



THIRST



Human Rights in The Tea Sector: The Big Picture

**Part 1: Human rights in principle
and in practice (full report)**

This review is dedicated to the memory of Dr Bimal Arora

Founder and Honorary Chair of the Centre for Responsible Business, a distinguished scholar and thought leader on corporate social responsibility and Sustainability, and an expert on voluntary sustainability standards.

The world is poorer for his loss, but those of us who were fortunate enough to work with him will honour his legacy by continuing to seek both truth and solutions to human rights challenges in the business world.

Disclaimer

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This review focuses primarily on ten tea producing countries; Bangladesh, China, India, Indonesia, Kenya, Malawi, Rwanda, Sri Lanka, Turkey and Viet Nam. These will be referred to throughout this report as the ‘focus tea producing countries’ or the ‘focus countries’.

About this report

This literature review report draws on a wide range of documentation on human rights in the tea industry globally, including the tea industry and how it operates, human rights in principle, human rights in practice (according to a wide range of reports by NGOs, academics, trade unions, governments and companies), some suggestions of the possible root causes of human rights impacts, and examples of initiatives to address the problems.

The literature review is the first phase of THIRST’s Human Rights Impact Assessment of the Tea Sector. The second phase – for which the literature review provides a basis

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will involve:

- A global survey inviting tea producers to share what helps or hinders their ability to respect the human rights of their workers.
- Interviews with tea workers, farmers and their representatives in selected countries that have not been adequately covered by the existing literature.
- Interviews with actors at every stage of the tea industry, in order to gain a comprehensive understanding of the potential drivers of human rights impacts from a range of perspectives.
- Interviews with technical experts in subjects such as gender, international trade, labour rights, etc, to deepen and enrich that understanding, and to explore potential solutions.

The third phase will bring together key stakeholders in the sector to discuss, agree, plan and implement changes designed to mitigate human rights impacts of the industry on tea workers and farmers, and to explore fairer, more sustainable and empowering models of tea production and trade.

In other words, together we will create a ‘highway map’ to get the industry as a whole to that destination (building on the excellent roadmaps developed by other organisations on issues such as living wages and gender empowerment).

The lead author and editor of this review was Sabita Banerji, CEO of THIRST. The Tea Industry was written by Justin Rippon; Standards and Laws by Caroline Sloan and Certification by Alysha Shivji.

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About THIRST

Our goal is to transform the tea industry so that tea workers and farmers are empowered and their human rights are protected.

We aim to achieve this through:



Convening stakeholders

THIRST is the first civil society driven organisation dedicated to *bringing together* key actors in the tea sector to discuss problems and explore solutions. For example, facilitating a group of NGOs to challenge and monitor company responses to allegations of sexual abuse on Malawi tea estates.



Sharing our resources and expertise

THIRST disseminates knowledge about human rights in the tea sector to help ensure that tea workers' and farmers' representatives, civil society and the industry have access to the most up-to-date insights and information.



Catalysing change

Where appropriate, in alliance with other civil society organisations and in response to evidence gathered, THIRST advocates for changes in the tea industry and by relevant governments to protect tea workers' and farmers' rights.

1. Introduction

There is much that is good about the tea sector: the global popularity of its product (it is still the world's most popular drink after water), the millions of livelihoods it supports, and the innovation, passion and creativity that has driven it for almost two centuries, resulting in many new and better ways of organising its production and trade.

Yet the sector has reached a critical point in its evolution. At the same time as facing a range of commercial challenges (including competition from other commodities, from overproduction, stagnating demand, rising costs, and the impacts of the climate crisis), it now faces growing expectations (from its consumers, employees and investors) of transparency, of respecting human rights and of protecting the environment. In many countries, in common with other agricultural sectors, there are severe labour shortages – and the younger generation is turning its back on the industry.

The industry – and its stakeholders – therefore now needs to consider how it can become both commercially and morally viable at every stage of the value chain, from tea plucker to tea drinker, and how it can do so in such a way that protects the environment.

The industry's origins in the 19th century are well known, and many commentators have highlighted the inequities that a system involving a lucrative commodity trade dependent on indentured labour inevitably created.¹ But the system is now confronted by very different realities to those that it enjoyed in its heyday. Tea is no longer a luxury commodity commanding high prices. Its trade is no longer part of a strong, global imperial system of governance.

As in so many global agricultural trading systems, despite progress in some areas, inequities remain in place, or have even been exacerbated. There have been countless reports since the inception of the tea trade about the poor living and working conditions of those who plant, prune, pluck and process it.

For example, THIRST's 2020 literature review 'Human Rights in Assam Tea Estates: The Long View'² looked back over 15 years of reports – some of which contain references dating back to the very inception of the industry. The review demonstrated that the same issues have emerged repeatedly throughout the decades in Assam; in particular, low wages, poor housing, poor sanitation and poor healthcare.

Those same issues reappear in this report, not just in Assam but also in Kerala, Tamil Nadu and West Bengal – and not just in India, but in China, Bangladesh, Indonesia, Kenya, Malawi, Rwanda, Sri Lanka, Tanzania and Vietnam. Moreover, the issues are unlikely to be substantially different in most other tea-producing countries, since tea can only be grown on a commercial scale in geographies that tend to fall within low to middle income categories.³

There have been many initiatives, both within the tea industry itself and by governments, to tackle these issues – yet civil society is calling for more radical change to ensure the empowerment of tea workers and farmers, and the protection of their rights. Industry players and governments of tea-producing countries sometimes feel that these critics do not appreciate the commercial realities that the companies in question are facing, and they worry about trust in the industry being further eroded at a time when it is facing so many other challenges. Furthermore, any factual inaccuracies that may occur in some of the reports undermines their trust in the reporters.

Yet the scope and scale of this literature review will hopefully demonstrate that the problems are both incontrovertible and universal; that while each country and region will have particular characteristics that may exacerbate the issues, when we look at the big picture we can see that the problems are in fact industry-wide and systemic.

The overriding challenge now is how to balance the need for commercial viability at each stage of the value chain with – to quote the UN Guiding Principles on Business and Human Rights – “the State duty to protect human rights” and “the corporate responsibility to respect human rights” of all industry stakeholders, including the most vulnerable: its estate⁴ workers and smallholder farmers.

Rather than apportion blame to any individual group within the industry, THIRST believes the time has come for constructive dialogue between its many stakeholders – each of whom has a critical part to play. We believe the time has come for collaboration in analysing, understanding and finding solutions to these systemic problems – and then for acting on those solutions together.

To ensure that human rights are fully respected, everyone within this system will now need to look at their role in sustaining it – from the consumer, through to the retailer, brand, blender, packer, trader, broker, estate manager, supervisor, and even the tea workers and farmers themselves.

Every industry is now expected (and may soon be legally required) to conduct human rights due diligence in its global supply chains – and the tea industry is no exception. Today, every tea brand and retailer is expected to take responsibility for the human rights impacts occurring within its supply chain, to understand the role it may be playing in perpetuating those impacts, and to act accordingly.

Where links between human rights breaches and industry-level systems are established, industry-wide adjustments may also need to be made, to ensure that human rights are protected throughout the value chain. This literature review, and the wider human rights impact assessment of the tea sector for which it forms a basis, is designed to support the industry, in conducting that aforementioned human rights due diligence. It tries to encompass ‘the big picture’ by piecing together evidence from a wide range of reports on human rights in the tea sector, across multiple countries, while looking at how the sector itself operates. It also hopes to offer a broad base on which to conduct further exploration of the root causes of human rights breaches in the tea sector – and what can be done to address them.

This is an exciting moment in the history of the tea industry. It can build on all that it has achieved so far by seizing the opportunity to transform itself into a fair and sustainable sector, where workers and farmers are empowered and their rights are protected – within a system that is shaped by 21st century values and systems, rather than 19th century ones.

It can become a financially viable industry that a new generation of health- and human rights-concerned consumers, investors and employees will be drawn to – and stay loyal to. In so doing, it can embark on a further two centuries, of which it can be justly proud.

2. Executive Summary

Not just Assam...

As the first phase of its three-year Human Rights Impact Assessment (HRIA) of the tea sector, THIRST reviewed over 200 documents to try to assess the scale of human rights issues in the tea sector globally – looking beyond the regions (such as Assam) and countries (such as Kenya) on which much of the human rights reporting for the sector is focused. The review looked first at the industry itself, then at the international, regional and national instruments and the corporate policies and standards protecting tea workers' and farmers' human rights in principle. Finally, we reviewed their human rights in practice as reported by a wide range of commentators. We focused on 10 countries across Africa and South and East Asia: Bangladesh, China, India, Indonesia, Kenya, Malawi, Rwanda, Sri Lanka, Turkey and Vietnam.

A thriving industry

The global tea market has been steadily growing and continues to do so. It was valued at nearly 200 billion US dollars in 2020, and is expected to rise to over 318 billion dollars by 2025. The production of tea employs an estimated 13 million people, nine million of whom are smallholder farmers, while the remainder work in tea estates – with millions more reliant on their incomes.

