2009a). Of these, it has been estimated that there are over 600,000 in Assam, over 260,000 in Tamil Nadu and over 53,000 in Darjeeling (GoI 2007). Slightly more than half of tea plantation workers are women (GoI 2007; GoI 2009a). Almost all of these women are employed as plantation laborers, with the majority of non-manual jobs (such as medical, teaching or managerial roles) being carried out by male workers (GoI 2009a).

Figures on proportions of permanent versus seasonal, casual or contract workers vary considerably between sources. One official source from 2009 asserted that 97% of tea plantation workers in India were permanent (GoI 2009a), while other sources report the percentage of casual labourers on Indian tea plantations rising from 13% to 24% between 1997 and 2000 (Goddard 2005). Some cite rates of casualization that are even higher, though these figures continue to be vigorously contested (van der Wal 2011). Rates of casualization vary also between individual plantations, growing regions, and over time (GoI 2007).

Tea workers in most locations occupy positions of socio-economic marginalization. Literacy rates amongst workers are low, and diseases such as malaria, tuberculosis, anemia and dysentery are common. Significant proportions of tea workers nationally belong to Scheduled Castes or

Scheduled Tribes, though these figures vary significantly between tea growing locations (GoI 2009a).<sup>1</sup> Many tea plantation workers come from communities that were originally migrants to the locations of tea production, though in some parts of India these communities of workers have now been involved in tea production for multiple generations. For example, in Assam, many tea workers are fourth generation descendants of indentured migrants brought by colonial planters 150 years ago from tribal areas in Bengal, Bihar, Orissa and Madhya Pradesh (NCLR 2009). The majority of workers in Darjeeling are of Nepalese origin, and Nepali-speaking, but refer to themselves as Gorkha to distinguish themselves from the state of Nepal (Moore 2010; Besky 2008; Besky 2007). In the Nilgiris district of Tamil Nadu the majority of workers descend from migrants from other districts of Tamil Nadu or the neighbouring states of Kerala and Karnataka. An increasing number of temporary workers are coming also from other parts of India, including from as far as West Bengal (van der Wal 2011).

## Human rights issues

Many of the human rights issues confronting Indian tea plantation workers relate directly to **working conditions**, particularly concerns regarding wages and remuneration, occupational health and safety, precarious employment, freedom of association and collective bargaining, and discrimination. For workers living on tea estates, there are also significant human rights concerns related to **access to social infrastructure and services** on plantations, alongside broader concerns about poverty and malnutrition amongst workers.

Extensive national and state **legislative protections** exist for both labour and social rights of tea plantation workers. Large estates employing wage labour are regulated by the provisions of the Plantations Labour Act (PLA), which details a range of benefits and protections for workers on large estates (greater than 5 hectares) (GoI 2007). The PLA was passed by the Indian Parliament in 1951; Plantation Labour Rules in each relevant state were established shortly afterwards.

Under the colonial labour system that preceded the PLA, remuneration involved a mix of cash and 'social benefits' such as housing, basic health care provision, subsidized food and firewood, and in some cases, provision of small plots of land for cultivation. The explicit aim of this colonial remuneration system was "to enable subsistence for the workers without creating opportunities to leave" (Rosenblum & Sukthankar 2014; Great Britain 1931). The PLA sought to formalize and harmonize existing practices with regard to provision of social benefits on plantations, while providing formal protections for worker entitlements such as entry and exit from the plantations (Rosenblum & Sukthankar 2014). Key features of the colonial remuneration system have persisted under the PLA, including a low sector-wide wage, supplemented by 'social benefits' (Rosenblum & Sukthankar 2014, p.26). Proposals to increasingly 'normalize' systems of remuneration and social provision for plantation workers, by raising cash wages and passing responsibility for provision of core educational and medical services to government agencies, have been advocated by some worker and planter associations and by parts of government, and continue to be debated.

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<sup>1</sup> Scheduled tribes and Other Backward Castes (OBC) together account for 73.9 of males, and 75.6 of females working in the tea sector (GoI 2009a).

Table 1: Human Rights Issues

|   |  |
|---|--|
| <i>Wages and remuneration</i>                           | Wages of tea plantation workers are the lowest of any sector in India; there are frequent disputes over issues such as the legality of wage payments or provision of statutory benefits.   |
| <i>Occupational Health and Safety</i>                   | Workers are often at risk from physical injury, exposure to pesticides, and in some areas a lack of access to clean water.   |
| <i>Precarious employment</i>                            | In some locations there is widespread use of casual and temporary labour contracts, often in excess of official time limits; casual workers regularly miss out on statutory benefits.  |
| <i>Freedom of association and collective bargaining</i> | Access to freedom of association and collective bargaining varies considerably across regions of India; constraints on freedom of association are particularly widespread in Assam. Limits to collective worker mobilization also result from structural marginalization of workers, and politicization and fragmentation of trade unions. |
| <i>Gender discrimination</i>                            | Discrimination against women has been widely documented, and includes poor prospects for promotion, male domination of trade union leadership, reports of sexual harassment and assaults, as well as lack of equality in provision of non-statutory benefits such as subsidized food and medical benefits.                                 |
| <i>Access to social infrastructure and services</i>     | Deficiencies in social infrastructure and services on farms are of major concern to many workers, encompassing problems with housing, health services, education, sanitation, or provision of clean water.   |

There is significant variability in patterns of (non)compliance with the standards laid out in the PLA between different tea growing areas, and across individual plantations. The below discussion focuses on patterns of human rights practices that are pervasive across multiple production locations—noting where these vary in significant ways between locations.

### Wages and remuneration

The wages of tea plantation workers in many parts of India are the lowest formally registered in any employment sector, and concerns regarding **wages and broader forms of remuneration** are of central concern for many workers and trade unions in the Indian tea sector. In some tea growing areas in the North of India, poverty wages have interacted with problems of indebtedness, landlessness and the absence of wider social support, giving rise to pervasive non-fulfilment of basic rights to adequate food and nutrition amongst tea plantation workers (FIAN International et al, 2016).

Some trade unions have framed these concerns with reference to the concept of ‘living wages’. The history of minimum wages legislation in India includes the concept of living wage, though there is no legal definition of a living wage—only a minimum wage, and how it is to be calculated. Calculation of wages and remuneration in the Indian tea sector is very complex, in part because of complex payment structures including involving basic wages per weight of tea and then payment of incentives on top of this. Complexity also results from provision of various forms of non-wage benefits to workers, which are aggregated in wage calculations in varying and contested ways. This has contributed to widespread disputes between workers, trade unions and employers regarding the **legality of wage payments**.

Another issue commonly raised by workers was disputed **(non) payments of statutory benefits** such as bonuses, gratuities or providence fund contributions (van der Wal 2011). **Provision of basic personal equipment to support tea plucking work**, such as umbrellas, picking baskets or gumboots, was another important issue for many workers. In some locations, disputes also related to contested entitlements of workers to access **non-wage resources** for workers living in estate housing such as drinking water, permission to collect firewood, or permission to grow small vegetable gardens on estate land near their housing to support livelihoods.

### Occupational Health and Safety

Risks of **physical injury to workers** as a result of the difficult physical labour involved in plucking tea have been extensively documented in previous research on the tea sector (van der Wal 2011). The use of **pesticides** by workers is another significant occupational health and safety issue. Workers in many locations are reported to apply pesticides without the use of masks, gloves or other safety equipment, despite the use of banned and harmful pesticides having reportedly decreased in recent years, particularly on plantations that produce tea certified by international certification schemes such as Fairtrade or Rainforest Alliance. Headaches, nausea and respiratory problems amongst workers have been linked to pesticide use (van der Wal 2008). In the Nilgiris and Darjeeling we did not encounter widespread evidence of grievances regarding sup-

ply of **safe drinking water**, but in Assam this was a serious problem for many workers. Inadequate supplies of safe drinking water on many Assam plantations has been linked to sickness and in some cases death from gastroenteritis.<sup>2</sup>

### Precarious employment

Despite the fact that tea is a perennial crop, significant numbers of workers in many locations are casual or temporary. In addition to insecurity, many workers miss out on statutory benefits such as pensions, medical benefits, maternity leave, gratuities, and in some cases, provident fund payments (Amiya 2010). There have also been widespread claims of pervasive illegal practices in which workers are employed with casual status for longer than the maximum period of 6 months allowed under national regulations (van der Wal 2011).

### Freedom of association and collective bargaining

Practices with regard to freedom of association and collective bargaining vary significantly in different production regions in India, reflecting different patterns of political and trade union activities in different parts of the country, different ownership and management arrangements, and different histories and social structures shaping worker-management relationships. India has not ratified ILO Convention Numbers 87 and 98 pertaining to freedom of association and collective bargaining, and there is no legislation nationally protecting these principles.

Assam is the region in which **constraints on freedom of association** have been most extensively reported and documented (BHRPC 2012). Central to grievances regarding freedom of association in the Assam tea sector are concerns regarding the domination of a single trade union: Assam Chah Mazdoor Sangha (ACMS), which is affiliated to the trade union wing of Indian National Congress. Although a number of other unions have some presence,<sup>3</sup> these other trade unions have not been recognized for the purpose of participating in collective bargaining processes in Assam. Other trade unions are reported to be actively excluded through a 'check off' system where subscriptions for membership of the ACMS union are deducted directly from workers' wages (van der Wal 2011). A check off system is used in some other parts of India also, but outside of Assam we found little evidence of this system being used as a means of constraining worker choice between rival trade unions.

The degree to which worker rights have been protected through robust collective bargaining processes has also varied significantly between different tea growing regions. Collective bargaining processes involving major trade unions and Planters' Associations occur in all states under the mediation of State labour offices (Damodoran & Hayami 2004). Smaller trade unions often complain that these processes are dominated by larger management-aligned trade unions, even in locations such as the Nilgiris where multiple trade unions are recognized formally within

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<sup>2</sup> Such problems were documented in 2012 data on violations of the PLA, provided to a member of our research team by a government official in Assam.

<sup>3</sup> These include: Akhil Bharatiya Cha Mazdoor Sangh, affiliated to CITU; Assam Sangrami Cha Shramik Santha, affiliated to AICCTU, the trade union wing of CPI(ML), Liberation Group; and two others unions affiliated to AITUC and Bharatiya mazdoor Sabha (BMS).

such processes. Critics of these processes have also highlighted the **restricted range of issues** that management has been willing to negotiate (and major unions willing to raise) through these processes (van der Wal 2011). A number of trade unions we spoke with further criticized the decision-making processes used for collective bargaining, whereby **workers at the garden level have often been excluded** from direct involvement in negotiations.

In addition to freedom of association violations that result from intimidation or active obstacles to worker organization, there are also much deeper, **structural obstacles** to effective worker organization in the sector. In part such barriers result from the wider context in which workers are socio-economically and sometimes also culturally marginalized, typically with weak traditions or organizational structures to facilitate collective mobilization.

Collective organizing amongst Indian tea workers are also impeded by broader patterns of **politicization** of trade unions, characteristic of trade union organization throughout India, and associated **fragmentation** amongst trade unions in many locations. Most major political parties in India, irrespective of their ideological orientations, are aligned to particular trade unions (Saxena 1993). Proliferation of political parties is then linked to the proliferation of trade unions, with the trade union movement in India as a whole being fragmented into “‘independent’ (but generally very weak) enterprise or sectoral worker associations, and various competing union ‘centres’ tied directly to structures of party political competition” (Gillan 2008, pp.3-4). Worker populations in tea estates can often “serve as vote-banks for party affiliates”, leading the “internecine struggles for trade union membership” that are a broader feature of Indian politics to also shape dynamics of formal worker organization within tea estates (Neilson & Pritchard 2009, p.144). Such fragmentation can weaken collective bargaining power on individual estates and in the sector as a whole, and make it difficult to sustain broader forms of collective action or protest that would require **coordination** between different union organizations (interview with Participant A January 2013; Participants B, January 2013). In some locations, the political alignment of trade unions was viewed as also undermining their **independence** (interview with Participant C, March 2013), though in other locations political links were weaker (interview with Participants B, January 2013).

### Gender discrimination

Discrimination against women working in the tea sector has been documented in a variety of forms by previous researchers. For example, one report found that women had relatively **poor prospects for promotion**, even to the rank of line supervisor (van der Wal 2011). Male domination of **trade union leadership positions** is also evident at district and central levels, though women members are frequently found in the garden primary committees of trade unions. Instances of **sexual harassment and assaults** on women workers have also been reported in some locations (van der Wal 2011).

Concerns have sometimes been raised about **gender discrimination in the provision of ‘non-statutory benefits’** such as subsidized food-grains or medical benefits—regarded legally as part of the minimum wage in plantations in Assam and West Bengal. In some locations, until a 2010 amendment in the PLA, a permanent male worker was entitled to such benefits for himself, dependent children below 18 years, and his wife and parents if they were dependent, while a

woman worker was entitled to non-statutory benefits only for herself and her dependent children (van der Wal 2011). Such forms of discrimination have been reported to continue in some locations, despite reform to relevant legislative provisions.

### Access to social infrastructure and services

Deficiencies in **social infrastructure and services** provided on farms is a major concern for many workers. Such concerns related to the quality of housing, availability of health and ambulance services on farms, the quality and availability of schooling for workers' families, and provision of latrines and potable drinking water for workers and their families. Security of access to housing and other social infrastructure for retired workers is also a major concern for some. The existing system for provision of social benefits through plantations has also been criticized for the **ambiguous relationship with government service provision** that it creates. Cases have been reported of workers having to pay for health services under these arrangements that could have been accessed for free under government schemes, had they not been dependent on plantations (Rosenblum & Sukthankar 2014). In some cases deficiencies of social infrastructure and service provision have **gendered dimensions**. For example, in Assam workers reported concerns about the absence of separate latrines for women, and inadequate medical facilities for women's reproductive and health issues.

## Grievance handling mechanisms – overview and evaluation

Overall, our analysis presents a rather gloomy view of both the capacity of workers in the Indian tea sector to access local or transnational grievance handling mechanisms, and the capacity of these mechanisms to influence business behavior in line with international human rights norms.

In what follows, we consider in turn a range of grievance handling systems that are in place in the Indian tea sector. We describe the role of each, assess the capacity of workers to use these mechanisms to achieve resolution or remedy for grievances they have experienced, and consider broader effects on human rights practices in the sector. We first examine **local-level grievance mechanisms**, including those operated both by plantation management and by government. These mechanisms sometimes enable workers to seek redress for particular categories of problems, but there remain significant limits to their scope, accessibility and effectiveness.