While tea is a major export commodity, two thirds of today's global production of tea is consumed within its country of origin. In Western markets the consumption of traditional black tea is declining; the UK alone has seen imports reduce 13.5% over the first decade of this century. Trends include a growing demand for 'ethical' and speciality tea.

Auctions vs private sales

Once processed, tea is sold either at auctions or through private deals to traders, packers and/or brands, who then sell it on to retailers. Auctions provide an international marketing tool and payment guarantee system for producers, a quick turnaround, increased traceability and sometimes better prices. But criticisms of the system include the domination of a small number of large buyers who can dictate prices, traders capitalising on price movements, unfair buying practice at auction centres, poor representation of producers by brokers, and local buyers struggling to compete with multinationals.

Many private and multinational producers prefer private treaties which enable them to build stronger relationships – allowing for long-term contracts, which in turn strengthen efforts towards social and environmental sustainability. Some speciality tea retailers also buy directly from estates, and there is a small but growing trend for producers selling directly to consumers.

Trends in tea production

Smallholder tea farming is rapidly taking over from tea estates. Smallholder tea farms exist across African tea-producing nations, but are particularly widespread and mature in Kenya. Recently, there has also been a rapid increase in the number of smallholder tea farmers in other origins, especially India, where they now contribute roughly half of the crop.

The last few decades have also seen a rise in independent private tea factories in many tea origins, processing bought leaf – rather than growing tea on their own estates, or through traditional associations with smallholders.

Another growing trend is mechanisation: tea plucking has traditionally been a highly labour-intensive job but, as production costs rise and prices plateau, mechanisation is rapidly increasing. This is inevitably leading to unemployment – particularly among women.

Human Rights in the Tea Sector in principle

The human rights of tea workers and farmers are protected in principle by a plethora of standards, conventions, policies and laws.

Internationally recognised human rights are addressed in a number of **international treaties and covenants** including the Universal Declaration of Human Rights and the International Labour Organization (ILO) Conventions. At regional level there are three main instruments that cover the major tea-growing regions; ASEAN's Human Rights Declaration (the Bangkok Declaration), the African Charter on Human and People's Rights (the Banjul Charter) and the Cairo Declaration on Human Rights in Islam.

Mandatory human rights due diligence (HRDD) for business – the process by which a business identifies, prevents, mitigates and accounts for its human rights impacts as recommended by the UNGPs – is a growing legal trend, with a number of HRDD laws already in place in tea importing countries.

Some, but not all, of the larger tea brands have publicly available **corporate human rights policies**. Several brands and packaging companies are members of the **Ethical Tea Partnership (ETP)**, which implements programmes across seven tea growing countries in Africa and Asia – addressing issues such as gender equality and improving women's empowerment, improving economic stability for farmers and workers, and mitigation and adaptation measures to tackle climate change.

Many also rely on **certification** to cover ethical or human rights issues in their supply chains. Research shows that certification has raised societal awareness and prompted inquiry into the conditions for tea farmers and workers, as well as helping to increase producers' access to markets.

Common criticisms of certification bodies include lack of transparency, weak implementation, overreliance on audits, unrepresentative governance structures and having the effect of undermining trade unions.

Although several certifiers are reported to have had positive gender impacts, most are also criticised for failing to address structural barriers faced by workers and producers – especially women.

In the next phase of this Human Rights Impact Assessment, THIRST intends to conduct a global survey of tea production companies to understand their perspectives on human rights,

their policies and commitments, and what helps or hinders them from meeting the human rights expectations of their customers: the buyers.

...And in practice...

THIRST's literature review found that across every human rights dimension there were gaps between the principles and the practice. In many cases, the practice also appears to contravene national laws.

For example, tea production provides incomes for millions of **women**, but on estates they are concentrated in the lowest paid roles. All of the tea-producing countries we focused on make some provision for maternity leave with pay or other benefits – but across tea-growing regions they experience economic and employment discrimination, sexual abuse and coercion, and violation of maternity rights.

The review identified legislation on **child labour** in all of the focus countries, yet there is evidence of child labour existing across multiple tea-producing regions. Children (and particularly girls) on tea estates are vulnerable to trafficking due to the poverty and poor living conditions of their families.

All of the focus tea-producing countries have some form of legislation to address **minimum wages**; yet the literature review found that the sector is characterised by very low incomes (often below international poverty lines – even at minimum wage levels, agreed through collective bargaining). Low wages are leading to malnutrition, indebtedness and risky survival strategies, such as transactional sex, child labour and trafficking.

The focus countries all appear to make provision for some form of occupational **health and safety** regulation and some provision for welfare at work – yet the research shows widespread occupational health hazards, including musculoskeletal injuries from carrying heavy loads, insufficient and inadequate PPE, and exposure to tea dust. Tea workers are also reported to often lack access to decent housing, toilets, safe drinking water and medical facilities.

Working hours in tea estates are technically within ILO recommendations of eight hours a day, but it is hard, physical labour in challenging environments. Women tea workers do around 13 hours of physical work, including the unpaid domestic work – and, while the working hours of smallholder farmers are not regulated, they are likely to be as punishing as those of estate workers, if not more so.

Women tea estate workers throughout much of Asia are permanently tied to their employment through bonds of debt and housing dependency. Yet their work is piece rated and seasonal, so they do not necessarily enjoy **regular work** throughout the year. As well as historical evidence of **harsh treatment** of tea estate workers, there are currently court cases underway over alleged failure to protect tea workers from violence and systemic sexual abuse.

All of the focus tea-producing countries legally allow workers to form and join **trade unions** – and in most (but not all) cases grant workers specific rights on that basis. Most tea estates workers are represented by formal trade unions, but in many cases these are weak, fragmented and inactive.

All the focus countries (except Sri Lanka) have laws relating to **discrimination** in respect of gender or of race, nationality and ethnicity; yet, as well as being concentrated at the lowest paid level of the tea estate workforce, women across the sector lack promotion opportunities and constitute the majority of casual workers. Migrant workers experience ethnic discrimination and are usually ineligible for benefits that permanent employees enjoy. Older people are also highly vulnerable to rights abuses, while non-working household members are often ineligible for tea estate benefits, such as housing and healthcare.

All the focus countries (except Vietnam and Turkey) prohibit people trafficking, and all have either a constitutional provision or a criminal law prohibiting **slavery** – yet forced and/or child labour has been identified in the tea industries of multiple countries. The UN’s special rapporteur on contemporary forms of slavery reported that he “...witnessed that women and girls are disproportionately affected by contemporary forms of slavery in Sri Lanka.”

Root causes

In the next phase of its Human Rights Impact Assessment, THIRST will collaborate with industry stakeholders for an in-depth exploration of the root causes of these human rights breaches – as well as the gaps between intentions and the reality. In the meantime, the literature review has resulted in some initial suggestions, including the historic structure and location of tea estates, multiple power imbalances throughout the system, the power of a few large buyers over many smaller local producers, the inequitable distribution of the retail value of tea, rising production costs and static prices, tea companies’ heavy reliance on certification bodies, and the lack of protections for smallholder tea growers.

Conclusion

Despite the success of the industry, the international and regional human rights instruments, the national laws, the certification standards and company policies pledging to uphold human rights for tea workers and farmers, THIRST’s literature review found that there were sector-wide breaches on every human rights dimension we examined. Women, children, older people and migrants are particularly vulnerable to these human rights breaches – and are the least empowered to challenge them.

In the next phase of the HRIA, collaborating with industry experts and experts in development, industrial relations and economic justice, we will co-develop a ‘highway map’ towards a future in which tea workers and farmers are able to live healthy, dignified lives within a thriving 21st century global industry.



3. Methodology

The literature review is the first of three phases of THIRST’s Human Rights Impact Assessment of the tea sector.

THIRST reviewed a wide range of documents produced by NGOs, trade unions, academics, companies and governments in an effort to gain a broad picture of human rights both in principle and in practice across the global tea sector, while trying to identify common themes. Many of the documents reviewed are available on THIRST’s Knowledge Hub.

This review focuses primarily on 10 tea producing countries: **Bangladesh, China, India, Indonesia, Kenya, Malawi, Rwanda, Sri Lanka, Turkey and Vietnam.**

These will be referred to throughout this report as the ‘focus tea-producing countries’ or the ‘focus countries.’ They were chosen to ensure a spread across the main tea-producing continents (as it would have been impossible to include the almost 60 countries that produce tea⁵), a range of country sizes, and different tea production approaches. As well as including some of the world’s leading tea producers and exporters (China, India, Kenya), these are also the countries about which information is readily available in relation to human rights in their tea sectors – although there is a heavy imbalance in the amount of information available, with large amounts written about the tea sector of India (particularly the Assam region) and Kenya, very little about China and Indonesia, and varying amounts of information on the remaining countries.

Wherever possible, THIRST has tried to draw together information from multiple countries to identify patterns or commonalities that could provide insights into the way that the tea industry as a whole operates. As such, we have tried to maintain a balance between country- and region-specific detail and sector-wide relevance. This is so that we can start investigating the systemic drivers of human rights breaches in the tea industry, rather than focusing narrowly on country- or region-specific problems.

An interim report was drafted in December 2021 focusing primarily on reports of human rights in practice for tea workers and farmers. The interim report was reviewed by a group of advisors who will continue to accompany the Human Rights Impact Assessment over its three-year lifespan. They provided expert input and feedback on the review which was duly incorporated.

The advisors are:

- Caroline Brodeur, Business and Human Rights Specialist, Oxfam America
- Jenny Costelloe, Executive Director, Ethical Tea Partnership
- Otilie Cunningham, Tea Buyer, Fortnum and Mason
- Narendranath Dharmaraj, Strategic Advisor and Operations Consultant in Tea
- Ella Frankel, Senior Advisor: Food, Farming & Fisheries, Ethical Trading Initiative
- Céline Gilart, Head of Social Impact & Sustainability, Twinings
- Justin Rippon, Tea Procurement Consultant
- THIRST Trustees

About the Authors

SABITA BANERJI

Lead author and editor

Founder and CEO of THIRST, Sabita is an economic justice advisor who was born and raised on tea plantations in Kerala and Assam. She has nearly 20 years' experience working in ethical trade and international development, having held strategic posts at Oxfam and the Ethical Trading Initiative. She was previously a member of the Board of Directors of Just Change, UK – a voluntary community tea trading initiative. She co-authored 'Addressing the Human Cost of Assam Tea' with Robin Willoughby for Oxfam, and has written several THIRST briefings and blogs.

JUSTIN RIPPON

Researcher and author of The Tea Industry section

Justin Rippon started his career in the Tea industry in 1997, mostly on the commercial side, as a trader, the majority of which was spent in Africa, and more recently for Van Rees in Malawi and Kenya, managing buying, blending and export operations – before returning to senior management roles in Europe. Since 2021 Justin has worked as a specialist independent consultant advising on tea procurement and logistics strategies.

CAROLINE SLOAN

Researcher and co-author of sections on international human rights standards and conventions, regional human rights bodies and influences and national legislation in exporting and importing countries

Caroline qualified as a lawyer and has years of experience in the international energy sector. She now provides research, training and advisory services on sustainability, human rights and corporate accountability, and is an Associate Lecturer at Oxford Brookes Business School.

ALYSHA SHIVJI

Researcher and author of the Certification section

In addition to being THIRST's Communication and Research Consultant, Alysha is a Doctoral Researcher in the Business and Human Rights Catalyst at the Alliance Manchester Business School, critically investigating the right to access remedy for business-related human rights abuses with a focus on the agrifood sector.

Limitations of the study

Information overload

The sheer volume of literature available on this topic is both an enabler and a limitation of this review. THIRST has made every effort to consult the most relevant documents, but inevitably there will be other important sources of information that have not come to our attention or that we have not had the capacity to review.

We have only been able to review documents that are published in English. This has, in particular, limited our ability to review the labour laws of all the focus countries (especially China), hence what is presented here should be taken as no more than a rough guide to the laws as we perceive them at a particular moment in time.

Information gaps

On the other hand, much of this plethora of information is concentrated on a small number of countries and issues. There is a significant amount of literature on Assam, much on Kenya, less on Sri Lanka and Malawi and a limited amount on other tea-producing countries of Africa and South Asia – or even on other tea-growing regions of India. There is very little literature available on the conditions for tea workers and farmers in East or South East Asia, even though these regions are home to some of the world's most important tea producing countries, not least China – where it all began.

There is some literature on conditions for smallholder tea farmers, but not nearly as much as estate workers – an imbalance that is increasingly failing to reflect the situation on the ground as the growth of smallholder tea farming starts to overtake estate production in many countries. There was also limited data on the extent to which the rights of older people in tea are being met.

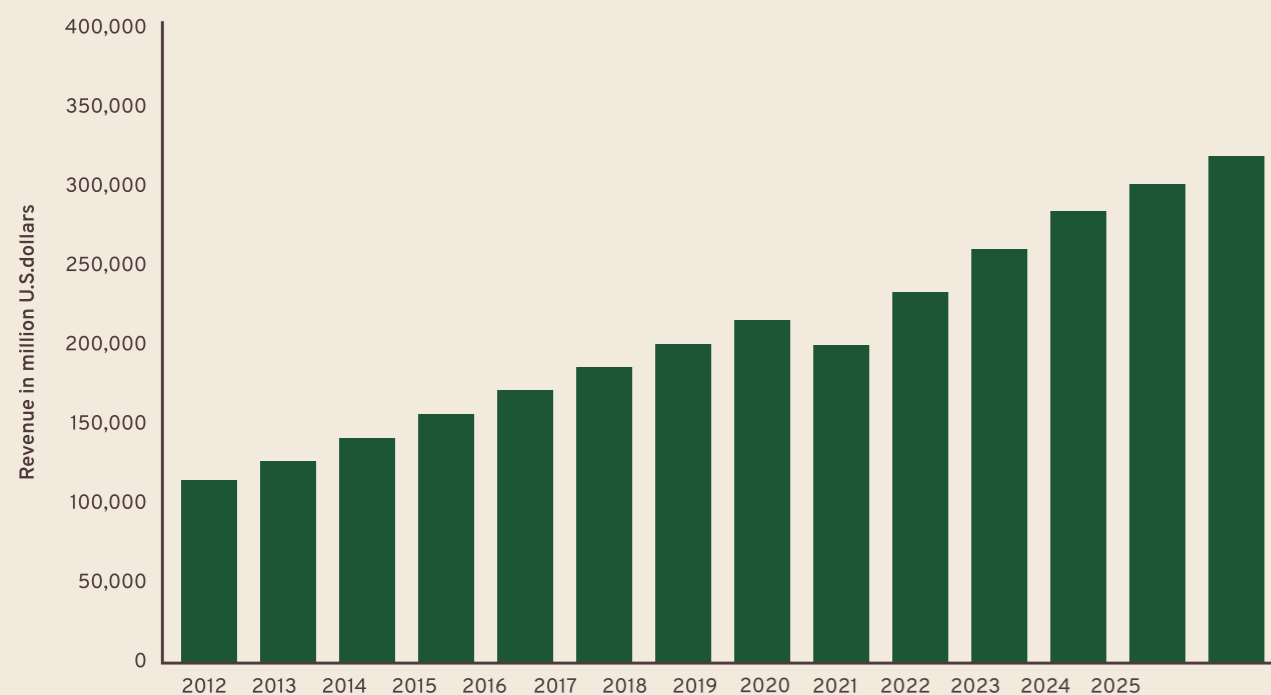
The patchiness of the available literature is necessarily reflected in this literature review, which provides more examples from India and Kenya than other countries, but wherever possible strives to find examples from further afield.

THIRST invites civil society, trade unions, academics and the industry to work with us as partners and allies to fill some of those gaps in the next phase of this HRIA.

A strong focus of the next phase will of course be filling the other significant gap in the literature, which is a whole value-chain analysis of the root causes of the human rights breaches highlighted in this review. Again, we invite the tea industry – from worker and farmer representatives to producers, buyers and retailers – to join us in mapping out the highway to a fair and thriving tea sector for all.

4. The tea industry⁶

The global tea market has been steadily growing and continues to do so. It was valued at nearly 200 billion US dollars in 2020 and is expected to rise to over 318 billion dollars by 2025.



Source: Statista⁷

Tea is very much a global commodity, grown in over 50 countries and consumed worldwide, although its popularity in traditional markets such as the UK is being overtaken by countries like Turkey and Pakistan, and by domestic consumption in tea-producing countries such as China and India.

Tea production employs an estimated 13 million people, nine million of whom are smallholder farmers, while the remainder work in tea estates – with millions more reliant on their incomes. In China, Sri Lanka and Kenya, which account for half of the world’s tea production, the majority of tea is produced by smallholder farmers. Millions more are employed in or dependent on tea processing, transporting, trading and retailing.

4.1 Tea production

There are two primary varieties of tea: *Camellia Sinensis* var. *Sinensis* (China) and *Camellia Sinensis* var. *Assamica* (India). Tea can be grown almost anywhere, but, to achieve cultivation on a commercial scale, a tropical/subtropical climate is required. This means that the majority of tea is of necessity grown in some of the world’s least developed countries; the main tea growing countries – with the exception of Argentina and China – all rank below 100 on the Human Development Index⁸. During peak season, fresh tea shoots (ideally two leaves and a bud) are plucked (harvested) every 12-14 days and then processed. Broadly speaking, tea processing falls into two categories; Crush Tear Curl (CTC) and Orthodox manufacture.