We then analyze the operation of **transnational grievance mechanisms** in the Indian tea sector. Several transnational grievance handling mechanisms are formally available to tea workers—contingent on the presence of international trade or financing links that connect transnational companies with specific Indian tea growing estates. Relevant mechanisms include OECD National Contact Points, the Ethical Trading Initiative, the IFC Compliance Advisor Ombudsman, and complaint handling mechanisms linked to international certification schemes such as Fair-trade and Rainforest Alliance. However, in practice such transnational grievance handling mechanisms are rarely used by tea workers, and make little contribution to the protection and promotion of human rights in the sector. We examine two cases in which such mechanisms have played a role in handling worker grievances. First, we examine an audit investigation by

**Table 2: Grievance Handling Mechanisms**

|   |   |
|---|---|
| <p><i>Management-based grievance processes</i></p>                              | <p>Estate-based processes are an important way of resolving small, routine worker grievances. They can be useful for workers in dealing with certain kinds of disputes, though they tend to be highly dependent on management discretion, and workers are often reluctant to make use of such processes for fear of adverse consequences.</p>   |
| <p><i>Routine Government regulation of the sector</i></p>                       | <p>Routine inspections by the government’s Inspector of Plantations are important, but suffer from shortcomings in human, financial and other resources. Weak penalties and lack of systematic enforcement also compromise the monitoring and enforcement system.</p>   |
| <p><i>Lodging formal complaints to government</i></p>                           | <p>The most common channels used to complain formally to government involve administrative and legal avenues, however there is often reluctance by workers and management to use them, and they are hampered by a variety of access barriers and capacity constraints.</p>  |
| <p><i>Grievance mechanisms linked to international certification bodies</i></p> | <p>Theoretically it is possible for workers to make complaints to certification bodies overseeing tea production on certified plantations, including Fairtrade and Rainforest Alliance. However, the coverage of these schemes is very limited and such mechanisms are rarely used by tea workers.</p>  |
| <p><i>NGO investigation and Rainforest Alliance research audit</i></p>          | <p>In addition to formal grievance mechanisms, it is not uncommon for NGOs to carry out their own investigations of alleged violations of certification standards, in order to hold certification bodies to account and raise international awareness of human rights issues. One such case that we document, involving Rainforest Alliance certified plantations, led to re-audits of relevant plantations, and there is evidence that Unilever introduced minor improvements in some areas of its human rights practices. However, little substantive change to human rights practices on plantations resulted.</p> |
| <p><i>Complaints to the CAO</i></p>   | <p>Deficiencies in social infrastructure and services on farms are of major concern to many workers, encompassing problems with housing, health services, education, sanitation, or provision of clean water.</p>   |



the Rainforest Alliance, which was initiated following an NGO report that investigated working conditions on certified tea plantations in Tamil Nadu and Assam. We also examine complaints brought to the CAO of alleged human rights violations on plantations in Assam.

## Management-based grievance processes

Multiple interviews with union representatives, workers and estate managers highlighted the central importance of estate-based grievance processes as practical means of resolving small, routine worker grievances. Such mechanisms are controlled largely by management and supervisors, sometimes with the involvement of garden-based union representatives. These grievance handling processes are usually relatively informal, though in some locations they are formalized within garden-based ‘standing orders’, which regulate various conditions of employment.

Usually an aggrieved worker would begin by making a complaint to **line supervisors or other frontline staff** such as field officers or garden welfare officers. Complaints are then typically passed on to more senior estate management as required. Details of such processes vary between production regions and individual estates. For example, in Assam many reported a common practice of setting aside a specific day in the week for workers to come forward to report small grievances (interview with Participants D March 2013). In Tamil Nadu, it was common for estates to establish formal ‘works’ committees to enable regularized discussion between management and workers concerning the operation of the estate. In addition to works committees, some individual estates in Tamil Nadu had established specialized committees focused on issues such as sexual harassment or women’s health. Although the autonomy of middle-level management in dealing with such complaints varied between estates and across different kinds of issues, in most locations any resolution of complaints was at the discretion of central estate management.

**Garden level union officials** sometimes play a role in negotiating resolution of complaints concerning issues such as the condition of housing or latrines, allocation of work tasks, electricity charges, provision of water, provision of protective clothing, or medical facilities. For disputes concerning issues that are subject to tighter legal regulation, such as suspension or dismissal of workers, and where resolution cannot be reached through negotiations at the garden level, complaints can then be taken to union branch committees or other higher-level union officials.

Some workers reported that estate level grievance procedures could be useful as means of dealing with minor grievances, such as leaky roofs on houses – particularly on estates with relatively responsive management. Management and planter associations we spoke with also endorsed such grievance handling processes as useful means of maintaining stability and productivity in the sector. According to one representative of a planter association: “resolving issues at the estate level is the best for everyone involved—it is the least expensive and takes the least time” (interview with Participant E January 2013). For workers, these mechanisms also have the advantage of avoiding the costs and risks of more adversarial approaches to pursuing grievances, including the risk of lockouts or other punitive responses that are sometimes associated with the escalation of disputes.

Despite widespread recognition of the importance of garden level mechanisms, the capacity of such mechanisms to deal with worker grievances remains limited in significant ways.

One of the limitations of estate based mechanisms is the **high levels of discretion** that these place in the hands of management, with regard to questions of process, timelines, how different grievances will be prioritized and whether and how grievances will be resolved. On some estates, workers reported that complaints were regularly ignored, or kept pending for months or even years, particularly with regard to complaints such as requests for repairs to houses or latrines. One worker observed that: “Most of the time the management agrees to resolve the complaint or address the problem, but then in reality [they] do nothing” (interview with Participant F, January 2013). Despite the formalized processes and timelines laid out in the Standing Orders on many estates in Assam, workers claimed that designated timelines were not followed: “With the management there is no timeline to resolve the complaints. The complaints are attended to on the whims and fancies of the management” (focus group interview with Participants D March 2013).

The alienation or disenchantment this generates amongst many workers leads to a **reluctance to make complaints**, because workers do “not expect much from the management” or expect they “would not get better than what [they are] already getting” if they were to complain (interview with Participants G March 2013). A union official similarly suggested that workers don’t complain because “they complain that they can’t get justice before a very long time, so they accept agreements with management to at least get something” (interview with Participant H January 2013). One worker in Darjeeling was blunt: “We don’t complain much as it makes no difference” (interview with Participant I January 2013). Where these mechanisms do continue to be used by workers, they tend to remain narrowly focused on smaller issues that are seen to be resolvable at the local level—tending to preclude complaints relating to more contentious, collective or structural issues.

**Fear of complaining** was also mentioned by many workers and local trade union representatives as an additional barrier to seeking redress. “There is a social stigma, that if they complain, then other women co-workers won’t support her, she will be isolated and victimized by management – people will say the management are decent people so why complain” (interview with Participant H January 2013). One worker told us that she was afraid the management would victimize her if she complained to the trade union, and that she was afraid of raising her voice since her husband was still a temporary worker and might also be victimized. This sense of vulnerability was compounded by the pressing demands of everyday work and responsibilities: “Every day of our life is a problem. We only know how we are coping” (interview with Participant J January 2013). Managers we spoke with were generally reluctant to acknowledge barriers of this kind. According to one: “there is a traditional bonding between the workers and the garden management due to the history and the age of the industry where workers are born and brought up in the gardens. There are no reasons why the workers will be reluctant to lodge a complaint” (interview with Participant C March 2013).

The discretionary character of estate-level grievance handling mechanisms means that their effectiveness **varies considerably between individual estates**. Attitudes and management styles of individual owners or managers was one important factor accounting for such variations. Relationships between workers and management, and thus the effectiveness of informal, estate level complaint handling processes, are also influenced in important ways by the histories and structures of social, ethnic and economic relationships in the tea sector in particular parts of

the country. For example, in Darjeeling, the workers are primarily ‘Gorkhas’, of Nepalese ancestry, while managers and farm owners are predominantly of Indian ancestry. Some have suggested that this can give rise to distinctive challenges in establishing relationships of trust between managers and workers, as a result of “a legacy of mistreatment by the British as well as by the Indian oligarchies that replaced the British” (Moore 2010, pp.13-16).

Some further suggested that plantations run as family businesses sometimes had stronger estate level processes for handling complaints, because of the more direct control that estate based management had over operational decisions (interview with Participant K January 2013). Where owners lived in other parts of India and visited their estates irregularly, as is particularly common in Assam and Darjeeling (Moore 2010), estate managers were reported to have little autonomy to respond to worker complaints, with one plantation owner referring to local management as the “filler in the sandwich” (interview with Participant L February 2013). As described by a union official in Darjeeling, such lack of autonomy on the part of local management has meant that in many cases:

*“management has shifted their mindset – now even for small things, not to mention big things like housing, everything has to be passed through the Kolkata office – all orders have to come from there, and so it is very hard now to get things solved at the garden level ... They all feel now that they are just employees of the owners, so they have no reason to compromise or say yes to our demands, they feel more accountable to the owner”* (interview with Participant M February 2013).

Overall, estate level grievance mechanisms fill an important niche, helping to manage small problems and grievances in a low-cost manner. However, there are significant limits to the capacity of these mechanisms to resolve many kinds of worker grievances. Moreover, the handling of grievances at the estate level rarely occurs through a rights-based framework in which workers claim recognized entitlements, but rather through discretionary and paternalistic processes, which are highly dependent on the goodwill of estate management in any given instance.

## Routine government regulation of the sector

One important way in which instances of alleged non-compliance with government regulatory standards can be addressed is through **routine inspections** by the government’s Inspector of Plantations. The Office of the Inspector of Plantations has the role of visiting each plantation to monitor implementation of the PLA, carrying out prosecutions where required. There are however significant shortcomings with the implementation of PLA provisions through such routine inspection processes.

First, it is widely reported that the government inspectorate has insufficient human, financial and other resources to carry out systematic inspections across the sector. One recent analysis concluded that “the PLA has been hobbled by inadequate, understaffed and weak state enforcement” (Rosenblum & Sukthankar 2014, p.28). Government officials who we interviewed reinforced this picture of inadequate resourcing. One senior official reported that he was “not able to do justice” to his responsibilities because of these responsibilities being split between multiple



Spraying the tea.

*Photo: Souparna Lahiri*

roles. Moreover, the plantation inspectors are reported to be “overloaded”, with inadequate staff capacity to perform their assigned roles (interview with Participants N March 2013). Other practical resources are also sometimes lacking. For example, in Assam one senior official responsible for plantation inspections told one of our researchers that since the inspectors are not provided with vehicles, they often depend on estate vehicles to facilitate their visits to tea estates, compromising the quality and independence of their reports.

The effectiveness of these routine systems of monitoring and enforcement is also undermined by the **weak penalties** available in cases of documented failures to implement the PLA. For instance, as of 2002, the maximum penalty for any offence under the PLA was up to 3 months imprisonment or a fine of up to Rs.500 (\$10.61). A second conviction for the same offence, within a two year time frame, would invite a penalty of up to six months imprisonment or a fine of up to Rs.1000 (\$21.22)” (Oxfam 2002). These penalties were amended in 2010, making the maximum penalty for a first offence up to 6 months’ imprisonment or a fine of up to Rs.10,000 (approximately \$150), and up to 1 year’s imprisonment or a fine of up to Rs.100,000 for a repeat offence. According to one frustrated Labour Department official, as a result of these weak penalties it seemed that estate management “would rather pay the penalty ten times over than actually invest in improving” (interview with Participant O January 2013).

There is also evidence of a lack of systematic **enforcement**, though accurately documenting enforcement activity is difficult due to a scarcity of official government statistics regarding the issuing of penalties in cases of non-compliance. Ad hoc figures we have been able to obtain provide some picture of the challenges faced by the government compliance system. One source we spoke with cited government figures suggesting that in 2008 and 2009 in Assam there were no convic-

tions for violations of the PLA and no fines levied. According to another published report, in Assam and West Bengal together, “over two years, in the two largest tea-growing states of India, with more than 600,000 daily permanent workers, government fines for violations of the PLA amounted to 54,000 rupees, or less than US\$1,000” (Rosenblum & Sukthankar 2014, citing GoI 2008 & GoI 2009b). In the Nilgiris, we obtained similar figures compiled by the Labour Commissioner, documenting the infrequency of penalties applied, and the extremely low levels of these fines. Between 2005-2009 in one region of the Nilgiris, there were 33 cases filed in relation to alleged breaches of the PLA and no penalties were imposed. In another region, 50 cases were filed, and the total fines collected were reported to be 400 Rs (about 6 US dollars).<sup>4</sup>

Some government officials described personal experiences of being subject to implicit or sometimes explicit political pressure to exercise restraint in enforcement activities. One official in Assam told one of our researchers that his “job is made difficult due to immense pressure put on [the labour] office by the government, the tea industry and the dominant trade union ACMS to keep the industrial relations in the tea industry healthy” (interview with Participants N March 2013). Some observers have pointed more broadly to strong motivations on the part of government authorities to accommodate some non-compliance with the PLA by estate owners, because of the dependency of a large workforce on the continued operation of the estates (Maheswari, comment to *The Hindu*, cited in Palanithurai 2006, p.vii).

### Lodging formal complaints with government

A broad array of mechanisms exist through which complaints may be made directly to government. In practice, however, both workers and management often expressed reluctance to use such formal complaint processes. Workers frequently expressed concerns about the risk of formal complaints escalating disputes or triggering retaliation at the garden level (interview with Participants Q March 2013). Concerns about costs or risks of bringing complaints were often linked to concerns about what were perceived to be very low chances of successful resolution through such formal complaint mechanisms.

In cases where formal government complaint channels are used, the most common pathway involves **administrative and legal** avenues. Workers and trade unions can take a complaint to the labour office, where conciliation is sought in the first instance, usually with the assistance of a trade union representative. If an issue is not resolved at that stage, it can be taken to the labour courts, though as discussed further below, this happens only rarely. There are also isolated cases in which **public interest litigation** has been used as a basis for seeking redress with regard to disputes concerning the calculation of bonuses or on wages (interview with Participants N March 2013).

Although administrative and legal mechanisms provide an important channel for dealing with certain kinds of complaints, these also suffer from numerous access barriers and capacity constraints. One important barrier facing workers seeking access to redress through such administrative and legal channels results from the significant **delays and costs** often associated with

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<sup>4</sup> These figures were provided to our research team by officials from the CITU trade union, who had obtained the data from the Labour Ministry in response to a Right To Information application filed by the union on 5th January 2011.

these processes. According to one analyst: “The legal process for the redressal of grievances is lengthy, complicated and expensive” (Bhowmik 2009, p.56). Labour conciliations or mediations managed by the Labour Ministry were also reported as being very slow. One plantation manager we spoke with in the Nilgiris reported that cases in their experience had typically taken between 2-6 years to be resolved, depending on levels of cooperation or resistance from the disputing parties (interview with Participant R January 2014). Trade unions we spoke with cited complex cases that had remained unresolved for as long as 18 years (interview with Participants G and S March 2013). As a result, the conclusion of one union official we spoke with was that: “Taking recourse to courts and tribunals does not solve the problem ... the complaints hang on for years, much to the detriment of the workers themselves” (interview with Participants Q March 2013).

Legal complaint channels can also be impeded by **evidentiary requirements** associated with legal processes. For example, one union had tried to seek redress for what they believed to be health effects of pesticide use in women, but reported that they were unable to establish “sufficient proof of causality from the pesticides ... If we could get the data we could sue for workers’ compensation, or through broader public interest law processes” (interview with Participant H January 2013).

As with estate level grievance handling processes, government based complaint mechanisms usually rely on **estate level trade unions** to help facilitate worker access, given most workers’ lack of familiarity with relevant administrative and legal procedures, and frequent fear of retaliation. As described by one analyst: “The elaborate legal structure and the emphasis on the bureaucracy have increased [worker] dependence on outside (non-worker) leaders as workers find the complicated legal process difficult to tackle on their own” (Bhowmik 2009, p.56).

Dependence on trade unions for practical access to formal complaint processes can create a range of barriers for individual workers, depending on their levels of access to and confidence in unions operating on their individual estates. In locations where trade unions are closely aligned with management—for example as many perceive to be the case with the ACMS affiliated unions in Assam—many workers and garden level trade union officials reported a tendency of branch level union officials to accept decisions of management, and fail to contest cases on behalf of workers (interview with Participants Q March 2013). More broadly, many workers we spoke with perceived higher level union officials to be distant from their lives and experiences (see also van der Wal 2008). Reliance on trade union representatives can create particular problems for workers not aligned with dominant trade unions on a given estate, or for workers whose gender or ethnicity is not reflected in trade union leadership. It has been widely documented that trade union leaders and officials are usually disproportionately men (Chaterjee 2008). In some locations there are also patterns of domination by particular ethnic or tribal groups (Bhowmik 2009).

Another formal, state-based avenue through which workers can potentially take grievances of certain kinds (such as allegations about beatings or other forms of abuse from supervisors) is through **complaints to the police**. However, even in cases where workers have been willing to take the risk of bringing an official grievance of this kind, workers have reported police as often being unwilling to intervene in disputes between workers and management (Rosenblum & Sukthankar 2014). Where disputes have escalated, trade unions have sometimes reported active cooperation between estate management and police in harassing or intimidating workers. In one

dispute in the Doom Dooma factory in Assam, trade unions alleged that management worked closely with local politicians and police to harass or intimidate workers in the context of major disputes (TUAC n.d.(a)).