4.1.1 CTC

The CTC process produces a finer tea grade and stronger cup (ideal for teabags), and this method of manufacture dominates African production. Once the tea leaves have been plucked and transported to the factory, they are withered (removing moisture) before maceration in a series of fast turning sharp rollers which crush, tear and curl the leaf – resulting in a mash of fine rolled particles. The tea is then oxidised on a fermenting conveyor and passed through dryers to remove almost all the moisture before being sorted into various grades from the largest ‘broken’ leaf to the smallest powdery ‘dusts.’ These different grades of the same tea meet very different markets; for instance, best Kenyan broken leaves will sell to Kazakhstan and Iran, best fannings (midway in size) to Pakistan and UK, dusts to Yemen and Afghanistan, and fibrous secondary grades to Sudan and Somalia. Each grade realises a different price dependent upon the specific supply and demand dynamics for the relevant market.

4.1.2 Orthodox

Orthodox processing is more common in Asia, where the industry originated, as it is possible to process tea this way in a domestic setting. The plucking and withering of the leaf follows a similar pattern to CTC, but rather than being macerated it is rolled before fermentation and then passed through a gentler drying process. Green teas are not fermented, hence the more delicate flavour. Orthodox processing produces a long, twisted leaf and various broken and dust standards of the same quality. Speciality teas (low volume, special productions designed to reflect a unique flavour profile) tend to be orthodox manufacture – but being orthodox does not necessarily denote quality. As with all tea production, quality is a result of the terroir and care of handling and manufacture.

4.2 Tea production models

4.2.1 China - the origins of tea

The tea industry traces its origins back to China, where over 1,000 catalogued types of tea are produced, largely on smallholdings and family-owned farms, meeting local demand. Tea production for export was industrialised during China's Communist era, resulting in a significant lowering of quality when artisanal methods were abandoned in favour of volume and a 'one size fits all' approach. Today, China is regarded as an internal market, with much of the production sold locally or processed through independent tea factories. Its presence in the international market is at a low scale relative to its huge and rapidly expanding production base; however, it is increasingly important as an importer from other origins, not least for the growing tea extract production sector and market, while its artisanal and speciality teas are gaining popularity as exports alongside the more generic types that proliferate in some markets, such as Morocco. The vast majority of the Chinese industry lies in Chinese hands – though multinationals such as Martin Bauer and Finlays also have a presence.



4.2.2 Estate Production

In the 19th century, the British developed the tea estate production model, as they looked to 'liberate' tea from Chinese control. They pioneered tea estate farming across the globe but with particular success in India, Sri Lanka and in East African countries. Tea estates were often situated far from population centres and thus had to offer housing, schools, medical centres and even social facilities for workers. Tea farming is labour intensive, and the bulk of the manual workforce (pluckers and factory workers) were accommodated in basic housing 'lines'.

The resources required to clear land on estate scale, prepare fields and plant tea (requiring three to five years to become commercially viable) meant that many estates in developing countries were owned by foreign companies. Today, in Africa and Asia, many remain members of large multinational groups such as Tata, Mcleod Russel, Unilever, Finlays and Camellia. Through efficiencies and scale of production, these estates are able to focus on reduced costs through higher yields. The yield of an estate is vital for its commercial viability; an East Africa estate can produce 3,000 plus kilos of processed tea per hectare annually, compared to 1,900 kilos per hectare a year for smallholders. In India, where the estates are more established and bushes aging, production is closer to 2,000 kilos per hectare per year, which is causing a squeeze on profitability.

4.2.3 Mechanisation

Tea plucking has traditionally been a highly labour-intensive job, but mechanisation is rapidly increasing. Its use has grown from around 2% of global harvesting in the 1980s to around 60% today⁹, and continues to grow rapidly, with technical improvements overcoming earlier concerns around quality.

Argentinian estates are the most mechanised of all the major production centres, as teas are harvested and processed with very little direct handling. Production is efficient, but quality is low, and best suited to the flavoured iced tea markets of the USA. Japanese tea production is also highly mechanised, and Indonesia is following suit after experiencing labour shortages. Mechanisation in Africa is on a smaller scale – but growing.

While employing hand pluckers exacts a high physical cost on workers, mechanisation causes unemployment – so each create different human rights challenges. For example, at the time of writing, a legal case is being brought against Finlays by workers claiming work-related injuries allegedly caused by neglectful employers¹⁰.

4.2.4 Smallholder production

Smallholder farming is a feature of many tea origins, but has met most success in Kenya, where there is a strong support network and avenue for sale available to the farmers. The ready market for tea in Kenya sees realised prices respond to both the quality and quantity of production. At times of high production, realised prices may be low, but the product can almost always be sold; even teas with significant manufacturing defects can find a home. There are an estimated 600,000 smallholder farmers in Kenya, accounting for some 60% of national production in volume terms. Their value share is higher still as a result of the market's recognition of the superior quality of smallholder tea. The vast majority of smallholder tea in Kenya is within the remit of the Kenya Tea Development Agency (KTDA), formerly a parastatal but now a well-established farmers' cooperative, operating 54 tea factories with a further 16 sub-factories. These factories are owned by the farmers, who elect local representative boards and officials to senior management positions at the head office in Nairobi.

Smallholder tea farming exists across other African producing nations, but not to the extent and maturity of the organisation present in Kenya. Elsewhere they generally feed private estates and independent tea factories, rather than their own cooperatively-owned factories.

There has recently been a rapid increase in the number of smallholder tea farmers in India, who now contribute roughly half of the Indian crop. Other countries, such as Sri Lanka and Indonesia, have a mix of private and state-owned tea estates and smallholder farms in variable proportions.

4.2.5 Independent or 'Bought Leaf Factories'

The last few decades have seen a rise in independent private tea factories in many tea origins, processing bought leaf rather than growing tea on their own estates or through traditional associations with smallholders. This now accounts for a substantial portion of Assam production (40%) and is increasingly prevalent in Kenya. Proponents of Bought Leaf Factories (BLF) argue that they are able to absorb excess harvest and those leaves which have been rejected by primary factories. However, their benefits are disputed by traditional factories and estates, who argue that their green leaf is being 'hawked' by the BLFs with the allure of higher and more immediate returns – and yet none of the longer-term investment in production. Further, there are concerns that BLFs may threaten traceability from field to cup, including environmental and



4.3 Regulation and support

In some countries, such as Turkey, the state controls the majority of tea production – but government regulation of production is generally channelled through tea boards, which exist as state bodies in most major origins.

Their remit is to grant licences (to growers, brokers, traders, packers and exporters), to oversee tea research facilities (for example, developing new tea clones to increase yield, quality and resistance to pests and drought), and to promote demand for tea domestically and internationally.

The Tea Board of India was set up in 1903 to regulate the industry, and subsequently developed a wider remit which included an oversight of the smallholder sector and the creation of initiatives to guide and control the application of pesticides – use of which now presents one of the most formidable barriers to exports for the Indian crop.

At the time of writing, the Tea Board of India was undergoing a further transformation “that will minimize its regulatory role in [favour] of promotion and development.”¹¹

The Tea Board of Kenya has had a more intermittent existence, but was recently reconstituted in accordance with the Kenya Government’s Tea Regulations of 2020 and a new Tea Bill¹². It aims to provide a structure to the industry which the Kenyan Government argue has become unwieldy and unregulated. Alongside the reconstitution of the Tea Board of Kenya, the 2020 regulations and bill introduce a wide range of reforms affecting both the management and shape of the Kenyan Tea Development Agency – as well as stating future aspirations and targets for the marketing of Kenyan tea, including requirements of tea buyers to invest in added value capacity. The regulations and bill have met vociferous objection from industry players and, at the time of writing, final implementation rests with the Kenyan judiciary.