In view of these barriers to using formal complaint channels, in cases of pervasive grievance workers have sometimes “resort[ed] to violent outbursts or wildcat strikes to get quick redressal” (Bhowmik 2009, p.56). In such cases, tactics have included sit in demonstrations within gardens, short strikes or stoppages of work for a couple of hours in a day, or ‘gate meetings’ where workers all come and sit at the gate of the factory for a short time each day to protest in relation to particular issues, creating a loss of time for management (interview with Participant T February 2013). Such actions would typically be organized by garden level trade unions. In some cases, it has been reported that such actions can yield positive outcomes in relation to small issues such as work rate requirements, supply of poor quality food grains, non-availability of firewood, or late payment of bonuses, though such strategies are unpredictable, and high-risk for workers involved (interview with Participants G March 2013). In rare cases involving more serious and protracted disputes, workers have sometimes engaged in political protest outside of the estate, including attempts to seek political or administrative inquiries, use of press releases and media conferences, or traditional methods of demanding justice in parts of India such as a dharna, in which aggrieved parties seek redress for an offence or payment of a debt by fasting at the doorstep of the person from whom reparation is sought (BHRPC 2012). On occasion major disputes have also been filed to State or National level Human Rights Commissions, though these bodies are rarely used for complaints of this kind, being perceived by trade unions we spoke with as advisory bodies that are too weak to redress workers’ grievances (interview with Participant U March 2013).<sup>5</sup>

A final government channel which is worthy of mention is **local administrative organisations** such as Panchayats or Block Development Offices (BDOs). These do not have any formal responsibilities for handling labour issues, or other issues directly related to tea production (interviews with Participant V and Participant W, February 2013). Nonetheless, in some locations they have a role in providing programs and services to tea worker communities (interview with Participant W, February 2013), as well as provision of broader infrastructure such as roads. According to one government official we spoke with: “the block office is the hub for everything and anything—the people come to the block office and they have the view that everything is the headache of the BDO and the BDO has to solve all the problems” (interview with Participant W February 2013). As a result, local officials reported sometimes becoming involved indirectly in disputes involving tea workers, despite a lack of formal responsibility for such issues. For example, such complaints were reported to relate to issues such as efforts to get a closed tea garden re-opened, and lack of provision of health services on plantations. Because these agencies have no authority to settle such disputes, their involvement simply involves a role of go-between: “If there is a problem somewhere I will just let them [the relevant line departments] know there is a problem, kindly look into it, but the final problem has to be solved by that office ... I just tell them what needs to be done, but I can’t interfere in his work. I am not his higher authority, he has his own chain of command” (interview with Participant W, February 2013).

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<sup>5</sup> One case study in this report series documents some significant success in use of the Indian National Human Rights Commission, which was able to compel state governments to compensate widows of men who died of silicosis caused by working in stone quarries in Rajasthan.

Although complaint procedures linked to government institutions can play a crucial role in facilitating redress in some circumstances, there remain pervasive limits to the scope and effectiveness of such governmental systems of grievance-handling. It is against this backdrop that the transnational grievance mechanisms have emerged.

## Grievance mechanisms linked to international certification bodies

One option for **transnational redress** that is at least theoretically available to some Indian tea workers is for workers on gardens certified by an ‘ethical’ production certification or labelling scheme to complain to the certifying body. These schemes tend to be built explicitly around an audit framework, whereby grievances need to be framed as violations of certification standards in order to be recognized.

There are a number of major tea production standards systems operating in the Indian tea sector, most notably Fairtrade, Organic, Rainforest Alliance and UTZ Certified, all of which certify plantations as well as cooperatives of smallholders. Of those certification schemes focused on social and labour issues, Rainforest Alliance has the largest number of certified plantations in India, 850 estates producing 15% of India’s tea (Rainforest Alliance 2015b), followed by the Fairtrade Labelling Organization. Often the same gardens are certified by multiple schemes. In most parts of the country, the coverage of these schemes is very limited, though it varies significantly between regions. For example, as of 2013, of approximately 900 tea gardens in Assam, nine were Fair Trade certified (Hodge 2013). In contrast, in Darjeeling, of its 87 tea plantations, around 50% were certified as organic, or in the process of conversion, and 30% were certified Fair Trade (Makita 2012, p.92), which is an effect of the region’s identity as providing extremely high-quality teas, and associated export patterns to Europe and the UK, where demand for certified teas is higher. Each scheme has its own distinct processes in place for dealing with grievances from workers; we focus our analysis here on the Rainforest Alliance and Fairtrade certification schemes, reflecting their more extensive presence in the sector.

### Fairtrade

Fairtrade is a prominent international standard-setting and certification scheme, which operates routine certification processes through an independent entity FLO-CERT. FLO-CERT has developed several different procedures to deal with third party claims of different kinds—classified as complaints, allegations, appeals and reviews.<sup>6</sup> The relevant procedure from the perspective of workers wishing to complain about violations of Fairtrade standards is the category of ‘Allegations’. These are defined as “a statement of fact or facts by a third party against an operator holding a Fairtrade certificate claiming that this operator is non-compliant with applicable Fairtrade Standards, or is in breach of FLOCERT policies or other contractual obligations with FLOCERT”<sup>7</sup>

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<sup>6</sup> Fairtrade Labelling Organizations International (FLO) was established in Germany in 1997. In 2004 Fairtrade International split into two independent organizations: Fairtrade Foundation, which sets Fairtrade standards and provides producer support, and FLO-CERT, which inspects and certifies producer organisations and audits traders [Fairtrade Foundation 2016].

<sup>7</sup> See: <http://www.flocert.net/wp-content/uploads/2014/03/QM-Complaints-SOP-15-en.pdf>



The audit and certification processes operated by FLO-CERT are intended broadly to support the objectives of remedying individual grievances and preventing recurring sources of grievance. The specific objective of ‘allegations’ procedures is viewed as linked to these wider purposes—providing a means of bringing to light and investigating possible breaches of the Fairtrade Standards, and in the process also bolstering longer term improvements that may help prevent recurring patterns of grievance.

The numbers of allegations made through this mechanism have been low, relative to numbers of certified production units. For example, in 2013, across all FLO certified products and locations worldwide, only 31 allegations were logged as submitted. Of the 25 that were then accepted, only one was in the tea sector, and only 2 were in Asia (FLO-CERT 2014). These figures regarding formal ‘allegations’ do not include those complaints or concerns communicated directly to FLO-CERT auditors during the course of routine audits (FLO-CERT 2013).

To make a complaint via this mechanism, the complainant must first email a designated FLO-CERT email address to request a form, and then complete and return the form within four weeks. The relevant certified operator must be identified, together with any available evidence to support claims that Fairtrade standards or policies have been breached. Within ten days, FLO-CERT will then make an initial assessment of the ‘validity of the allegation’ (FLO-CERT 2013). If the allegation is judged to be valid, the certification unit responsible for the affected operator will be informed by the FLO-CERT quality management team, and will begin investigating the case.

The nature of any subsequent FLO-CERT investigation will vary depending on the nature of the allegation. Options are listed as including: analysis of written evidence provided by the alleging party; request for an expert or technical evaluation of the allegation; request for a statement of the concerned operator; analysis of the allegation as part of the next regular audit of the concerned operator; or conducting an additional or unannounced audit to verify the allegation onsite. The majority of allegations are dealt with through audits. For example, FLO-CERT figures suggest that in 2014, 17 of the 25 accepted allegation cases were investigated by means of an audit in the same year (FLO-CERT 2014). If non-compliances with FLO standards are found, then these will be documented, and the operator will be asked to suggest corrective measures to address the non-conformity. These measures are then followed up either through written documents or through a follow-up audit, depending on the case. For more serious instances of non-compliance, certification certificates may be suspended while corrective measures are undertaken, or for the most serious cases, the operator may be de-certified (FLO-CERT 2013). In 2014, of the 17 accepted allegation cases that were investigated by audit, 7 were found to be substantiated, at least in part (FLO-CERT 2014).

Access to the mechanism is broad in the sense that an allegation can be filed by “any party, including but not limited to, a Fairtrade operator, an NGO, a labour union, a worker or a member of the public” (FLO-CERT 2013). However, access to the complaint mechanism is limited in important ways. First, allegations are only accepted for any matter “that imposes stricter requirements than national legislation” (FLO-CERT 2013, p.3), to try and avoid overlap with the jurisdiction of national regulatory processes. In practice, this limitation excludes many significant human rights violations experienced by Indian tea workers, since many relevant rights are for-

mally recognized in the Plantations Labour Act, despite systematic shortcomings in the implementation of these provisions. Second, it is stated that workers and their representatives should not bring complaints to FLO-CERT until they have already tried to solve the conflict “within their own organization”. Only “in cases when the internal procedure does not function properly, FLO-CERT will accept the allegation and investigate it accordingly” (FLO-CERT 2013, p.4).

### Rainforest Alliance

Like Fairtrade, the primary purpose of the Rainforest Alliance system is to provide standard setting, certification and verification processes for a range of mainly agricultural and forestry sectors, including tea. Rainforest Alliance has also developed a formal grievance handling system to operate alongside its certification program (Rainforest Alliance 2016). As in the case of Fairtrade, these grievance handling processes are designed to supplement opportunities for worker feedback that are incorporated into routine audit processes.

Complaints alleging violations of Rainforest Alliance certification standards by Rainforest Alliance certified operations or applicants may be made by a broad range of stakeholders (including community members, adjoining landowners, government officials or NGOs). Rainforest Alliance says that it will investigate any allegations of non-conformity and specify any proposed actions in response to a given complaint within 3 months of the date it was formally lodged (Rainforest Alliance 2016). Little information is publicly available about numerical patterns of usage of this mechanism, though we were advised that there are plans for this information to be made available in the future.

Where it is judged that sufficient evidence has been presented as part of a complaint to warrant further investigation, one possible response to a complaint is for Rainforest Alliance to carry out what they refer to as a ‘Research Audit’, which is a surprise audit carried out in response to a complaint received about a Rainforest Alliance Certified operator (SAN & Rainforest Alliance 2015). In the following section of this report, we examine in more detail one instance in which this research audit process was used in response to alleged code violations.

### What difference do these certification-based complaint mechanisms make?

Based on the figures presented above, it is clear that the **coverage** of these schemes within the Indian tea sector as a whole is very limited—though highly variable across tea growing regions. What can be said about the capacity of these grievance mechanisms to provide redress for the minority of Indian tea workers who work on estates holding ethical certifications of these kinds, for whom these mechanisms are therefore formally available?

From the **perspective of individual workers** wishing to resolve plantation-level grievances, the first thing that is striking is that despite the prominence of these certification schemes, available figures suggest that the formalized grievance mechanisms linked to these schemes are very **rarely used**. To some extent this may relate to the limited scope of grievances able to be accepted by these certification-oriented mechanisms, noted above. There are also significant barriers for individual workers in accessing these mechanisms. Clearly there are straightforward technical

barriers for many workers in accessing email-based communication channels. Many workers are also unaware that such grievance channels are available to workers on certified estates, and in any case would be very unlikely to make a complaint through impersonal, remote channels of this kind, under conditions where there is a widespread lack of confidence amongst workers to speak freely with outside auditors, and few opportunities to make direct contact with staff from the certification bodies themselves (van der Wal 2011).

Such barriers are often compounded by weak collective organizing capacity amongst workers, and limited connections to outside organizations such as NGOs who may be able to provide assistance in making complaints—as discussed further later in this report. It is notable in this respect that during the period of our research, there was no evidence of the capacity of workers to bring complaints through the FLO-CERT system being enhanced to any discernable extent (for example, compared with worker access to comparable mechanisms operated by the Rainforest Alliance) by the presence of Fairtrade ‘Joint Bodies’ (worker committees), which must be established on Fairtrade certified plantations as a condition of certification. The requirement for these worker committees to be established on Fairtrade certified estates is an important and distinctive feature of Fairtrade certification, and might be expected to help overcome access barriers associated with weak collective organizing capacity amongst workers.

In practice, however, the Joint Bodies operating on Fairtrade certified tea estates were widely perceived by those we spoke with to be closely linked to management, with weak or non-existent links to trade unions in most cases. Joint Bodies on Fair Trade certified plantations often involve individual workers who have no links to trade unions, and there are no structures in place to facilitate communication or coordination between these distinct collective worker bodies (Moore 2010). Moreover, Joint Bodies are mainly perceived as an instrument for distributing the Fairtrade social premium (a cash payment received in addition to the minimum price paid for Fairtrade tea), not for any other representative functions such as supporting aggrieved workers, even informally. Estate managers we spoke with on one Fair Trade certified estate told us that the Joint Body is “completely different” to both unions and the works committees. This view was reinforced by a local FLO staff member we spoke with in 2010, who told us that: “the Joint Body has nothing to do with the union, nothing to do with the existing committees... It’s a separate requirement of the Fair Trade standards” (interview with Participant X, July 2010). In January 2014 (after the period of our field research in India) Fairtrade introduced some reforms to its Fairtrade Standard for Hired Labour, designed to strengthen protections for union organizing, and worker control over expenditure of social premiums (Fairtrade Foundation 2014). We have no evidence as to whether such reforms have had any impact on the earlier dynamics documented here.

Political mobilization by Joint Bodies, whether independently or in coalition with trade unions or NGOs, has been further constrained in India by a government policy that restricts foreign funding to NGOs for activities designated as ‘political’ in purpose (PoI 2010). Such funding restrictions are applied not only to NGOs, but also directly to Fairtrade organizations. As a result, use of Fairtrade social premiums is restricted to non-political purposes. Since Joint Bodies in their existing form are already very apolitical in orientation, this was not perceived as a practical constraint by any workers we spoke with. However, some outside organizations we interviewed viewed this regulation as further limiting the potential for Fairtrade Joint Bodies in the Indian tea sector to reorient themselves as more political vehicles for worker organization or claim-making.

## NGO investigation and Rainforest Alliance Research Audit

In addition to formal grievance handling processes established as part of international certification systems, it is not uncommon for NGOs to carry out their own investigations of alleged violations of certification standards in particular sectors or locations. Such investigations often have dual aims of holding international certification systems to account for the performance of their internal audit systems, while also amplifying specific worker or community complaints to international audiences. In a number of cases that we examine in this series of reports, investigations or research reports of these kinds have intersected in important ways with formal non-judicial grievance mechanisms. We examine in some detail one such example, whereby an alliance of Dutch NGOs carried out a research investigation of compliance with Rainforest Alliance standards on tea estates, leading to a response from the Rainforest Alliance in the form of a Research Audit (van der Wal 2011).

### Overview of the investigation and audit process

The Dutch NGOs SOMO (Centre for Research on Multinational Corporations) and ICN (India Committee of the Netherlands) published a report in 2011 based on research carried out in the Kenyan and Indian tea sectors (Tamil Nadu and Assam), investigating incidences of alleged human rights violations in Rainforest Alliance certified plantations (van der Wal 2011). In Kenya the plantations were owned by Unilever; in India they were direct sellers of tea to Unilever. The research on the ground in India was sub-contracted to an Indian researcher. SOMO and the Tropical Commodity Coalition (TCC, a wider NGO coalition of which SOMO and ICN were members) then coordinated what they referred to as a ‘right of reply’ dialogue with Unilever and Rainforest Alliance prior to the release of the report, to provide an opportunity for them to respond to the claims in the report prior to its publication.

The report published findings documenting a range of human rights problems on tea estates supplying Unilever, and certified by Rainforest Alliance. Human rights and broader labour problems documented in the report related to payment of wages, discrimination against women, casualization of the workforce and poor protections for health and safety of workers. Many of the problems documented constituted violations of Indian legislation, ILO standards, and Rainforest Alliance certification standards (van der Wal 2011).

An unusual feature of this case was that the parties instigating the process—SOMO and ICN—framed their action as a research activity, not a complaint. The investigation report was carried out with the intention of generating independent research to document “whether there is evidence of improvement of the working conditions on tea estates that have achieved Rainforest Alliance certification ... The rationale for focusing on Rainforest Alliance is the increased reliance of large companies such as Unilever on these kinds of multi-stakeholder certification schemes, and the market share of tea sourced under such labels growing accordingly, and particularly in the context of Unilever setting a target to source only RA certified tea for its Lipton (and PG Tips) brands by 2015” (van der Wal 2011, p.4). The subsequent interactions between SOMO, Unilever and Rainforest Alliance were characterized by the report authors as a ‘right-to-reply dialogue’ (SOMO 2011), not as a process for handling a complaint. This dialogue took place in late 2010, and the report was published in 2011. In this sense, the report and its follow up was not conceived or represented by the ‘complainants’ as an attempt to appeal to a formal grievance mechanism.

Despite a formal complaint not being submitted to Rainforest Alliance, Rainforest Alliance responded to receipt of the report, and the associated dialogue process with SOMO and TCC, by instigating a ‘research audit’. Although Rainforest Alliance acknowledged that a formal complaint had not been made, instigation of a formal research audit was regarded as an appropriate response to the presentation of documented allegations. As they described it: “In the case of the Tea Research reports shared by TCC, a formal written complaint was not received. However, the content of the two documents that were shared were containing allegations that SAAS (Sustainable Agriculture Auditing Services – a program of Rainforest Alliance) considered of a serious nature, and decided to start research on the findings of the two reports” (Rainforest Alliance 2010).

Rainforest Alliance’s interactions in the ensuing dialogue were therefore undertaken in a dispute resolution mode, and they were critical of SOMO’s unwillingness to work with them to advise on measures to ‘resolve’ the dispute. SOMO, on the other hand, felt that their proper role was one of independent researchers, and that it would be inappropriate for them to engage with the companies beyond a certain point. In their own words:

*“... in the discussion with Unilever and Rainforest Alliance we have made it clear that it is neither SOMO’s or ICN’s role nor our objective in the project to provide specific and tailor made technical advice for business or other organisations on how to solve their problems relating to sustainable production. There are consultancies and (other) NGOs that are better equipped for this. Moreover as a research organisation focussing on multi-nationals SOMO does not work for companies by principle to avoid potential conflicts of interests.” (SOMO 2011)*

This disconnect between the modes of engagement of the parties involved in the process contributed to a process of dialogue and response that was highly defensive, somewhat hostile, and not particularly constructive from the perspective of achieving remedy—either from the perspective of individual grievances, or from the perspective of changed business behavior in the sector as a whole.

## Reflections on effects of the investigation and audit process

Because different parties participating in the investigation and audit process understood the nature and objectives of the process differently, our assessment of the process considers its effects from the perspective of these varying objectives.

From the perspective of Rainforest Alliance, the purpose of the process was viewed as being to identify patterns of non-compliance with its standards, and put in place **internal remedial actions** designed to prevent violations from recurring on the specific certified estates identified in the NGO report. Accordingly, the Rainforest Alliance response involved a re-audit of all the plantations studied as part of the investigation report, with particular attention to the alleged standard violations documented in the report. Research Audits were carried out in October and November 2010, in all of the estates mentioned in the report, to inform Rainforest Alliance and Unilever’s response. These reportedly involved document checks, meetings with estate managers, and interviews with workers and union representatives in each estate, and with union

leaders of major district-level unions. Meetings were also held between staff from the Dutch NGOs, Rainforest Alliance and Unilever (Rainforest Alliance 2010).

There is some evidence that these processes led to a degree of strengthening of Unilever's response to pervasive human rights problems in the Kenyan tea sector. In their published report, SOMO and ICN state that in 2010, after the dialogue around the research started, Unilever initiated a number of new measures to try and tackle discrimination, harassment and other problematic practices documented in Kenyan plantations: "While it is too early to verify whether these measures are effective, they are apparently not the result of signals being picked up by the local Unilever management but by SOMO's research". Subsequently, Rainforest Alliance revised some of its procedures related to the auditing of human rights risks (Rainforest Alliance, 2015),<sup>8</sup> and both Rainforest Alliance and Unilever implemented a range of new measures to improve labour conditions (ICN, 2016, p.8).

In India, a follow-up study of working conditions on two of the same plantations in Tamil Nadu, carried out by ICN in 2015, concluded that some improvements had been made in relation to payment of minimum wages, safe handling of chemicals and provision of health and educational facilities for workers. Problems were reported to persist in relation to overtime wages and hours, provision of benefits to casual workers, chemical handling practices and worker representation (ICN, 2016).

The NGO investigation report was broader in orientation than Rainforest Alliance's internal audit processes. The report stated that its goal was not merely to remedy the specific grievances identified in the report, but to highlight more **entrenched, sector-wide problems** that are "not incidental but systemic in nature", and "affecting a great number of people; not just a few" (van der Wal 2011, p.5), and to push for efforts to tackle these on a wider scale. Specifically, the report authors stated that their goals were "to raise awareness" of persistent human rights issues in tea production, to "initiate and support debate and raise awareness among food industry stakeholders" regarding shortcomings of certification systems, and thereby to "improve the effectiveness of sustainability initiatives and systems by analyzing the shortcomings of existing voluntary approaches" (van der Wal 2011, p.7). In other words, the goal was to contribute to remedy through bringing about broader changes to the behavior of companies and certification schemes.

One potential channel through which the NGO report may have contributed to remedy in the form of broad-based sectoral change is by generating political or market pressure to induce Unilever and Rainforest Alliance to **alter their internal procedures** (van der Wal 2011, p.5). To the extent that changes to Unilever and Rainforest Alliance procedures that followed the research audit can be causally attributed to the audit findings, the process can be regarded as having contributed to desired change—though we have no clear evidence regarding the strength of such causal links.

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<sup>8</sup> The SAN standard and associated procedures are periodically revised in accordance with stated principles of continuous improvement, and they have continued to be revised since that time. Such revisions draw on feedback and experience from audit processes, public consultations and broader processes of learning, to which complaint processes are one of numerous inputs.

Often political and market pressure is strongest when it can be sustained through broader **campaigns**, which strategically deploy information about grievances as a basis for strengthening the bargaining position of affected people and their supporters. However, in this case, because the investigation report was conceptualized primarily as a piece of research rather than as a basis for advocacy, the report was not accompanied by investment in worker capacity-building, or relationships with worker organizations at the local level. Neither were investments made in developing links to wider campaign groups internationally, to enable information gathered through the investigation to be used in subsequent, coordinated campaigns. This limited the degree of leverage that the report was able to generate, and the NGOs' capacity to engage Unilever and Rainforest Alliance in a public dialogue.

Another process through which sector wide change in business behavior is often understood to occur is through support for strengthened communication and **dialogue amongst different stakeholder groups**—in turn supporting processes of **learning** or attitudinal change in the sector. However, SOMO and ICN were clear that their aim was not to engage in processes of remediation in collaboration with Rainforest Alliance or Unilever—stating as noted above that they did not see it as their role to offer technical assistance with regard to solutions for achieving strengthened compliance. There were also no efforts to engage directly in dialogue with Indian planters—either during the 'right to reply dialogue' that followed the report, or in the course of conducting the research. Managers of estates that were subject to the SOMO report and subsequent Rainforest Alliance investigation consistently reported that the first they learned about the report was when Rainforest Alliance showed up to do a surprise audit. After the audit was finished, they were told that there had been a report in which complaints had been made alleging non-compliance with the Rainforest Alliance standards. The estate managers then talked amongst themselves, and some found copies of the report on the internet, so they came to know more about the background afterwards.

The lack of direct communication with estate owners and managers in the course of carrying out the research was widely criticized by plantation owners and managers we interviewed, on the grounds that it damaged trust between parties, and impeded constructive efforts towards dialogue and learning. According to one estate owner: "It is healthy to have a watchdog or whistle blower – this can be helpful for all stakeholders, but ... rather than doing it in such a hush hush way, they should have asked to discuss afterwards with management ... What is needed is ... an environment of trust I wherein I should be able to say 'sorry I am not able to comply with these standards can you help me to comply with it in the way you know' because ... they have seen many parts of the country or world facing the same problem" (interview with Participant Y January 2013).

Garden management further used the fact that they hadn't been consulted during the preparation of the report to try and **discredit** the report in the eyes of Rainforest Alliance and Unilever, suggesting that the investigation had been "one-sided". One estate manager we spoke with complained that: "most of these reports are all one-sided ... [and] trying to find faults, which is very easy ... with ... so many things happening" (interview with Participant R January 2013). An official from a major planters association similarly told us that:

*“[On large scale estates] you will always find mistakes. It is impossible to find 100% compliance. ... But if Rainforest Alliance and Fair Trade are doing things and trying to do this for the betterment of people, then you should also be asking have there been improvements, but who is looking at that? In the report they were only looking at the negative aspects. Why were they not reporting both?”* (interview with Participant E January 2013).

Such perceptions and experiences seem to have reinforced a pervasive attitude of defensiveness or even hostility amongst planters towards NGOs in general, and particularly foreign NGOs. According to one: “I can tell you straight away that [NGOs] are biased and will go for what gets the headlines—they complicate matters. If they get involved, then they do it without understanding the ground reality, and they will try to sensationalize, to try to get in the media that they solved the problem” (interview with Participant E January 2013).

The public response to the report from Rainforest Alliance and Unilever was also in some respects **defensive** in character—further limiting the prospect for constructive processes of remedy in response to the report. Rainforest Alliance claimed that they were in favor of an open dialogue on the matter, saying that: “We welcome feedback from stakeholders and are grateful for the open dialogue that these reports have opened” (Rainforest Alliance 2010, p.1). However, Unilever emphasized their opposition to airing complaints publicly: “The Rainforest Alliance has played a crucial role in improving the lives of tens of thousands of agricultural workers in the tea industry. We are disappointed by SOMO’s attempt to undermine public trust in the scheme. If SOMO intends to improve the living and working conditions in the tea industry, we believe publishing this report will have a counter-productive effect” (Unilever 2011).

The somewhat defensive stance of Rainforest Alliance and Unilever, together with the strong audit orientation of Rainforest Alliance’s broader engagement with the NGO report, contributed to forms of public dialogue that appeared more focused on **deflecting ‘blame’ from their own organisations**, than on seeking dialogue about broader processes of learning and change in the sector. The way in which Rainforest Alliance publicly refuted specific allegations made in relation to them illustrates this tendency. Both specific factual claims, and the credibility of the research process itself, were questioned, suggesting a reluctance to acknowledge the pervasive existence of certain kinds of worker rights violations in the sector, and the unreliability of audit processes in detecting these. Rainforest Alliance’s response asserted firmly that that “no such practices [concerning casualization of labour to avoid payment of statutory benefits] exist in any of the tea estates”. It further affirmed conclusions from the Research Audit that the relevant estates were “at the time of the Research Audit, compliant with the SAN certification requirements” (Rainforest Alliance 2010, p.5). The Rainforest Alliance response to this specific set of allegations was somewhat at odds with many of the organization’s broader public communications, in which there is often open acknowledgement of the systemic nature of problems faced on farms and by workers, and the constrained capacity of certification processes to tackle such problems in the absence of wider shifts in national regulatory processes and supply chain power imbalances.<sup>9</sup>

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<sup>9</sup> See for example: <http://www.rainforest-alliance.org/about/integrity/improve-living-conditions-plan-of-action>



The somewhat polemical response to allegations of specific Rainforest Alliance standard violations was reinforced by broader efforts to question the credibility of the research process, such as statements that workers and union representatives who had been interviewed as part of the Rainforest Alliance research audit process had not heard of or been interviewed for the NGO study. It was further reflected in an unwillingness to accept the validity of claims made in the report unless the NGOs would “share a list of people who were interviewed for the reports”. Rainforest Alliance stated that the unwillingness of NGOs to share this confidential information meant that “it has not been possible to cross check the findings of the reports with those originally involved” (Rainforest Alliance 2010, p.5)

The notion that evidence can be simply ‘checked’ through a plantation-based audit process, and that such a process would be sufficient to verify or reject concerns that had been raised, is at odds with the significant challenges that face all parties in securing reliable evidence in relation to complex and pervasive human rights issues such as these. As discussed in greater detail later in this report, and extensively documented in wider bodies of research, workers often lack confidence to speak frankly to external auditors, even when given formal opportunities to do so. Workers may lack confidence that their claims will be taken seriously and will not result in retaliation from management, and they may be unwilling to formally testify in relation to pervasive grievances—or may not perceive certain firmly established practices as issues about which they are able to complain.

For outsiders such as NGOs seeking to gather evidence regarding practices within plantations, a distinct set of barriers exist. **Access to workers** is often seriously constrained, with “trespassing” by outsiders onto plantation property looked on very negatively by planters (Sumitha 2012, p.29-30). According to one recent analysis of conditions in tea plantations, management in many plantations “restricts access” to the workers’ housing areas on plantations, and “carefully polices” worker activities there, particularly the comings and goings of external organizations such as NGOs who management perceive as trouble makers. Some managers demand that workers seek advance permission for any meetings with outsiders. This is despite provisions in the PLA that explicitly require that “The employer shall not deny to the public free access to those parts of the Plantation where the workers are housed” (Rosenblum & Sukthankar 2014, p.69). Difficulties accessing workers are often compounded by lack of trust between planters, unions and perceived outsiders at the local level, and more broadly often a hostility to the ‘interference’ of foreign organizations. Yet grassroots unions and NGOs with close ongoing links to workers often lack the financial capacity, specialized experience or external networks to be able to collect, document and disseminate ‘evidence’ of violations in the specific ways expected by many formal complaint-handling mechanisms.

Instead of such challenges for all parties being acknowledged as part of public dialogue, **competing sources of evidence have often become highly politicized**, reflected in open contestation regarding the validity or legitimacy of competing sources of evidence. The Dutch NGO investigation gathered significant amounts of ‘evidence’ to support claims of Rainforest Alliance code violations, yet these were contested and ultimately not accepted by either Rainforest Alliance or planters. The antagonistic processes of dialogue following the NGO report appear to have pushed parties towards polarized claims about evidence, rather than acknowledgement of the challenges

confronting all parties in documenting clear evidence of complex and contested practices. This politicization weakens the capacity of either audit processes or other external investigations or grievance procedures to provide a basis for dialogue or redress between the parties that both sides of the dispute will accept as valid—in turn weakening the capacity of such processes to support broader learning and dialogue around human rights practices in the sector.

## Complaints to the CAO

Another prominent transnational grievance handling mechanism that has been used in the Indian tea sector is the International Finance Corporation (IFC)'s Compliance Advisor Ombudsman (CAO)—analyzed in more detail in another report in this series. The CAO is responsible for handling complaints by people affected by projects supported by IFC or MIGA—the World Bank Group's two private sector lending bodies. The CAO has three separate functions. The Ombudsman offers a problem-solving or dispute resolution function. The Compliance function conducts audits of the IFC/MIGA's own decision making. The Advisor function provides advice to the IFC and MIGA about their policies in relation to environmental and social sustainability based on lessons learnt from handling cases.

In the Indian tea sector, the CAO was involved in two grievance processes, initiated respectively in 2011 and 2013. These involved separate complaints from separate parties, though both related to plantations managed by the company Amalgamated Plantations Private Limited (APPL)—a large Indian tea producing company which had received funding from the IFC. The 2013 complaint occurred at the end of our period of field research. As a result, our local interview data regarding this case is limited, though we have conducted phone interviews with key actors where possible. The events in the two cases were complex, but are narrated in summary form in the following discussion; the timeline of key events is also summarized in table form in Appendix 1 below.