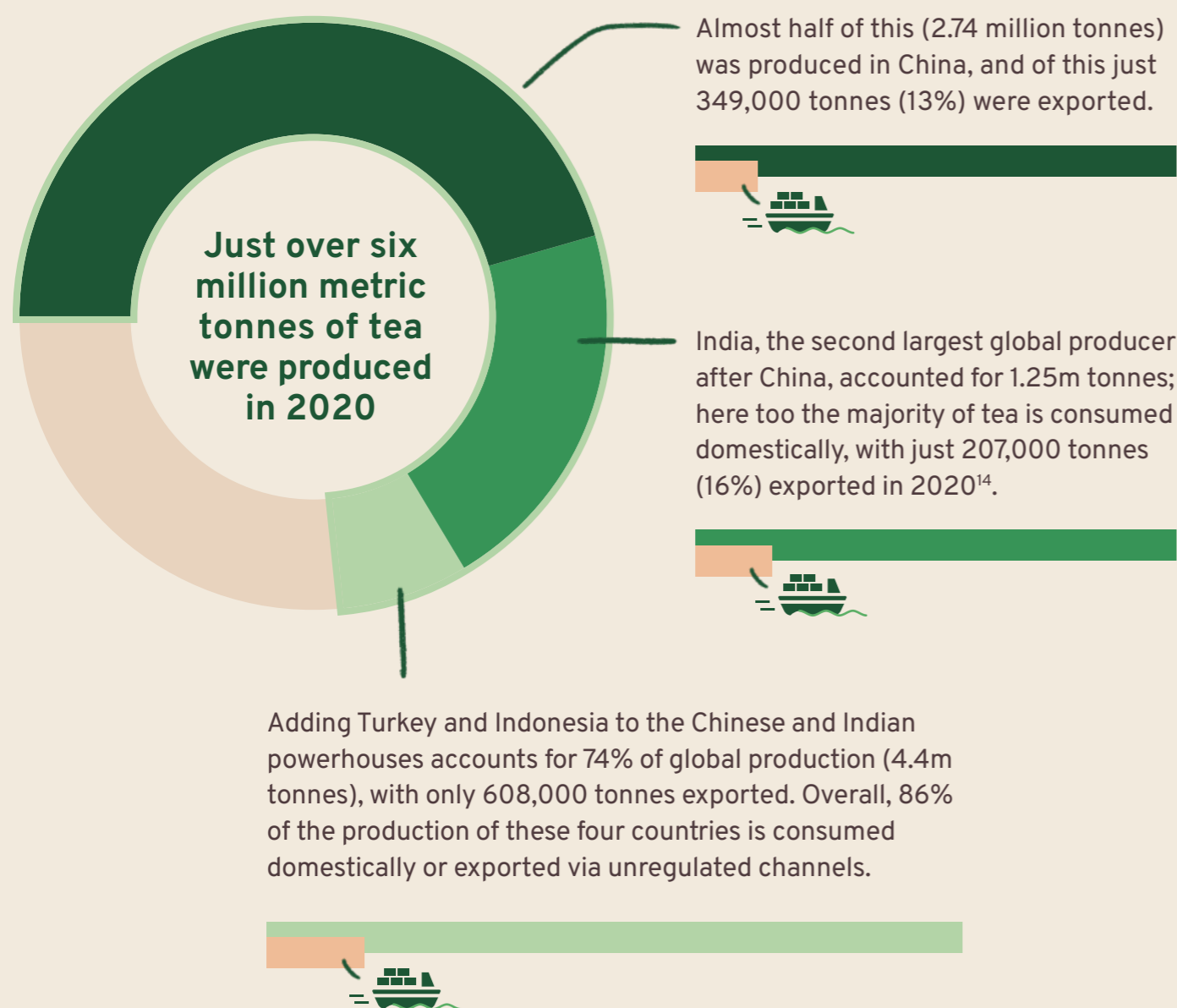
Most major auction centres host trade associations to manage the auctions, with sub-committees to represent the various aspects of the trade. In Kenya, the East African Tea Trade Association represents the interests of all 10 nations selling through Mombasa (Burundi, Congo, Ethiopia, Kenya, Mozambique, Madagascar, Rwanda, Tanzania, Uganda and Zambia). In India, each auction centre has its own association, under the oversight of the Indian Tea Association that was formed in 1881.

Additional regulation and guidance to farmers and industry players is provided through certification bodies such as ISO and the Rainforest Alliance. This is costly for farmers, but increasingly necessary for the assured marketing of teas for export – as well as encouraging an ethical and sustainable approach to staff and the environment.



4.4 Shape of the global industry¹³

While tea is a major export commodity, the industry is founded on domestic consumption, particularly in Asia. Today, two thirds of the global production of tea is consumed within the country of origin.



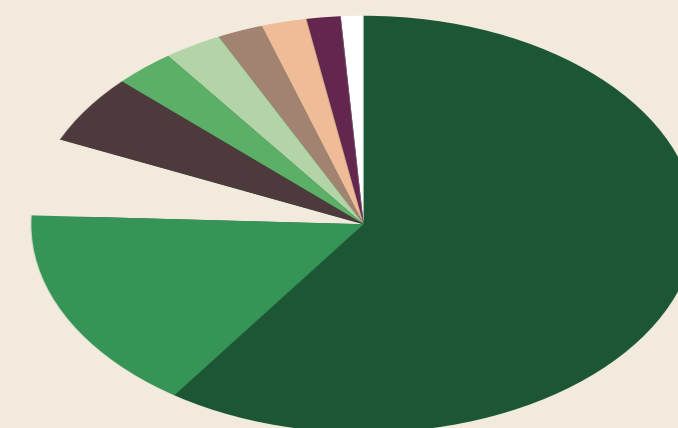
The major global tea exporters are Kenya, Sri Lanka, Argentina, Uganda, Malawi, Rwanda and Tanzania.



Kenya, the third largest producer, is also the world's largest exporter, dominating the export market with 519,000 tonnes shipped in 2020, equivalent to 91% of its production that year. Kenya's prominence is further strengthened through operations within the port city of Mombasa, where the CTC auction is the largest tea export auction in the world.

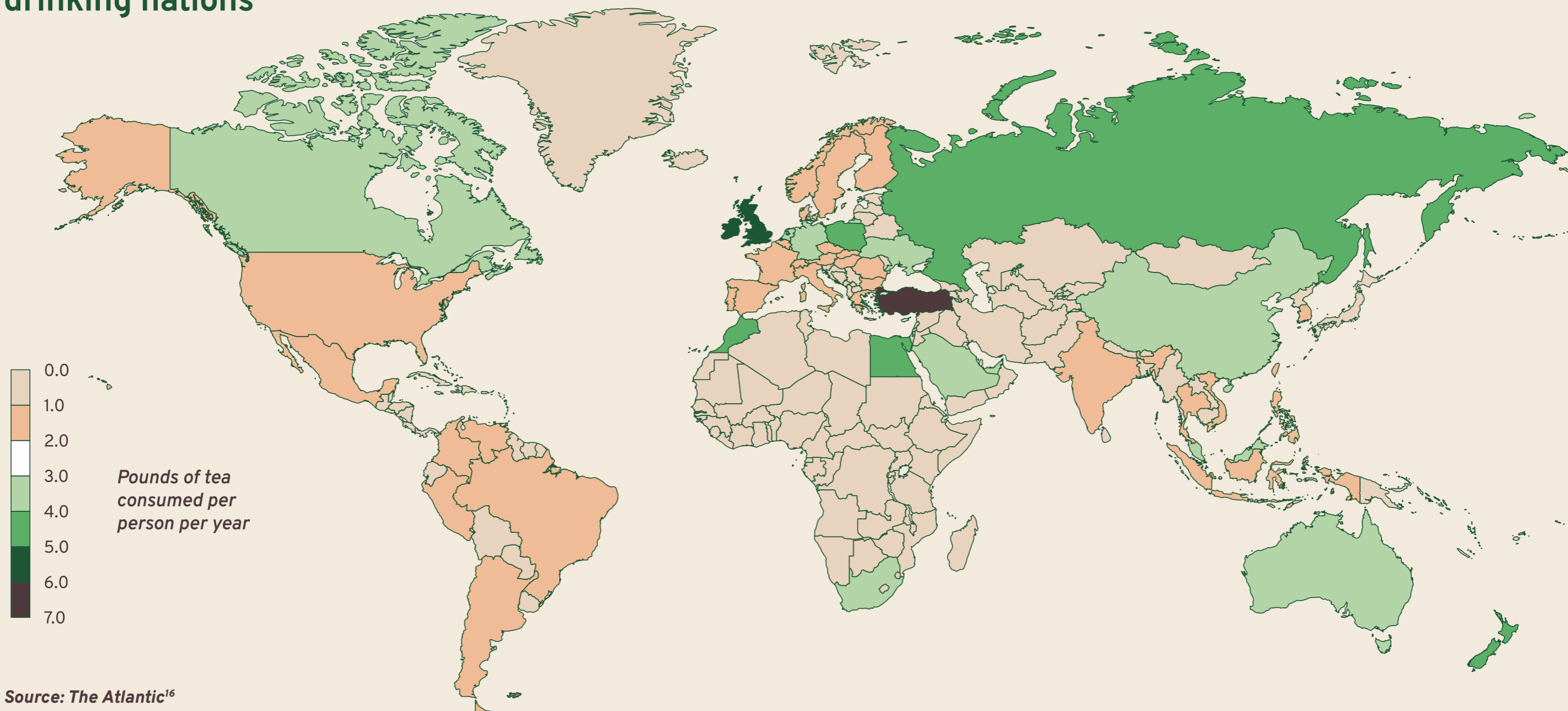
Top 10 tea producing countries by growing area

- China
- India
- Kenya
- Sri Lanka
- Vietnam
- Indonesia
- Myanmar
- Turkey
- Bangladesh
- Japan