Grievances are able to be brought to the CAO by parties affected by projects or business activities that have received funding from the IFC. Tea workers in Assam were eligible to make use of this grievance system as a result of IFC funding to the company APPL. It is worth noting that this financing link was the only documented international connection in this case. Just under 50 per cent of APPL shares are owned by Tata Global Beverages, owners of the Tetley tea brand (Ramachandra & Feruglio 2014). However, according to a statement from Tata tea, tea produced on APPL plantations is sold exclusively to the Indian domestic market (Green 2014).

## Overview of the grievance process

In 2009, APPL received an equity investment of \$7.8 million from the International Finance Corporation (IFC) (Agarwal 2014). All IFC financed projects are required to comply with a set of social standards, known as Safeguard Policies prior to 2006, and the Performance Standards subsequently. The IFC conducted due diligence in accordance with the Safeguard Policies as part of the approval process for this investment, and APPL was required to comply with the newer Performance Standards as a condition of the IFC loan (Rosenblum & Sukthankar 2014).

According to some observers, although “the IFC investment of nearly \$8 million may have been relatively small in dollar amounts ... it brought critical legitimacy and a necessary infusion of cap-

ital to a corporate restructuring project that had lost other outside investors” (Rosenblum & Sukthankar 2014, p.12). The investment was designed to facilitate the acquisition and management of 24 tea plantations in Assam and West Bengal owned by Tata Tea, and implement a ‘worker-shareholder’ model of production. Key elements of the transition from Tata to APPL involved the sale of up to 30% of shares to employees (mainly staff and management, but with some involvement intended for workers), and diversification from an exclusive focus on tea production, to include production of other agricultural commodities and fisheries (Rosenblum & Sukthankar 2014).

### Background to the complaints

The events leading up to the series of CAO complaints need to be understood against the backdrop of the problems and union mobilizations taking place in Assam over a number of years. The specific incidents on which the initial complaints were based dated back to 2009 and 2010, occurring on two separate tea estates in Assam owned by the company APPL. In both cases, the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) had previously become involved, providing some support to local union and worker mobilization.

In the first incident, in 2009, a pregnant tea garden worker at the Nowera Nuddy Estate in West Bengal (in the Dooars Valley, Jalpaiguri District) had allegedly requested maternity leave at an APPL clinic, before collapsing at work in the field. This precipitated a major labour dispute on the Estate, resulting in a prolonged worker lockout until the middle of December of that year. The dispute then expanded to encompass disputes about payment of workers’ wages during the lockout period. As the dispute escalated, eight workers who took part in protests were suspended, and later arrest warrants were issued for these eight suspended workers and three others, on charges including theft, grievous bodily harm, unlawful assembly, criminal intimidation and unlawful confinement, in connection with the protests (Rosenblum & Sukthankar 2014). In this case, the IUF provided some support for workers participating in the protest, calling for Tata to pressure the management of Amalgamated Plantations to engage in serious negotiations with workers. The IUF complained to the IFC, who conducted a site visit to Nowera Nuddy in September 2010, but the IUF was critical of the lack of opportunity for workers to speak independently with IFC staff during this visit.

In a separate case, in which the IUF was also involved, a spray worker who had been denied sick leave at the Powai Tea Estate (located in the Tinsukia District of Assam) collapsed at work in the field in May 2010. He was allegedly denied medical assistance and died – many believed due to overexposure to hazardous chemicals, associated with inadequate provision of personal protective equipment. The death of the spray worker, and the subsequent response of managers, prompted worker protests. During clashes with the police, two protesters were shot dead, and 18 others injured (Gothoskar et al 2010). Workers also felt aggrieved by the company’s subsequent treatment of victims of the police violence, with regard to facilitation of medical assistance, leave from work and payment of wages and other financial compensation (Gothoskar et al 2010). Negotiations with the company in relation to these grievances were carried out on behalf of the affected communities by the only employer-recognized union at the estate, the Assam Chah Mazdoor Sangha (ACMS) (Gothoskar et al 2010). The sole demand made by the ACMS to the company was reportedly the construction of a permanent “confidence-building” monument



'No Trespassing.'

Photo: Souparna Lahiri

inside the factory premises in memory of those who had lost their lives during the violence. Members of the affected community expressed great dissatisfaction with the quality of the representation provided (Gothoskar et al 2010).

This incident gave rise to a number of worker and trade union mobilizations. Workers and trade unions organized protests and attempted to directly approach the company, as well as the Tinsukia district and police administration, the Assistant Labour Commissioner office in Tinsukia, the Assam Chah Mazdoor Sangha (ACMS) trade union and the Assam Branch of India Tea Association (ABITA) (Telegraph Newspaper 2010). In July 2010 the All India Trade Union Congress (AITUC), the Assam Tea Labour Union (ATLU) and the Centre of Indian Trade Unions (CITU) contacted the IUF, asking that they investigate the case of the Powai Tea Estate (Gothoskar et al 2010). The IUF investigated the case from July to October 2010 and published a report in October 2010.

The company was reportedly strongly opposed to the IUF team investigating the incidents and monitoring progress on the estate. The management was alleged to have threatened the team with physical harm and property damage, and illegally denied them access to the estate and the workers for the purpose of its investigation (Gothoskar et al 2010). In response to this denial of access, the report team from the IUF complained to the Assam Chief Minister, the Deputy Commissioner and the Superintendent of Police, asking for assistance in guaranteeing their safety and concluding its enquiry. These authorities acknowledged receipt of the IUF letter but declined to cooperate (IUF 2010). In addition, some requests for information made by the IUF team to local authorities were denied (Gothoskar et al 2010).

## The CAO becomes involved

Given ongoing concerns about conditions on both these plantations, in January 2011, the IUF opted to make use of an online complaint mechanism (referred to as a ‘communication portal’) provided by the IFC as a means of enabling trade unions to bring alleged core labour rights violations associated with IFC funded projects to the attention of the IFC’s Environmental and Social Development Department (ITUC 2011). The IUF was registered as complainant, on behalf of workers of Nowera Nuddy Estate and Powai Estate. The complaint related to concerns over APPL’s (non)compliance with the IFC Performance Standard (PS2) relating to labour and working conditions on these two estates.

In response to the complaints received, the IFC carried out some intensified supervision of APPL, including in the form of brief site visits in September 2010, and APPL reportedly took some additional steps to address issues related to the health, safety, working and living conditions of workers. However, NGOs and workers on the ground reported that such efforts had negligible impact, and CAO appraisal reports later concluded similarly that the adequacy of these efforts was ‘questionable’ (CAO 2014; CAO 2013a). In April 2011 the IFC issued a formal response to the IUF’s complaint, stating that their review had found no non-compliance with Performance Standard 2—though they did undertake to conduct an audit of APPL’s occupational health and safety practices.

Despite the absence of any formal remedy for workers as a result of the complaint to the IFC, negotiations between the company and local trade unions on the Nowera Nuddy estate were subsequently escalated, leading to involvement of higher-level company management and the IUF national India office. A settlement was reached in May 2011. Workers received some compensation for the three -month lock out, and those who had been suspended or fired for union activity were reinstated (ITUC 2011). Some further concessions were given to one of the local trade unions supported by the IUF, leading to some small improvements such as house repairs, a new school bus and development of clearer maternity rights protections on the estate (IUF 2012). The timing of these subsequent developments suggests that IFC involvement—in interaction with intense union activity and media attention to the case—may have played some indirect role in motivating management to reach a negotiated resolution with trade unions.

A year later, in May 2012, the CAO Vice President took the unusual step of initiating a compliance appraisal of IFC’s investment in APPL, in the absence of a formal complaint to the CAO having been made. The CAO’s Annual Report stated that the decision to undertake a compliance appraisal was in response to complaints made about “worker health and safety standards on two tea estates where violent protests and deaths had been reported”—referring indirectly to the prior complaints by IUF directly to the IFC (as cited in Rosenblum & Sukthankar 2014, p.100). However, the scope and timing of the review suggests that it was also in response to a broader set of concerns about IFC compliance in the tea sector. Several people close to the case told us that prior to the compliance appraisal being initiated, the United States Treasury Department had been communicating directly with the IFC about concerns regarding compliance in the Assam tea sector. CAO staff were also independently aware of such concerns, and decided that their office should become involved (interview with Participants Z February 2016).

In January 2013, the CAO compliance appraisal—based on analysis of project documents—was concluded, and the appraisal report from CAO released. In the Appraisal Report, the CAO questioned the IFC’s due diligence in relation to the project, and stated that it was unclear “whether IFC adequately discharged its duty” regarding “labour disputation and associated conflict” (as cited in Rosenblum & Sukthankar 2014, p.100). The Appraisal Report raised particular concerns about violations of Labour and Working Conditions (Performance Standard 2) (Rosenblum & Sukthankar 2014).

Shortly afterwards, in February 2013, three NGOs from Assam filed a direct complaint with the CAO regarding three separate APPL tea plantations in Assam: Nahorani, Majuli and Hatigor. The three NGOs were People’s Action for Development (PAD), Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA) and Diocesan Board of Social Services (SDBSS) (CAO 2013c; CAO 2013b). This complaint raised concerns about working and living conditions on the three plantations. In particular, the complaint referred to long working hours, inadequate compensation, poor hygiene and health conditions, and restricted freedom of association among plantation workers. Furthermore, the complainants questioned the worker share-buying program, contending workers have been pressured into buying shares, often without proper consultation or sharing of information about the risks of such an investment (CAO 2013b, p.5).

From the perspective of the local NGOs involved in submitting this complaint, this was quite separate from the earlier IFC and CAO processes. According to one local activist, the NGOs were not even aware of the previous IUF complaints to the IFC until after preparation of their own complaint, when they visited the CAO website and “saw that there had been a previous complaint [to the IFC], and that already there was a compliance process pending” (Interview with Participant A6 April 2014).

This local NGO complaint was submitted directly to the CAO Ombudsman, and was registered on 2nd February 2013. The complaint was found eligible for further assessment, and the CAO carried out an initial 5 day field visit in April 2013, followed by a subsequent 5 day field visit over June/July. At the end of the second visit, the CAO facilitated a joint meeting between APPL and the NGOs that had filed the complaint with the CAO. They discussed both the issues in the initial complaint, and allegations concerning retaliation and harassment of workers who had participated in meetings linked to the initial CAO field visit (CAO 2013b). However, parties were not able to reach agreement regarding ground rules for a prospective mediation.

Two days later, on 5th July, a press release summarizing key details of the case was published by two NGOs—Accountability Counsel and Nazdeek—who were not formally connected to the case, but had provided strategic legal advisory support to the NGOs during their preparation for the CAO’s visit. Although the press release drew only on information that was already in the public domain, APPL was unhappy about its publication. Shortly afterwards, they expressed an unwillingness to continue negotiations with the NGOs about the possibility of establishing a formal mediation, meaning that mediation efforts through the CAO were unable to proceed. On this basis, in November 2013 the CAO published their assessment report, and transferred the case to CAO Compliance.

Tensions between the parties were again given public airing in January 2014, following publication of a report by the Columbia Law School, which presented detailed documentation of many of the grievances at issue in the CAO complaint, and highlighted the link to the IFC (Rosenblum & Sukthankar 2014). APPL vehemently denied the claims of the report, claiming that it was “injurious” and “defamatory” (APPL 2014). The IFC released a statement responding to the report, acknowledging that there was room for improvement, but highlighting APPL’s efforts to meet IFC standards.

The following month, in February 2014, the CAO released a terms of reference for a compliance investigation of the IFC, which took as its scope all of the previous complaints relating to the APPL IFC loan. The terms of reference stated that the CAO’s compliance investigation of IFC performance in relation to its investment in APPL would consider “both the issues raised by the current complaint, and those discussed in its January 2013 compliance appraisal” (CAO 2014, p.2).

### Outcomes of the CAO intervention

What then can we say about outcomes of CAO interventions to date? There is little we can say about any potential impact of the CAO compliance investigation, since this has not yet been concluded. It was initially estimated that this investigation would be completed by May 2014. At the time of finalizing this report (in October 2016) the CAO’s report had been completed, but not yet publicly released. Our understanding is that delays resulted from difficulties in organizing field visits, together with broader staffing and other resource constraints within the CAO office. As noted earlier, those appraisal and assessment reports that have been released so far by the CAO have documented a number of concerns with the IFC’s processes of project supervision, particularly with regard to violations of Performance Standard 2, pertaining to core labour standards.

With regard to effects on resolving the specific complaints documented by the three Indian NGOs, and the tea worker communities they aimed to represent, some very small effects of CAO involvement are discernable. Some people close to the case reported to us that the complaint to CAO led to a series of responses from APPL and Tata in the form of several commissioned reports and audits to investigate living and working conditions on the named tea estates, and some small efforts to address specifically cited problems on estates (interviews with Participants A4 January 2016 & A3 December 2015). For example, there were reports of the company fixing some problems with housing, renovating a health centre and crèche at one estate, and supporting a new teacher at a primary school on another (interviews with Participant A4 January 2016; A3 December 2015; A7 January 2016). Nonetheless, such changes have been widely reported to be very limited. The NGO Accountability Counsel, PAJHRA, PAD and Nazdeek have been working together to carry out monitoring to assess promised renovations of housing, and their findings so far suggest that only a small number of houses have been significantly improved. There have reportedly been few investments by APPL in gardens beyond those directly involved in the complaint (interview with Accountability Counsel, 2015). Moreover, monitoring conducted by this civil society coalition suggests that the company’s responses have not extended to a broader range of problems with working and living conditions, such as low wages, complaints about worker representation, or other areas of social infrastructure and services.<sup>10</sup>

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<sup>10</sup> Some of this evidence was presented in a follow up letter to the CAO, available at: <http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/9.18.15-Letter-to-CAO.pdf>

Although a formal CAO problem-solving process was never initiated, the CAO's preliminary involvement in investigating the NGO complaints appears to have interacted with broader worker and trade union mobilization, as well as media coverage of the complaints, to at least support some increased public awareness of labour issues on APPL tea estates, and generate some increased pressure on the company to make small concessions in the short term (Interview with Participant A6 April 2014).

It is also important to note some **adverse consequences** of the complaints processes that have been reported by workers and NGOs. Despite initial efforts to protect the confidentiality of workers involved in the complaint, managers allegedly managed to find out the identities of some workers, and prior to and/or following the CAO's initial field visit in April 2013, there were allegations of retaliation from the APPL plantation management towards tea workers who had participated in meetings with the NGOs to discuss the CAO process (CAO 2013b). Specifically, the CAO documented allegations of workers being harassed by management for not reporting meetings with NGOs to management, workers being demoted or switched to unfamiliar jobs, or work quotas being summarily increased, and workers being intimidated by rumors that their actions would bring about the shutdown of plantations and loss of jobs (CAO 2013b).

Overall, effects of the CAO's involvement in the complaint have been very mixed. There have been some slight improvements for a small number of workers in the form of minor improvements to estate infrastructure or services. However, in some instances workers have been put in a more vulnerable position because of company management allegedly adopting retaliatory measures against them. To the extent that there have been beneficial impacts as a result of the CAO's involvement in the case, these have mainly been small and indirect, arising through interaction with broader political processes of worker mobilization or publicity attracted to the case. NGOs working to support the communities on the case concluded that while the process as a whole has led to some changes, "it has been extremely slow and very frustrating" (interview with Participant A4 January 2016 & Participant A7 January 2016). Nonetheless, there was some energy and satisfaction that the process had generated "some recognition and reaction from agencies" outside Assam (interview with Participant A4 January 2016 & Participant A7 January 2016), as discussed further below. Moreover, the fact that a complaint was able to be brought in the first place constituted an accomplishment of sorts, given the multiple barriers facing workers seeking to make complaints, documented earlier in the report.