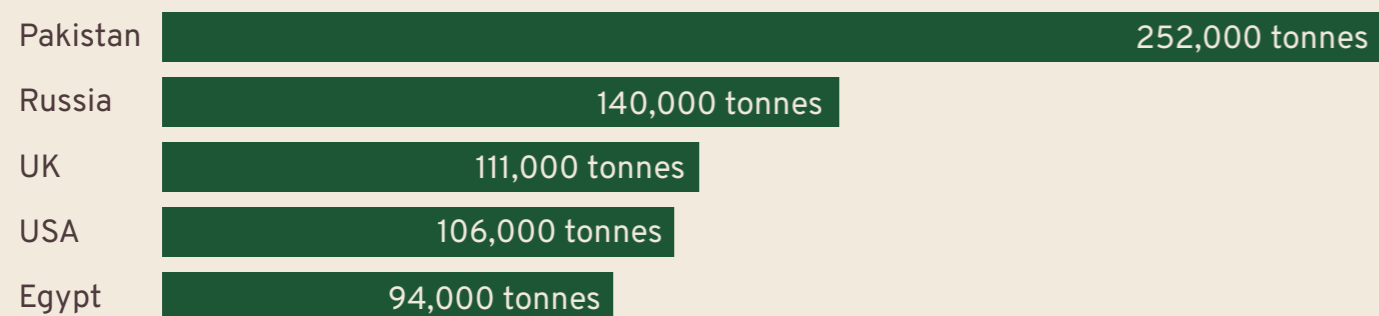


Source: Killgreen¹⁵ 2018 (most current data available)

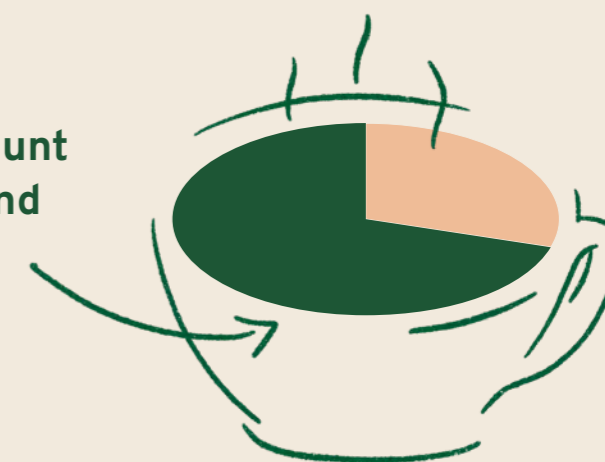
The world's biggest tea drinking nations



The five key global importers of tea are:



Together, these five countries account for the consumption of 703 thousand tonnes of tea from the one million tonnes exported.



4.4.1 Key players

As described above, at the production end of the tea value chain there are many thousands of tea estates and smallholder tea farms across Asia, Africa and – to a lesser extent – the Americas. The estates range from ‘single estate’ entities to clusters of estates owned by a national company or by larger, vertically-integrated multinationals. In many countries, including Turkey, Indonesia and Tanzania, there are also state-owned tea estates. Once processed, tea is sold either at auctions or through private deals to traders, packers and/or brands who then sell it on to retailers (see section 4.5: Tea marketing). Some speciality tea retailers buy directly from estates, and there is also a small but growing trend – particularly in India – for producers selling directly to consumers.

Some of the major players in the tea ecosystem include Unilever, Tata Tea (part of Tata Consumer Products, formerly Tata Global Beverages), and Twinings (part of Associated British Foods). Unilever remains the largest and most important global player in the industry, with major international brands including Yellow Label, PG Tips, Tazo and Pukka adding to the production capability. However, it is in the process of exiting the industry through the proposed sale of its tea subdivision, ekaterra, to venture capitalist CVC Capital Partners¹⁷.

Tata Tea, which owns Tetley, Tea Pigs and multiple other brands, also has global brand presence, though some regional market packers enjoy greater local dominance, such as Tapal in Pakistan, El Arosa in Egypt, Beta in Turkey, Orimi in Russia, Al Kbous in Yemen, Coftea in Sudan.

A number of Indian producers have diversified origins, most prominently Mcleod Russel who include estates in North India, Vietnam and Uganda within their portfolio. However, in recent years the company has divested several estates in India and has pulled out of Rwanda altogether, leaving Camellia plc, the British parent company of Goodricke (in India and Bangladesh), and Eastern Produce (in Malawi and Kenya) as the world’s largest domestic tea producer. Another British company, PGI (Plantations & General Investments) owns estates in Malawi and Zimbabwe.

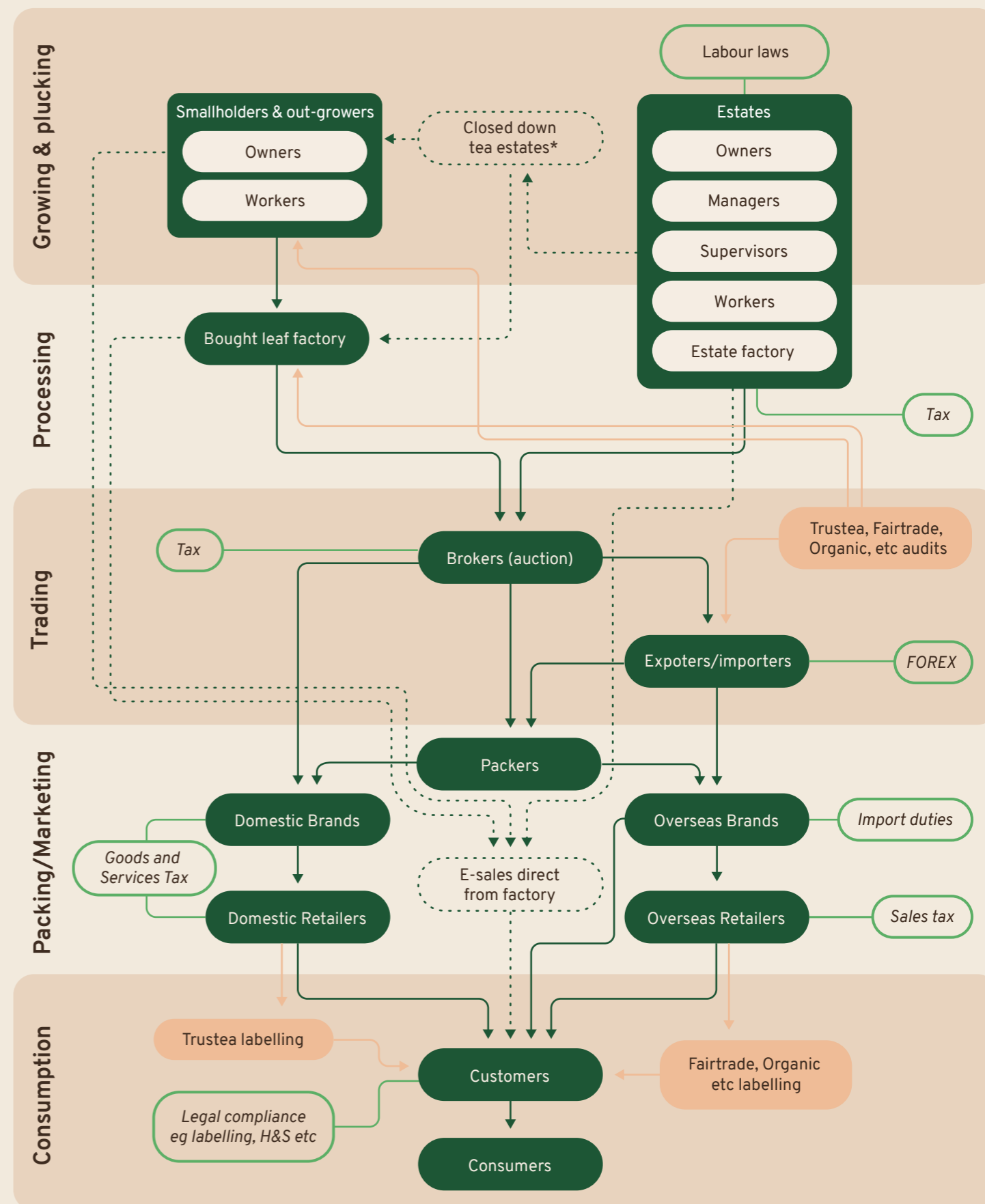
Finlays (part of the Swires group), also British, also has significant production interests in Kenya, as well as China and Argentina. But if recognised as a single producer the KTDA would be the largest and most important exporter in the country. Finlays are fully integrated in the global tea supply chain, with buying, blending and trading operations, packing tea (mostly own label) and tea extract. They also source from a large federation of Kenyan smallholder tea cooperatives that they helped establish, called Fintea Growers. However, the company is in the process of divesting its estates in Sri Lanka to one of the major players there – Browns Investments PLC¹⁸.

The Dutch company, Van Rees is the largest of the non-integrated traders of tea. However, traditional European traders like them are facing growing competition from origin; Indian companies such as the Asian Tea Company; SSK and Swiss Singapore Overseas Ltd; Sri Lankan firms Empire, Gokal and Imperial who have all opened operations in Kenya; and traders focussed on the Mombasa market such as Global Tea & Commodities, LAB and Chai Trading (KTDA).

Supermarkets across the world are important retailers of tea, selling both branded and own brand varieties, and holding considerable power over pricing for tea, as well as other food markets.

TYPICAL STAGES OF THE GLOBAL TEA VALUE CHAIN

- = Key actors
- = Government Involvement
- = Standards and certification
- = Occasional



*When estates close, workers sometimes start picking the tea and selling it to bought leaf factories themselves. Others become small tea grower cooperatives.