### Factors enabling and constraining CAO processes in these cases

In making sense of these mixed results, two distinctive features of these cases are particularly noteworthy. First, the capacity of affected workers to access the CAO process in the first place was highly dependent on unusual levels of support from NGOs and other external organizations at local, national and international levels. Second, the failure to reach agreement from conflicting parties regarding the terms of a formal mediation following the 2013 complaint was hindered by significant challenges in negotiating both representation and confidentiality for complainants.



## Reliance on intermediaries in enabling access

One of the notable features of these complaints was simply the fact that they were able to be brought to a transnational mechanism in the first place. As analysis elsewhere in this report highlights, the significant barriers confronting workers wishing to make complaints, particularly to transnational mechanisms, means that complaints of this kind are very unusual. In explaining why the complaints occurred in these cases, but not in so many other cases of pervasive human rights concerns in the tea sector, the involvement and strategies of key NGOs and trade unions in supporting grievance processes has been a crucial factor. Such groups played an important intermediary or go-between role between workers or trade-unions on the ground, and staff in international bodies. This intermediation role was important at several stages of the dispute processes, including investigation and documentation of complaints, initiation of contact between local complainants and the international bodies, and ongoing support with regard to subsequent procedures.

In the case of the first complaint (made directly to the IFC), the role of the IUF in investigating and documenting the rights violations, and then supporting the local union to take the complaint to the IFC, was clearly central. The IUF's capacity to undertake this role built on the sustained involvement in the tea sector in Northern India that the IUF had previously established over a number of years. Such **investigatory and documentation activities** are often extremely important in laying the foundations for a formal grievance to be brought.

In the subsequent complaint made directly to the CAO, international actors also played an important role in facilitating access to the CAO mechanism, even though no international actors were direct parties to this complaint. According to descriptions provided to us, a team of researchers from Columbia University played a crucial role in facilitating this complaint, both in alerting local groups to the existence and applicability of the CAO mechanism, and providing advice as to how a complaint could be framed to fit with CAO standards and procedures. This team was carrying out research on human rights violations in the Assam tea sector between 2010 and 2013. One of the Columbia University researchers had longstanding links with the IUF, and throughout the period of their research they were aware of the possibilities of a CAO complaint. They had met with several NGOs in Washington DC with experience of using these kinds of complaint mechanisms when they started their research on APPL, and they had been advised not to try and take forward a complaint in the absence of strong links and support from groups on the ground. It wasn't until one of their later research visits that they were introduced by ActionAid India to the NGOs who ultimately decided that they wanted to bring a complaint to the CAO (interview with Participant Z February 2016).

According to one observer, prior to communications with these external researchers, the local NGOs "had no idea what was this CAO, what was the mandate of the CAO or what could be the possible outcomes of the CAO mechanism". The idea of taking a complaint to the CAO had therefore been "nowhere on the horizon" (Interview with Participant A6 April 2014). The Columbia University researchers carried out a meeting with a number of local NGOs to discuss the possibility of taking a complaint to the CAO, and then spent a day sitting with key staff from the three NGOs to talk through the details of how a complaint would need to be presented. These NGOs then finalized and submitted the complaint after the researchers had left.

Additional support was provided subsequently by the NGOs Accountability Counsel and Nazdeek. Nazdeek is a collective of lawyers and researchers who use legal empowerment strategies to advance social and economic rights of marginalized communities in India. Nazdeek had previously supported the NGO PAJHRA with filing labour and health complaints in estates through welfare officers and other local rights mechanisms, including the court system. They saw their role as providing strategic legal support to the local NGOs and affected workers. This took the form of translating technical language and processes into accessible language, and building legal knowledge and capacity amongst communities about the CAO process, the World Bank Investment and workers' rights under domestic laws such as the Plantations Labour Act (Interviews with Participant A6 April 2014; A3 December 2015; A4 January 2016). Accountability Counsel had more expertise specifically in using transnational mechanisms like the CAO, so part of their support role was helping to organize documentation that local groups had prepared so as to align with the provisions and format of the IFC Performance Standards and Indian Plantations Labour Act.

To try and provide assistance, Nazdeek and Accountability Counsel regularly visited tea worker communities both in the lead up to the CAO's first visit, and many times thereafter. They initially focused on explaining what the CAO process involved, and helping to organize workers, and to facilitate worker discussion of what they wanted to share in interviews with the CAO. Later, the focus was on supporting documentation of ongoing concerns through extensive interviews with workers, which fed into a supplement to the original complaint, and provision of further information in September 2015 (interviews with Participant A3 December 2015 & A4 January 2016). These groups also provided some media support, helping to raise the profile of the CAO case with national and international media outlets. Such external sources of support played a crucial role not only in facilitating the complaint in the first place, but also by providing support during a very demanding process following instigation of CAO involvement. According to one observer involved in the process: "There was so much burden put on [the local NGOs], all the back and forth – there is a great deal of romantic appeal about community organizations being able to submit a complaint with few or no transaction costs ... [but] it was hellish for these local NGOs" (interview with Participant Z February 2016).

The capacity of the local NGOs and workers to bring a complaint to the CAO in the first place also depended importantly on organizational capacities at the local level. According to one observer of this process, the possibility for the complaint to occur depended also on unusual levels of organizational capacity at the local level on the part of the local NGOs. This helped to enable both sustained consultation with workers on the relevant estates, and the capacity to work with Delhi-based and international groups (interview with Participant Z February 2016). The strong links of these NGOs to local tea worker communities were extremely important in enabling them to play this dual role. Presence of these local NGOs in tea growing communities was a vital precondition for the chains of intermediation to be established through which the complaint could proceed. Two of the three NGOs involved in bringing the CAO complaint were run by people who had been born and brought up in the tea plantations of Assam, and all had strong links with local tea plantation worker communities (interview with Participant A6 April 2014). The three NGOs were all working in different districts, with tea garden workers on different estates. The selection of gardens on which the complaints focused was directly related to the pre-existing relationships that these organizations had with workers on those estates (interview with Participant A7 January 2016).

Another important local organization involved in facilitating links to workers in this CAO case was the All Adivasi Students' Association of Assam (AASAA), AASAA), which is a group comprised mainly of young men from tea plantation communities, with chapters on districts throughout Assam. They are not a worker representative organization, but rather a broader grassroots organization, active in organizing workers on the ground. In the past, they have played a significant role in campaigns designed to get Adivasi tea workers in Assam recognized with Scheduled Tribe status under the Constitution, as well as campaigns around living wages, rest days, and other labour issues. They have some presence within the tea gardens, and also offices just outside the estate land. Their family connections make it relatively easy for them to move in and out of plantations, which is often difficult for others because of constraints that management of many estates places on 'outsiders' visiting worker housing areas located within the gardens (interview with Participant A6 April 2014). PAJHRA was able to work closely with AASAA, and when Nazdeek and Accountability Counsel were visiting to help organize and communicate with workers, they were able to meet at the AASAA office.

Overall then, the capacity of local workers to access the support of 'intermediary' organizations—including local NGOs and grassroots organizations with close links to their communities, as well as national and international NGOs—was a crucial facilitating factor in enabling a complaint to be brought to the CAO in the first place.

### Challenges of negotiating representation and confidentiality for complainants

Following the CAO's acceptance of the eligibility of the complaint, the involvement of NGOs in bringing the complaint on behalf of individually affected workers gave rise to significant challenges surrounding delineation of the appropriate role for NGOs to play in relation to the complaint-handling process.

Some workers actively designated the NGOs as their representatives in the preliminary meetings with company management facilitated by the CAO, in July 2013, while requesting that their own identity remain confidential. Other workers were less actively involved in the complaint process, but were at least aware of the NGO action on their behalf. As noted earlier, staff in two of the three NGOs also had strong family and community connections directly to affected workers. This somewhat informal representative status gave rise to difficult negotiations regarding the status of the NGOs who were formal parties to the complaint as representatives or members of affected worker communities.

The CAO has stated an expectation that complaints brought to the Ombudsman for mediation should come directly from project-affected people, and one participant in the Assam case described visiting CAO staff as "deeply suspicious" of the role of outside NGOs in supporting local workers (interview with Participant Z February 2016). According to one of the local NGOs involved in this case: "initially CAO clearly told us that affected people only can be complainants, but we argued that we are affected because of family connections in the gardens". The tea companies subject to the complaint also expressed a strong desire to negotiate directly with estate workers—rejecting the proposal that workers be represented in negotiations by the NGOs who had filed the CAO complaint.

These disagreements about NGO representation of workers were further linked to challenges regarding protection of confidentiality for individual complainants. NGOs reported repeated requests from estate management—both received directly and conveyed by the CAO—for provision of names and signatures of individual workers who the NGOs were claiming to represent (CAO 2013b). Citing security concerns, the company further stated that they were not willing to meet with the NGOs until the identity of the NGOs themselves had also been disclosed. According to one local activist involved in the process:

*“The management started saying it was a security problem for them if they don’t know who they are, who are they going to sit with, and so on. We said but there is no problem with security because the NGOs are all registered, all have clearances with Ministry of Home Affairs ... What else do you want to know? ... [But] the company management ... said a dispute resolution can’t be facilitated unless you reveal your identity. Will the workers sit in the dispute resolution or not?”* (Interview with Participant A6 April 2014)

The NGOs and many individual workers were reluctant to accede to this request, in view of concerns about workers involved in the complaint process being harassed or intimidated. Such concerns were heightened during the early period of the CAO’s assessment process, at which time a number of meetings with workers on estates were being organized. Several instances of harassment and altered workloads of workers attending these meetings were reported to have occurred. After the CAO’s first assessment visit, the NGOs agreed to provide names and signatures of individual workers to the CAO, though this information was not shared with the company. In this way, the confidentiality of individual workers was formally protected during these initial discussions.

One of the local NGOs working closely with worker communities on one of the tea estates as part of their routine development work further reported that while estate management had previously allowed them to operate freely, following the complaint management started monitoring their activities more closely, and asking to be advised in advance before they held meetings with workers on the estate (interview with Participant A7 January 2016; CAO 2013b). Freedom of movement of NGOs or trade unions in and out of estates where workers live is regularly a source of contention in the Indian tea sector. Management often views such unrestricted movement as a security threat, whereas worker groups view it as a legal entitlement, and basic precondition for the exercise of freedom of worker association and organizing. Following the July CAO-facilitated meeting between the company and NGOs, this persisted as a point of contention. The company agreed that the NGOs should be able to continue their day to day activities on the plantations and have free access to the employees, but insisted that management should be notified of any scheduled meetings with the employees regarding the CAO process. Workers and NGOs were reluctant to agree to this, given concerns that the company would send ‘spies’, and people would not feel free to raise concerns openly. During the month of July, further discussions took place regarding settlement of this issue as a precondition to establishing a mediation facilitated by CAO (CAO 2013b).

In July 2013, following the meeting between the CAO, NGOs and company, and amidst ongoing concerns about possible retaliation against workers or NGOs, the NGO Accountability Counsel and Nazdeek—which as described earlier had been providing some assistance to complainants

in preparation for the CAO process—put out a press release which summarized information about the case that was already available on the CAO website, and also named the NGOs involved in the case (information that had not previously been in the public domain). Later that month the company became aware of this press release, which they viewed as not being in good faith (CAO 2013b). As a result, as described in the CAO Appraisal report, the company stated that “given this type of media statement ... the Company no longer felt it was in their best interest to continue the engagement with the NGOs” (CAO 2014).

Ultimately, the parties were unable to agree on the terms of a prospective CAO-facilitated mediation, leading to a formal conclusion of the CAO’s Assessment phase in November 2013. The failure to establish a formal mediation process resulted centrally from disagreements between the parties on the role of NGOs—both in directly representing affected workers as parties to the dispute, and in providing broader forms of support. (CAO 2013b)

## Factors influencing the performance of grievance processes

The above analysis has focused primarily on the operation and performance of individual grievance handling mechanisms at national and transnational levels. We have alluded throughout this discussion to ways in which the effectiveness of grievance handling processes in supporting human rights norms is influenced not only by internal procedures or capacities of a given grievance handling mechanism, but also by features of the wider social and political environment. We briefly review below some of the most important external enabling and constraining conditions documented by our own research, and by broader bodies of work on the Indian tea sector.

### Social relations of production and structural power imbalances

The historically embedded socio-economic relationships that underpin contemporary tea production in India generate various forms of vulnerability and disempowerment amongst workers. These contribute to the barriers workers face in accessing grievance processes, and weaken their leverage within such processes.

Structural disempowerment of workers results in part from the prevailing **land-labour relations of the plantation system**. During the colonial era, indenture was a common mode of recruitment (Bhowmik 1980). Many commentators have described colonial social relations as “semi-feudal” (Lahiri 2000, n.p.), involving a “coercive ‘master-servant’ relationship” (Alawattage and Wickramasinghe 2009, cited in Makita 2012, p.90). Often the plantations were located in regions with few other sources of employment available, creating a kind of “enclave economy” involving the “economic and social exclusion of the plantation labour” (Lahiri 2000; Sumitha 2012; Rosenblum & Sukthankar 2014). It is generally acknowledged that over time such relations have shifted from overtly repressive to more patrimonial structures (Makita 2012). Nonetheless, some features of paternalistic organizational structure and culture established during the colonial period persist throughout large parts of the sector.

One contemporary legacy of the historical origins of the plantation sector is the **dependence** that many workers and families continue to have on provision of employment as well as social services and infrastructure on tea growing estates, which can weaken the bargaining power of workers in the case of disputes (Oxfam 2002). In some tea growing regions, particularly in South India, some children of tea working families have begun moving off plantations in search of employment elsewhere (interview with Participant A1 February 2013). Where there are sustained opportunities for workers or their children to move away from plantations and seek alternative employment, this can shift bargaining power in favor of workers. However, for many workers, such opportunities continue to be elusive. Where plantations are located in remote areas, challenges for workers with low levels of formal education to find alternative employment are often significant (interview with Participant A9 January 2013). Recent migrant workers often face particular vulnerabilities in accessing alternative employment, given language barriers, and in some cases barriers to accessing government-provided social entitlements. In places where casualization of the labour force is prevalent, concerns about security of employment are heightened. Such factors reinforce dependency on tea estates, heightening the risks for workers of initiating disputes with management (Oxfam 2002).

As noted earlier, those workers and their families still living in estate-provided housing also sometimes experience **practical barriers to organizing**, since management control of plantation property can sometimes pose a significant barrier to outside NGOs or organizations seeking to establish regular communication with workers. Practical barriers to organizing also result from the lack of time that workers have available once work and family commitments have been met. This is a particular problem for many female workers, who have to take care of children, cook and so on before and after work (Sumitha 2012). More generally, most tea workers do not receive paid leave, and are paid on the basis of tea leaves plucked, so organization must occur outside of work hours.

Disempowerment of plantation workers is often further linked to a **culture and mindset** of dependence, whereby informal culture and social norms reinforce patrimonial organizational and economic relationships on the estate—generating an unwillingness to question authority, and weakness of a ‘rights’ consciousness. In some places, informal hierarchies are further reinforced by “ethnic, linguistic and caste differences [between workers and management] that date from colonial times” (Moore 2010, p.23).

Patrimonial social norms of these kinds have significant implications for the ways in which workers perceive and interpret ‘grievances’, and the way they make decisions about if and how to pursue grievances when they face problems related to their working or living conditions on the tea estates. In part, these norms generate a tendency for workers to accept certain kinds of rights violations as “reflective of their status in life” (Oxfam 2002, p.18), without constructing them as grievances or bringing claims accordingly. Workers are thus less likely to perceive certain practices as ‘grievances’ of a kind that they regard themselves as entitled and capable to challenge. One union official we interviewed spoke of the barriers created by “the psycho-social approach of the workers – their state of mind in this enclave economy. They are into a state of mind where the management is the boss ... [Before complaining] workers have to feel these things are a problem. Many women workers see these things as their fate—so it is not a problem or an offense against one person” (interview with Participant H January 2013).

It is difficult to empirically distinguish to what extent the reluctance of many workers to raise grievances reflect ingrained attitudes and mindsets, and to what extent workers' decisions reflect more strategic judgements about the costs and risks of challenging prevailing arrangements, under conditions of significant structural disempowerment. For many workers, the prospects of accessing remedy are weak, particularly in relation to recurring, structurally entrenched sources of grievance, and risks of retaliation for perceived troublemakers are often very real. Taken together, the overlaying of cultural, social and economic barriers, onto political and institutional challenges discussed earlier in the report, creates powerful barriers for many workers in the tea sector experiencing human rights grievances.

### Interplay between grievance processes

Both the capacity of affected workers to bring a complaint to a non-judicial mechanism in the first place, and the capacity of such mechanisms to influence business behavior in support of human rights norms, often depend crucially on the ways in which grievance mechanisms interact with broader forms of local organizing and social pressure. Such interactions were clearly evident in dynamics surrounding worker complaints to the CAO in Assam.

One important form of interaction in this case resulted from the **use of evidence developed in the context of one dispute process to gain leverage in other forums**. For example, it was reported to us that the CAO process and associated local and media attention had led to increased visibility of worker grievances amongst those working on labour rights issues within Assam. According to one local activist we spoke with, local publicity surrounding the complaint involving the high profile Tata group encouraged an official within the local labour inspectorate to investigate reports of complaints against Tata on the internet. Some of the evidence collected by NGOs to support one of the CAO complaints was then shared with the local labour inspector, who, according to the activist involved: “called me up and said ‘this is very interesting, since from 2009 onwards there has been no inspection.’ So he then immediately sent a letter saying to send an inspector to this garden as soon as possible” (interview with Participant A6 April 2014). A government inspection process followed, and the inspection reports were shared with the local activists, who in turn communicated these to the CAO investigation team (interview with Participant A6 April 2014). Using this official evidence to feed into supporting the CAO claim, and associated publicity, was viewed by this activist as a more effective way of leveraging pressure on the company than simply relying on routine government inspection processes to run their own course: “The [government] process is very lengthy, and ... the inspectors are so few, they don't even have the time to follow them up. So now I think ... whatever report we can get from the government we can use in our campaign so it automatically becomes part of the follow up” (interview with Participant A6 April 2014).

Increased **visibility of grievances** resulting from the publicity around the CAO process was also suggested by some to have intensified broader public pressure on companies in the Assam tea sector—building on the “momentum” of the CAO investigation process (Accountability Counsel 2016). Media attention at state, national and international levels played an important role in driving intensified scrutiny of working conditions in the sector. International media scrutiny from high profile outlets including the *Guardian*, the *Observer*, the *New York Times*, the *Telegraph*, the *Financial Times*, and the *Wall Street Journal* (Accountability Counsel 2016), was par-

ticularly concentrated in early 2013, following the submission of the second CAO complaint, and the subsequent release of the Columbia University report. According to local activists, this meant that at that time “Tata was fielding lots of calls about conditions on their estates from the media, so this was a jump start for audits and other processes” (interview with Participant A3 December 2015).

Such increased external visibility and support acquired through use of transnational grievance processes is also regarded by some as having helped to **fuel broader forms of mobilizing** amongst workers, in support of their rights. Some local activists we spoke with reported quite deliberately using the CAO complaint as a basis for helping to build a stronger grassroots organizing base amongst workers and local activists, rather than waiting for the unlikely event that the CAO process would lead to changes on the ground directly as a result of its own internal processes:

*“The critical thing is that even after knowing that we might not get much out of the complaint, we strategically decided to use the complaint as part of a wider campaign. If we had stuck just with the complaint, we might not have achieved what we have – but we used it as a strategic tool for the wider campaign we were already trying to do in the gardens in Assam – so we used it to build up pressure”* (interview with Participant A6 April 2014).

Some have further suggested that the relationships and visibility associated with the CAO grievance strengthened the State-level alliance of Adivasi groups and tea worker organizations mobilizing in relation to tripartite negotiation of wages in Assam in 2015 and 2016, in the lead up to a State government election. In the view of some, this contributed at least marginally to elevating the issue of working conditions in tea plantations up the government agenda (interview with Participant A3 December 2015). Tea workers have traditionally been an important vote bank for the Congress party in Assam (who were then the governing party), and they are a constituency that it is very important for the government to keep onside (interview with Participant A3 December 2015).

According to one local activist we spoke with: “with media reports of the complaint and the embarrassing situation of the APPL, the AASAA saw a ray of hope of raising the workers issue, especially the wage and non-implementation of the PLA in Assam” (Participant A6, personal communication, October 2016). An NGO staff member we spoke with described similarly how the “energy” from increased media attention fed into supporting the work of the grassroots movement AASAA, and spurring broader worker mobilization around the state-wide issue of wages:

*“With the success of the CAO in bringing this issue to attention outside Assam, we decided to use this as pressure to demand higher wages. [AASAA] had mobilized workers for the CAO, so we thought we would use this energy to support mobilizations in relation to the wage issue ... there was local media coverage of the wage campaign as well ... and lots of energy around it”* (interview with Participant A4 January 2016).

Although we have no clear evidence that would support attribution of discernable influence by the CAO process over broader political debates surrounding wage negotiations, the CAO process may have played at least a minor catalyst role (alongside other factors) in helping to



bring organizations and activists together, and “to achieve a different level of attention from state officials” (interview with Participant A5 January 2016). With the state legislative elections coming up, the Assam government formed a committee comprising planters and unions to consider the wage negotiation process, and the disparity between the cash wage and the stipulated minimum wage of the state. This process resulted in preparation of a draft notification that would raise the combined cash and in kind wage to the stipulated minimum wage—a move that provoked a legal challenge by planters groups. At the time of writing this report, this legal challenge was ongoing. Nonetheless, in the eyes of one local activist: “for the first time in the history of Assam tea plantations, the government came out in support of the parity of tea workers minimum wage with other sectors, with a section of the labour bureaucracy supporting the move” (Participant A6, personal communication, October 2016).

Although direct effects of CAO involvement in the dispute have so far been minimal, interactions between CAO involvement and other parallel processes can therefore be viewed as having generated some indirect effects—via development of evidence to support worker claims, support for worker mobilization and alliance building, and strengthened political visibility, credibility and legitimacy for worker claims.

### **Establishing legitimacy amidst claims of foreign interference in established sector-wide practices**

One notable constraint on the capacity of transnational grievance processes to influence human rights in the tea sector results from legitimacy challenges that transnational actors often face when they seek to influence human rights practices in a particular national or sub-national jurisdiction. Such challenges can confront not only certification and grievance handling bodies themselves, but also transnational NGOs or foreign companies involved in human rights disputes. Such legitimacy challenges are particularly likely when external interventions challenge practices that are deeply entrenched and socially normalized in the local sector—provoking sensitivities concerning perceived external ‘interference’ in local political processes, and associated questions of legitimacy.

A recurring theme from our interviews with many local plantation owners and industry bodies related to concerns about the role and legitimacy of international certification agencies, often grounded in the suggestion that they were foreign entities who didn’t properly understand the ‘local context’. For example, one article in the Southern Indian Planters’ Chronicle stated in relation to international certifying agencies that: “The certifying agencies as such are institutions that are capitalising on the poverty of the farmers and the guilt of conspicuous consumption of the highly affluent in the western world... As far as India is concerned it has much better labour protective legislation than the US, China and many of the European Countries” (UPASI 2009, p.29). Although some managers endorsed the value of foreign certifications in promoting good standards in the sector, they still often insisted that good practices could be achieved largely through initiative from local actors. According to one: “we would like to do it ourselves. We as a company will not allow others to come and do it [implement schemes to improve living standards of workers] ... Somebody coming here and doing it on their own, that is not right” (interview with Participant A1 February 2013).

Indeed, many plantation managers and planter associations were of the view that it would be inappropriate for external standards regarding issues such as living wages to be externally imposed on local estates, because issues such as wage levels: “have to be raised by the union with the industry as a whole, and in that case the two sides will sit and proceed according to the existing labour laws only... Wider social problems have to be addressed by the government and the political parties” (interview with Participant C March 2013). Some planters have gone so far as to suggest that it would be better if international certification schemes could be replaced altogether by national certification initiatives, and some have been pushing the government to develop an initiative along these lines. According to one: “This would be cheaper, and also local auditors have better knowledge of the local context ... though buyers would have to agree to national certification schemes if they were to be viable alternatives” (interview with Participant A2 January 2013).

Such resistance to acknowledging the legitimacy of transnational actors as voices within local regulatory or policy debates constrains the kinds of leverage that international certification schemes and their associated grievance systems can realistically expect to bring to bear in promoting change in local business practices, particularly in relation to practices that are deeply entrenched at the local level. There is some evidence that legitimacy-oriented ‘resistance’ strategies by local planters groups can be quite effective in weakening the influence of external bodies, particularly in light of the anxiety of international standard setting representatives not to impose themselves ‘imperialistically’. According to one staff member from Rainforest Alliance who we interviewed in 2010:

*“We want to be sensitive; we don’t want to throw our weight around in an area like this that we don’t really understand ... There are vocal and strong trade unions here – we can’t start getting involved in things like negotiating wages – you could get bogged down in a quagmire with all those kinds of things ... we are just a small team here. We know our limits and want to stay focused on action”.*

Similarly, a FLO Liaison Officer who we spoke with in 2010 explicitly rejected the notion that international standard setting bodies could play a legitimate role in addressing sector wide issues such as wages and overtime – making arguments that strongly resonated with views of planters groups within the sector:

*“There’s nothing I can do about it because it’s all something that government is involved in... there are unions that are involved in it, tea management is involved in it. ... The entire tea sector is involved. In fact currently the wage decision is under dispute with the High Court ... There is no role for anybody in fact, no role for anybody from Fair Trade I think, because the law of the land does take its own course.”*

In the context of specific grievances, similar arguments are often invoked by companies as a basis for resisting efforts by actors such as the CAO to exercise leverage over local practices. For example, in the CAO complaint involving APPL, APPL was explicit in arguing that many of the issues in the worker and NGO complaints were “applicable to the entire Industry and cannot be directly addressed by a single corporation”. The companies insisted that such issues should be decided by the Indian Tea Association, or in a tripartite forum also involving unions, government and tea industry representatives at the state level (CAO 2013b).

Such arguments can undermine the practical influence of transnational grievance-handling mechanisms both by weakening their moral suasion, and their capacity to bring together wider coalitions of actors in support of change. Such sensitivities can also be linked to more practical, material constraints to transnational bodies carrying out their work. For example, we were told by several local actors that a team sent by the CAO as part of its compliance investigation, in May 2014, was not able to complete planned field visits due to lack of government clearance. Clearance was eventually able to be secured for a visit in September 2015.

Such occurrences highlight fundamental limits to the kinds of effective and legitimate leverage that transnational grievance handling mechanisms can exercise over deeply embedded local production processes, particularly in the face of political resistance to foreign intervention. Such challenges are especially pronounced when grievances do not entail ‘deviant’ violations by individual wrongdoers, but rather result from practices that are entrenched and normalized throughout the sector in a particular local setting. It is difficult to ‘redress’ such recurring and routinized problems in the absence of broader structural social changes, and attribution of business responsibilities for such wider, structural problems is not very clearly dealt with within international frameworks such as the UN Guiding Principles. Such principles focus on concepts such as ‘due diligence’ or corporate management of human rights risk, which don’t translate well to contexts where ‘risk’ throughout the sector is in some senses almost unavoidably high, in the absence of wider structural social transformation. In the absence of clearer guidelines as to how companies should deal with human rights issues that are entrenched in the sector as a whole, it remains relatively easy for businesses to use the normalization of problematic practices in the sector (or society more broadly) to circumvent responsibility for addressing such practices.

## Lessons Learned

The tea sector in India presents a very challenging case for the operation of transnational non-judicial grievance handling mechanisms. Despite significant links to transnational markets through supply chains in the tea sector, access to remedy for tea workers remains very weak. There are some limited success stories whereby sustained efforts by transnational actors to support worker organizing and demands for remedy have supported small changes to business practices—at least indirectly. However, overwhelmingly, the evidence in this sector paints a rather sobering picture of the limited capacity of transnational non-judicial grievance handling mechanisms to make a positive difference for workers.

What then are the practical lessons from this analysis for how we understand the roles transnational mechanisms can usefully play, and the factors that are most likely to enhance their capacity to perform these roles? In what follows, we identify a number of possible channels through which transnational grievance handling mechanisms might usefully support the human rights of workers and communities affected by transnational business activity—despite the serious structural constraints within which these transnational mechanisms operate.

## Outreach, capacity-building and management of power imbalances between parties

The rare cases in which complaints have been brought to transnational grievance-handling mechanisms have relied crucially on the provision of support to aggrieved workers by local, national or transnational unions or NGOs, who have had both prior knowledge of transnational complaint systems, and established relationships with affected workers and communities. Facilitating access by marginalized workers to grievance systems in the absence of such support would require provision of significantly strengthened outreach and support for affected communities. Access could be practically strengthened both by direct outreach activities to provide information and capacity support to affected workers, and by support for the emergence and operation of civil society networks in targeted sectors and locations.

- International certification organizations and financial institutions to which transnational grievance handling mechanisms are connected currently carry out limited outreach to communities of workers on plantations with which they have established economic relationships. More **extensive and proactive outreach and capacity building** activities could make a significant contribution to facilitating worker access to available mechanisms.
- Information provision, capacity building and ongoing support are tightly interconnected, and should all be considered part of a meaningful outreach process. To be effective, outreach would need to go significantly beyond the simple provision of information—also **facilitating connections between communities of workers and individuals or organizations able to play an ongoing liaison and support role**. Any such individuals or organizations would, at a minimum, need to have an ongoing physical presence close to communities, the ability to build trust with workers, and the capacity to maintain ongoing channels of communication. In some cases such groups would also need to provide some basic capacity building or awareness raising (both regarding specific grievance procedures, and broader worker and human rights), and where appropriate to assist informed deliberation amongst a group of workers about whether or how to make use of available grievance-handling mechanisms.
- What such **liaison contact points or networks** may look like in practice would need to be flexibly adapted to varying contexts. In some cases such outreach could be integrated into existing safeguard and support systems. For example Fair Trade Producer Liaison Officers could take on additional tasks along these lines, or certification bodies could mandate external audit organizations or other consultants to carry out appropriate outreach activities. In other cases, grassroots networks of individuals at the community level might take on such roles. For example, participants of such networks might include community leaders, trade union officials, local level government officials or staff from civil society organizations. Multiple individuals may be needed to perform such roles in a single production location, where local organizations are particularly fragmented or politicized.
- Transnational grievance handling mechanisms could also more pro-actively **support the emergence and operation of brokerage networks** of local, national and/or international NGOs or trade unions through which such liaison and support functions could be provided, enabling marginalized workers to gain access to transnational grievance systems. For ex-

ample, such support could take the form of initiation and/or support for regional, national and sub-national networks connecting relevant labour and human rights organizations in specifically targeted sectors and locations.