4.5 Tea marketing

4.5.1 Tea auctions

In many countries, processed tea is sold through auction. It is transported to auction centres to arrive two weeks before going under the hammer, though some auction centres allow the sale of tea that is still situated on tea estates. The producers nominate warehouses which are responsible for the distribution of representative samples, through to the buyers, who will then taste and quantify quality ahead of the auction. The producers nominate auction brokers, who value and catalogue the teas and are responsible for the actual process of auctioning the tea, as well as collecting payments prior to buyer collection of the teas.

Traditionally, tea auctions were conducted by open outcry. India, which has a number of auction centres in the North and South, moved to an electronic auction in 2010, while Sri Lanka and Kenya adopted electronic auction systems during the lockdowns enforced by the Covid-19 pandemic. After Kenya, Sri Lanka hosts the second most important export auction in Colombo, a vast and complex auction offering a wider variety of types and qualities, sold in smaller lots than in Mombasa.

Indonesia and Malawi also host auctions for domestic and international buyers, but these struggle to attract the same attention and competition. In Jakarta the auction is regulated by the Government, acting through the PTPN (PT Perkebunan Nusantara), which controls state agricultural interests (accounting for 60% of Indonesian tea production), and allocates tea to the single state auction broker, who by convention does not accept teas from private estates for auction. In Malawi, exporters face the challenges of geographical location and scale, with seasonal production variation barely able to support an auction system. Selling tea by auction is an important component of the marketing plan for many African producers, but they outsource the process itself to Kenya and the East African Tea Trade Association.

Prices within an auction respond to changes in both supply and demand; in recent years, the scale of these swings has intensified as supply chains and packer-retained stocks have shortened. The benefits derived from the auction system include the provision of an international marketing tool and a payment guarantee system for producers: a system that ensures a quick turnaround, increased traceability and – in the case of transparent auctions, particularly open outcry – better prices. Criticisms of the auction system include the domination of a small number of very large buyers who can use their strength to dictate prices, traders capitalising on price movements, unfair buying practice at auction centres, poor representation of farmers/producers by brokers, and difficulties for local buyers to compete with multinationals.

Following concerns that private sales were enabling price suppression, the 2020 Kenya Tea Regulations now require all black CTC teas to be directed to the Mombasa auction; the KTDA has already complied, and other producers have felt pressure to follow their lead.

4.5.2 Private sales

For many private and multinational producers, private treaties are the preferred route of sale. These allow the producer to deal directly with packers (sometimes employing a commissioned agent to handle the sale and associated logistics at a set rate of remuneration). Some tea packers actively push for direct contracts, which they feel enable them to build stronger relationships with the producer and farmers. Tea can be tailor-made to fit the exact specification of a packer, containerised on the estate and shipped immediately upon the completion of production, rather than being delayed by the long auction process. Furthermore, a direct transaction in a trusted relationship between packer and producer allows for long-term contracts (stretching into the future) to be set on a Fair Average Quality basis. These contracts enable a close connection between consumers and farmers, especially important for packers promoting ethical or environmental sustainability. Governments at origin look less favourably on this route due to the demands of confidentiality.

4.5.3 Forward markets

There have been a number of unsuccessful initiatives to establish a forward market for tea. The ability to trade forward can confer benefits to both producers and packers, as this should smooth the price curve, removing volatility and enabling more predictability in prices in the short to medium term. Currently, producers and buyers are able to conclude a forward contract based upon trust, but this does not in itself constitute a forward market – which also requires that private contracts be tradeable, with the ability to sell forward production from one buyer to another. While conceivable, this has not (to date) worked in practice due to the variation in quality of tea, along with the fact that buyers using different subjective means to assess quality. The current auction model with sales post-production enables buyers to assess quality and place their bids accordingly. Proposals for forward market initiatives often rely on an agreement of Fair Average Quality – a lower common denominator, which by its nature can undermine the drive for higher quality tea and reduce prices.

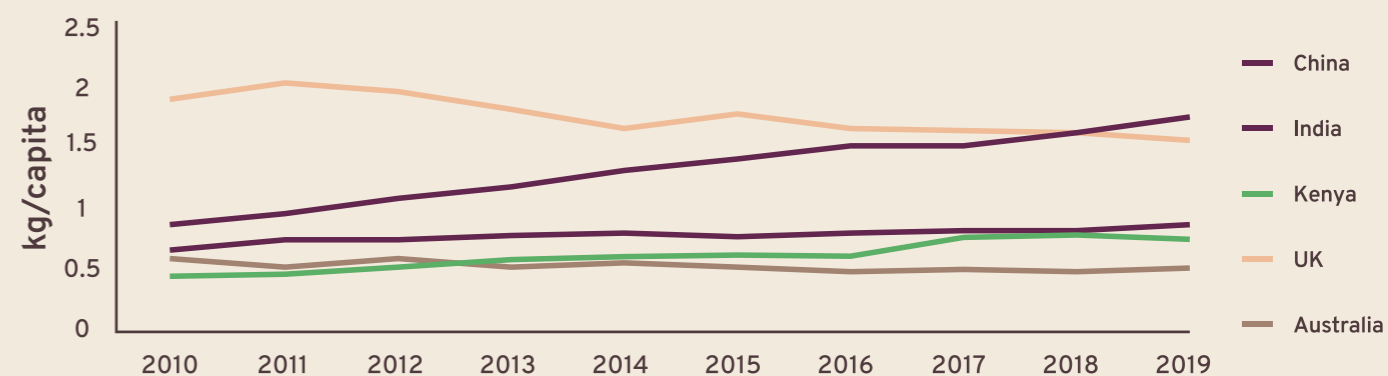


4.5.4 Consumption and prices

In Western markets the consumption of traditional black tea is declining; the UK alone has seen imports reduce by 13.5% over the first decade of this century (ITC 2020 Report). The FAO identifies three main trends in tea consumption in ‘mature markets’ such as the UK, including a preference for herbal infusions, demand for a greater variety of traditional tea and – importantly for this study – “a survey conducted in the United Kingdom of Great Britain and Northern Ireland in 2019 indicated that buying ethical tea is important, particularly amongst the 25-34 year olds,”²⁰ (FAO, 2022) . Demand for speciality tea is also growing in the USA, where demand for “specialty tea has overtaken the traditional (black teabag) market in value since 2018.”²¹

In the UK²² – an important market for tea, particularly from Kenya – teabags are included in the basket of goods set out by the Office for National Statistics to measure inflation; as such, they are regarded as an essential product by supermarkets, who protect them from inflationary measures – often resulting in a deflationary spiral, with brand and own label tea buyers and blenders challenged to beat the market and buy cheaper than the last purchase. This leads to lower quality, as better teas are blended with ‘reducers’ (teas from lower quality origins such as Argentina and Indonesia or lower/secondary grade teas from traditional origins), and even the quantity of tea in a teabag has been reduced. These cost-reducing measures have successfully lowered major brand and own label teas to below 3p and, in extremes, as low as 0.7p per cup.

Development of per capita tea consumption, selected countries, 2010-2019. Source FAO¹⁹



Some packers have shown that it is possible to grow the industry through quality and at the same time channel benefits through the supply chain, but other major brands continue to focus on low prices as the route to build sales. Meanwhile, tea consumption per person in the UK has reduced from 2.4 kilos per year in 1995 to 1.5 kilos in 2019.

The developing markets of North Africa, Eastern Europe and Asia have shown a willingness to pay for quality. These markets have spearheaded a global growth in tea consumption - Turkey is the current highest per capita consumer of tea in the world. But this remains slower than the growth in production; in 2019 6.2m tonnes were produced worldwide while 5.8m were consumed the resulting in a downward pressure on the market going forward.

There are also a number of smaller, purpose-driven brands such as Clipper (“the world’s largest Fairtrade tea brand”), and CaféDirect, which preceded Fairtrade and pioneered its introduction into the UK.

SECTION 1

Human Rights for tea workers and farmers in principle



5. Standards, laws and policies

This section of the literature review identifies human rights that are of particular relevance to people employed in the tea sector and provides a high-level overview of country-level commitments to internationally recognised human rights. This is followed by a high-level mapping out of trends in selected national legislation that addresses labour and employment in the focus tea-producing countries, highlighting business and human rights-related legislation in countries in which international businesses participating in the sector may be based, and for certain countries which import tea. This is followed by an overview of corporate human rights-related policies and an outline of key certification standards commonly applied to tea. In other words, this section covers the instruments that should, in principle, ensure decent lives and livelihoods for tea workers and farmers.