In the rare cases where a group of workers gets to the point of submitting a complaint, capacity gaps and power imbalances between workers and companies in the grievance-handling process itself also need to be addressed. To some extent such imbalances may be mitigated by support for workers' self-organizing capacity, and/or a role for intermediary organizations to support or represent workers making complaints. In this regard:

- There would be value in greater provision of **support for organizational and collective decision making processes amongst workers** at the local level. The forms of support required would vary between contexts, potentially including support for: strengthening local worker organizations; strengthening networks and relationships between groups of workers; supporting community-based evidence-building; and building rights-awareness amongst affected workers and communities. Such support could help both to enable worker access to grievance-handling mechanisms, and to increase their negotiation capacity in the course of a given grievance process.
- Such support could be provided, as appropriate, by grievance handling bodies or the organizations that establish them, or by local intermediary organizations such as NGOs, trade unions or other grassroots organizations. Any provision of capacity building to marginalized complainants by grievance handling bodies themselves would need to appropriately **balance responsiveness to entrenched power imbalances with a commitment to principles of procedural impartiality**.
- In some cases, it may be appropriate for local intermediary organizations such as NGOs or trade unions to not only support but also actively **represent directly affected workers** within grievance processes. In some cases reliance on representatives would be unnecessary or inappropriate, but in contexts where workers express a desire to be represented by another organization, and where a suitable representative organization can be identified, grievance handling mechanisms should be willing to deal with such representatives within mediation or other grievance handling processes.
- **Clear guidelines would be required to govern any proposed instance of worker representation**, to ensure workers were properly represented and empowered within the process. Clarity would be required on the roles that are and are not appropriate for intermediaries to play in 'representing' the interests of directly affected workers in any given context, taking into account the nature of the relationship between directly affected workers and their proposed representatives, and any tensions between the interests or priorities of workers and proposed representatives. Procedures could be established for negotiating such roles on a case by case basis.

However, even in the presence of active measures to mitigate power imbalances between workers and companies, significant power imbalances are likely to persist. Procedures established by grievance handling systems need to recognize and accommodate such imbalances. To the

extent possible, **power imbalances should be publicly recognized and appropriately accommodated** within the procedures of transnational grievance handling mechanisms. In addition to provision (where appropriate) of third party capacity building and representation for marginalized complainants, noted above, such accommodation may take a number of forms:

- A **willingness to accept diverse forms of evidence**, to accommodate challenges that marginalized workers may face in producing systematized evidence, particularly in written forms. In highly politicized conflicts, it can be very difficult to establish a single source or form of evidence that all parties will recognize as independent and credible. There may be value in searching for more creative methods of contested and triangulated evidence building, taking account of the disparities between the capacities of different parties to collect evidence of different kinds.
- **Recognition of the potential legitimacy of aggrieved workers continuing to pursue their claims through parallel avenues**—including public campaigns—while mediation processes are ongoing. Parallel participation in public campaigns by parties to disputes, or NGOs supporting them, has often been represented as an act of ‘bad faith’ that undermines the collaborative spirit of mediation (see the companion report on the CAO for illustrations). There are certainly some practical tensions between cooperative dialogue and more adversarial forms of claim-making, and associated risks that public campaigns may weaken trust between parties or provoke challenges to the legitimacy of the mediation process. Nonetheless, use of public campaigns is sometimes one of the strongest forms of leverage otherwise marginalized parties have in disputes, and grievance-handling bodies should clearly recognize the legitimacy of ongoing public expressions of disagreement between parties, alongside ongoing mediation efforts.

### **Building cumulative leverage over wider human rights practices**

The above points have highlighted some ways in which countering power imbalances can help to facilitate access to grievance handling mechanisms, and to support balanced processes of bargaining or mediation. Attention to power imbalances between parties is also important when considering the influence that transnational grievance handling mechanisms can exercise over wider human rights practices within the tea sector.

By their nature, non-judicial mechanisms lack coercive tools through which to induce behavioral change. Moreover, there are significant limits to the influence of transnational mechanisms over human rights practices that are deeply embedded in social and political relationships at the local level. Although transnational companies are key players in tea supply chains, it is ultimately the local tea producing companies (together with relevant government policy makers and officials) whose practices need to undergo change if significant improvements in the human rights conditions experienced by workers are to occur. Transnational companies are key players in tea supply chains, and possess some leverage over local management as a result of their ability to withdraw from valuable purchasing or financing relationships. The leverage of transnational grievance mechanisms is closely linked to this underlying market leverage.

However, such leverage remains limited, making it very difficult for transnational actors to challenge entrenched relationships between workers, managers and estate owners within the sector, which powerful local actors often have strong interests to sustain. Transnational non-judicial grievance handling systems thus tend to have the biggest impact when their interventions **interact with and reinforce broader pressures for change**.

- Such influence is often very indirect. Where such interactions were documented in relation to complaints in the tea sector examined as part of our research, they were often either **unintentional**, or **coordinated by external NGOs** or other grassroots groups working to support affected workers.
- To some extent, the mere involvement of a transnational grievance mechanism such as the CAO, regardless of the details of its procedures, can provide some support for marginalized groups making claims, by **enhancing the visibility or credibility** of grievance claims in the eyes of other local or transnational actors.
- Such a complaint may provide a focal point that can help NGOs or other grassroots organizations to **build rights-consciousness and mobilization capacity** amongst workers, or **support networking and relationship building** between organizations.
- Grievance handling mechanisms may also have indirect effects on wider mobilizing efforts to the extent they can **assist local groups to gather and mobilize evidence** to support their claims.

In addition to such indirect effects, there is some scope for transnational grievance handling mechanisms to take on a **more active role in supporting wider sectoral change in human rights practices** by contributing to a number of possible activities or functions:

- They may more systematically and extensively **document lessons learned** from specific complaint handling processes, in relation to complaint handling processes themselves, as well as identification and analysis of external obstacles to change in addressing recurring human rights grievances.
- Where appropriate, **proposal of specific policies or guidelines** to support prevention of recurring grievances may be developed, which other business or government actors may then choose to take up.
- They may also adopt a more **externally-oriented approach to disseminating advice or proposals on prevention of recurring human rights problems**. For example, this may involve more actively supporting multi-stakeholder forums or other networking activities oriented towards preventing recurring patterns of grievances in a particular location and sector. In some contexts (where appropriate) it might entail provision of support for networks or coalitions of business, government and civil society actors broadly supportive of desired change—whether these be trade unions or other worker organizations, or sympathetic government officials or producers.

- Lesson-learning, advisory and associated capacity-building functions may sometimes seek additional support from **external aid and development organizations**—bilateral, multilateral or non-governmental—working to build capacity or otherwise promote wider change in relevant sectors.

Such functions are often inherently political, even if not presented as such, and transnational bodies taking on such roles would need to establish legitimacy for these roles with local audiences in any specific national or subnational jurisdiction. This can be very challenging, in the presence of significant sensitivities around perceptions of foreign interference in local political processes. As we have seen, when outside actors seek to challenge existing practices in ways that local planters' organizations find insulting or threatening, these local actors are often quick to challenge the legitimacy of outside groups. Such sensitivities have sometimes been explicitly recognized by transnational grievance handling bodies as constraints on their capacity to intervene. For example, a CAO compliance appraisal report from January 2013 recognized sensitivities associated with the inherently political character of labour conflicts in Northeast Assam, and thus the complexity of defining an appropriate role for an international body like the IFC (CAO 2013a). The involvement of transnational actors is often particularly contentious in relation to issues that are already highly politicized at local or national levels, such as labour rights. Such sensitivities place significant limits on the extent to which transnational bodies can promote concrete policies or guidelines, or engage in active coalition-building or advocacy, in ways that are widely regarded as legitimate.

The extent to which a given transnational grievance handling mechanism can contribute to wider sectoral change depends on a number of factors, including: its own internal capacity and resourcing; its visibility, profile and perceived legitimacy in a specific location and sector; and its existing networks and relationships.

- **The CAO** may often be particularly well placed to carry out such functions given its relatively strong organizational resourcing and high visibility. Taking on such a role would require the CAO to broaden the mandate of its existing advisory function to encompass externally oriented advisory activities—within the limits of its external legitimacy in a given local political setting.
- **Certification bodies** may be able to carry out some similar functions in particular locations or sectors where they have strong local presence and legitimacy. Certification programs usually already provide some support or advice for producers to assist compliance with certification standards, and some means of drawing broader lessons from routine audit processes. In some instances expanded lesson learning or advisory functions might build on such existing functions and roles. In other cases there would be need for some reorientation of certification bodies' complaint systems, which are currently rather narrowly focused on audit-oriented 'compliance' systems. In relation to some entrenched sector-wide problems, it may be appropriate to pursue lesson-learning or advisory functions through broader umbrella organizations in which individual certification bodies participate, such as the international organization ISEAL.



## Balancing the conflicting roles of transnational grievance handling mechanisms

These findings highlight a number of tensions or dilemmas facing transnational grievance handling bodies with regard to how their role in managing local human rights grievances should be construed. Such tensions have practical consequences for the design and operation of transnational non-judicial mechanisms, and the ways in which prospective complaints attempt to make use of them.

There is a central underlying tension between a view of transnational grievance mechanisms as largely mirroring **quasi-judicial processes and principles**, versus a view that regards them as part of **broader political processes of interest group mobilization and contestation**. This distinction is linked to broader dilemmas about the varying purposes of grievance channels—as ways of handling individual instances of non-compliance, versus addressing systemic non-compliance.

A view of NJMs as primarily quasi-judicial in character tends to regard them as independent arbiters, oriented primarily towards resolution of disputes between individual parties. Such a view would stress the importance of procedural standards such as ‘independence’ and ‘impartiality’. This view also tends to be associated with a greater resistance to the involvement of outside groups assisting or in some way ‘representing’ directly affected parties. It further stresses principles of confidentiality and closed process amongst affected parties, rather than openness and engagement with broader actors and issues in the wider sector. Finally, such an approach tends to emphasize the role of NJMs in adjudicating on existing and agreed categories of rights, where they are alleged to have been violated.

In contrast, viewing NJMs as political rather than judicial in character suggests a relatively greater stress on attention to power imbalances, complex, cumulative and often path dependent processes of intervention and change, and ongoing contestation of regulatory standards. On this view, grievances are not regarded as isolated disputes between parties, but rather viewed as particular instances of wider social and political struggles to define values and purposes, and to establish influence. Accordingly, such a view tends to regard grievance mechanisms as elements in wider coalitions and processes of social contestation and change, rather than as closed, authoritative entities making procedurally closed decisions in line with fixed and agreed standards. This tension then gives rise to some specific dilemmas regarding how such grievance handling mechanisms understand the nature of their role, functions and sources of legitimacy.

One practical dilemma associated with these contrasting perspectives relates to how non-judicial grievance handling bodies understand **their role with regard to managing persistent power imbalances and disagreement between parties** to specific complaints. In this regard, there is a need to clarify **what a principle of ‘impartiality’ or ‘independence’ should be taken to mean in practice**, with regard to what forms of active intervention to balance power relations or orchestrate wider efforts to bring about change in the sector it is appropriate for an NJM to pursue. While a quasi-judicial view regards the independence of non-judicial mechanisms as requiring a role as neutral arbiters, a political view is more likely to stress the need to actively counter unbalanced power relations amongst parties to a given dispute, for example via accommodation

of third party capacity building or representation for marginalized complainants. Our analysis has suggested the need for an approach that can uphold principles of transparency, neutrality and fairness, while recognizing and accommodating material differences in the power and capacities of individual parties to a grievance process.

These contrasting views also generate practical dilemmas with regard to managing challenges associated with the **politicization of evidence** associated with complaints. Our cases demonstrated the challenges of establishing a single source of investigation or evidence that all parties will recognize as independent and credible. In response to this challenge, a quasi-judicial view would highlight the value of further bolstering institutional protections to secure and signal the independence or expertise of investigation and evidence-gathering processes. A political approach would stress the inevitability of ongoing contestation regarding the legitimacy of different sources of evidence, highlighting the value also of more participatory, openly contested processes of evidence-building, taking account also of disparities between the capacities of different parties to collect evidence of different kinds.

Another potential dilemma relates to how NJMs understand **their mandate with regard to structural or systemic dimensions of change to human rights practices**. A political perspective is more likely than a quasi-judicial view to foreground connections between individual disputes and broader sectoral problems—placing greater stress on the role of grievance mechanisms in supporting wider, incremental processes of social change oriented towards strengthened human rights protections. In seeking to strike an appropriate balance between these competing considerations, it is important for those operating grievance handling systems to ensure that any networking or coalition-building efforts oriented towards wider change are managed extremely carefully so that political neutrality with regard to particular party political or organizational conflicts can be maintained to the extent possible, while also acknowledging that promotion of particular regulatory agendas around human rights is inherently political in a broader sense.

More explicit efforts to articulate **the nature, boundaries and justification of specific roles for transnational non-judicial mechanisms within wider regulatory and policy-making processes** may assist in navigating these complex political dilemmas.

## Appendix 1: Timeline of IFC and CAO complaints in Assam

| DATE                     | COMPLAINT 1<br>(communication portal then compliance)  | COMPLAINT 2 AS-<br>SESSMENT | COMPLAINT 2<br>COMPLIANCE |
|--------------------------|--|-----------------------------|---------------------------|
| August 2009 and May 2010 | Incidents on Nowera Nuddy and Powai estates  |                             |                           |
| July 2010                | Local trade unions contact international trade union IUF to ask them to become involved  |                             |                           |
| September 2010           | IFC site supervision visit to Assam plantations  |                             |                           |
| October 2010             | IUF publishes a report on the incidents involving Powai Estate   |                             |                           |
| January 2011             | IUF makes a complaint to IFC Communication Portal for PS2  |                             |                           |
| April 2011               | IFC responds to IUF complaint stating their review had found no non-compliance with PS2, but that they would conduct an audit of OHS standards on the plantations. |                             |                           |
| May 2011                 | Negotiations between local unions and management from Nowera Nuddy Estate reached a negotiated settlement, with support from IUF.                                  |                             |                           |
| June 2011                | IFC and APPL jointly commission an audit of OHS standards on 8 APPL plantations, and plan some follow up remedial activities                                       |                             |                           |
| May 2012                 | CAO initiated compliance appraisal of IFC's investment in APPL   |                             |                           |
| January 2013             | CAO concluded appraisal of this case, and issued a compliance appraisal dated January 8th 2013, recommending progression to a compliance audit.                    |                             |                           |

|                |  |   |
|----------------|--|---|
| January 2013   |  | Columbia University Researchers travel to Assam for their final field trip  |
| February 2013  |  | 3 NGOs file a complaint to the CAO raising concerns about three APPL plantations. CAO finds the complaint eligible for further assessment.                  |
| April 2013     |  | CAO delegation visits Assam to meet with workers, NGOs and company representatives.   |
|                |  | Following the April meeting, some workers reported incidents of retaliation targeting those participating in the discussions. NGOs report these to the CAO. |
| June/July 2013 |  | A second CAO delegation conducted a site visit to finalise the assessment and determine whether to go forward with dispute resolution or compliance review. |
| July 2013      |  | CAO facilitated meeting between NGO complainants and APPL management. Identity of the NGOs was revealed to the company in this meeting.                     |
| July 2013      |  | Two days later, there was a press release by NGO Accountability Counsel reporting the NGOs and companies involved in the case                               |
| July 2013      |  | IFC conducted a Site Supervision Visit, visiting the three plantations named in the complaint   |
| November 2013  |  | The CAO finalised their assessment phase and transferred the case to compliance review  |

|                                |  |  |  |
|--------------------------------|--|--|--|
| January 2014                   |  |  | Publication of Columbia University report on the Assam tea plantations   |
| February 2014                  |  |  | CAO compliance released an appraisal report finding that a full investigation was required.  |
| February 2014                  |  |  | Terms of reference for the compliance investigation were issued, encompassing issues raised by both the first and second complaints.                                   |
| February 2014                  |  |  | Local NGOs (supported by Accountability Counsel) file a supplement to their complaint, providing more detail of alleged policy and legal violations on the plantations |
| March 2014                     |  |  | Tata announced they would commission an audit of living and working conditions on one of the estates   |
| August 2015                    |  |  | Consultant to CAO compliance review visited tea plantations in Assam.  |
| September 2015                 |  |  | Local NGOs (supported by Accountability Counsel) filed additional information concerning alleged IFC failures to meet due diligence and supervisory obligations.       |
| Time of writing (October 2016) |  |  | CAO Compliance investigation report has not yet been released  |

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