The review is based on selected publicly available information as of the end of January 2022. Due to the scope of the review and the sheer volume of information available, it is restricted to the focus tea-producing countries, to the extent that relevant information is both readily and sufficiently accessible in English in respect of those countries, via databases provided by the United Nations Human Rights Council, the International Labour Organisation and Nottingham University's Rights Lab.²³



5.1 International human rights standards and conventions

Internationally recognised human rights are addressed in a number of international treaties and covenants. The Universal Declaration of Human Rights (adopted by the United Nations General Assembly in 1948) (UDHR), the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) constitute the International Bill of Rights (IBR). Together with the International Labour Organisation ‘ILO’ Declaration on Fundamental Principles and Rights at Work (1998), these codify core human rights and minimum expected human rights standards, as highlighted by the UN Guiding Principles on Business and Human Rights (‘UNGPs’)²⁴. These ‘minimum standards’ and other human rights treaties and instruments initiated by both the UN and the ILO, that have particular relevance to the tea sector, are discussed:



5.1.1 United Nations Human Rights Instruments

5.1.1.1 CORE INSTRUMENTS

The Core United Nations International Human Rights Instruments include the ICESCR and ICCPR. The focus tea-producing countries have all ratified at least five of these nine Instruments. China has ratified five, India six, Kenya and Vietnam seven, and Bangladesh, Indonesia, Malawi, Sri Lanka, Turkey and Rwanda have each signed eight²⁵. Ratification of these Instruments does not mean that their terms are necessarily complied with (and some provisions may be addressed by countries progressively), nor that individuals or groups can bring a complaint under the Instruments before the relevant treaty body.²⁶ That said, it is helpful for civil society actors to note the obligations which these countries have expressly assumed (along with the mechanisms for monitoring and reporting which apply to the Instruments, including those that countries have not yet ratified), and call out breaches.

The rights addressed under the core instruments that are most relevant to the tea sector include:

- the right to work (Article 6 ICESCR)
- the right to just and favourable conditions of work (Article 7 ICESCR)
- the right to an adequate standard of living and adequate food (Article 11 ICESCR)
- freedom from slavery (Article 8 ICCPR)
- freedom of association (Article 22 ICCPR) and the right to join a trade union (Article 8 ICESCR)
- the right to social security (Article 9 ICESCR)
- the right to health (Article 12 ICESCR)
- the right to freedom from discrimination (Article 26 ICESCR).

5.1.1.2 CERD AND CEDAW

Discrimination is specifically addressed in two other core instruments. The International Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD) has been ratified by all 10 of the focus tea-producing countries. In addition, the Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW), also ratified by all the focus tea-producing countries, seeks to address the “extensive discrimination against women” that continues to exist decades after the adoption of the UDHR. Its purpose is “bringing the female half of humanity into the focus of human rights concerns.” Given that more than half of the lowest paid and least well represented workers and farmers in the tea sector are women, the need to bring them “into the focus of human rights concerns” is equally pressing. Women working in tea estates or small farms may suffer discrimination on multiple levels – in addition to gender-related discrimination, they may also be discriminated against on grounds of “gender, caste, class, and religion etc.”²⁷



5.1.1.3 UN TREATY ON BUSINESS AND HUMAN RIGHTS

Beyond the Instruments discussed above, the proposed UN Treaty on Business and Human Rights²⁸ would require countries to take steps to ensure that businesses respect human rights, ensure access to remedy for victims, and provide for legal liability for human rights abuses arising from business activities. The final terms of the Treaty are some way off, and the current (2021) draft has its limitations. Once finalised, the extent to which countries might ratify both the Treaty and its optional protocol remains to be seen.

5.1.1.4 UNGPS

Finally, the UNGPs, endorsed by the UN Human Rights Council in 2011²⁹, form a set of principles and a standard of conduct for governments and business. The UNGPs framework (referred to as ‘the three pillars’) addresses:

- (i) the protection of human rights by countries
- (ii) the respect for human rights by business
- (iii) the remedy of human rights violations arising from business activities.

The duty of governments to protect human rights includes obligations in terms of law, policy-making and enforcement (UNGP 3), obligations in respect of businesses and agencies owned and controlled by the State (UNGP 4) and where the State uses businesses to provide services that impact on human rights (UNGP 5) or conduct commercial transactions (UNGP 6). The extent to which countries have engaged with the UNGPs is highly variable. One possible indicator of engagement is the publication of a National Action Plan on Business and Human Rights by a country. Of the focus tea-producing countries, Kenya is the only one to have published a National Action Plan on business and human rights – while India, Indonesia and Vietnam are identified as currently developing a National Action Plan.³⁰



5.1.2 International Labour Organisation Conventions

The ILO's Declaration on Fundamental Principles and Rights at Work (1998) addresses the most basic of workers' rights, all of which are highly relevant to this review. They are:

- Freedom of association and the right to collective bargaining (ILO Conventions 87 and 98)
- Forced labour (ILO Conventions 29 and 105)
- Child labour (ILO Convention 138)
- Discrimination in respect of employment and occupation (ILO Conventions 100 and 111)

A full list of the core ILO labour conventions which address these rights is set out in Annex 3 to this section. All ILO member States – including all 10 focus tea-producing countries – are committed to respect and promote these principles, whether or not they have ratified the relevant Conventions.³¹

The four ILO Governance Conventions address the international labour standards system: Labour Inspection, Employment Policy and Tripartite Consultation. Further details of the ratification of the Governance Conventions by the focus tea-producing countries discussed in this review can be found in Annex 4 to this section.

The ILO's Technical Conventions address a range of labour rights and issues.³² It is notable that only two of these countries (Kenya and Malawi) have ratified six of the sample Conventions. The Conventions relating to Violence and Harassment (2019), Maternity Protection (2009) and Indigenous and Tribal Peoples (1989) are not yet ratified by any of the focus tea-producing countries. That said, ratification of the ILO Technical Conventions by the international community is, at times, patchy, for a range of reasons – and so the extent to which any country seeks to or fails to protect the rights to which the Technical Conventions relate should not be inferred from ratification (or non-ratification) alone.



5.2 Regional human rights bodies and influences

Asia

In 1993, 48 Asian States, including the tea-producing countries Bangladesh, China, India, Indonesia, Sri Lanka and Vietnam, adopted the Bangkok Declaration, reaffirming their commitment to the principles contained in the UDHR (Article 1). The Bangkok Declaration (not a treaty) made a number of further statements relevant to the tea sector today, including that “poverty is one of the major obstacles hindering the full enjoyment of human rights” (Article 19), reaffirming their “strong commitment to the promotion and protection of the rights of women” (article 22) and recognising “the rights of the child to enjoy special protection...” (article 23). There is, as yet, no regional human rights tribunal in Asia. ASEAN (the Association of South East Asian Nations), which includes Indonesia and Vietnam, has adopted the ASEAN Human Rights Declaration and established the ASEAN Intergovernmental Commission on Human Rights – which has, in turn, taken initial steps towards human rights monitoring. Both the Commission and the Declaration have been the subject of some criticism in their approach to human rights and issues of transparency and accessibility.³³



Africa

Kenya, Malawi and Rwanda, as member States of the African Union, have all ratified the African Charter on Human and Peoples’ Rights (“Banjul Charter”) and its Protocol on the Establishment of An African Court on Human and Peoples’ Rights. Only Malawi has accepted the jurisdiction of the African Court on Human and Peoples’ Rights to hear complaints brought by individuals and NGOs.³⁴ The African Commission on Human and Peoples’ Rights (ACHPR) was established to protect human rights in the African Union States who have ratified the Banjul Charter. The ACHPR has mechanisms to support and promote human rights among member States, and can hear complaints from individuals, groups and NGOs. The Banjul Charter also makes express reference to peoples who have been colonised or oppressed (Article 20). The link between the tea sector and colonialism merits careful examination, in order to understand how structures which operate in the industry today, their human rights impacts and their connection to colonial activities may serve to reinforce each other and threaten human rights.

Islamic states and republics

Many tea-producing and -buying countries are Islamic states or republics, while others have a large Muslim population. Opinion is divided among these states as to whether the UDHR is compatible with Sharia law. The 1990 Cairo Declaration On Human Rights In Islam by the Organisation of Islamic Cooperation was created to address these concerns. Some Muslims strongly believe that the two are not compatible, especially on some women’s rights and the right to complete freedom of expression – while others, including Muslim women’s organisations, interpret Islam “not as a legal system, but as a set of ethical and religious values that can strengthen and legitimise the legal standards of human rights.”³⁵ The leading Muslim organisation in Indonesia, a major tea-producing State, “seek[s] to push the boundaries for how Islamic law can be interpreted, facilitating space for human rights, but without seriously challenging the religious authority of Islamic law.” (Petersen, 2018).

Since Muslim countries – particularly in the Middle East – constitute a vast and growing market for tea, the question of whether and how these countries might engage with changes and initiatives intended to address human rights has implications for the tea sector as a whole.

5.3 National legislation

This section provides a summary of selected legislation and information available as of the end of January 2022, via the ILO's national legislation database and the Anti-Slavery in Domestic Legislation Database of University of Nottingham's Rights Lab³⁶ in respect of legal approaches to slavery and forced labour. The legislation reviewed relates to nine of the 10 focus countries. China was included in the review of international human rights commitments, but the reviewers did not have access to sufficient translation and legal expertise to conduct a meaningful review of China's national legislation (except on forced labour).

5.3.1 Legal definitions of a 'worker'

Labour laws are highly variable from country to country and even from worker to worker within a country, including – importantly – the way in which countries distinguish different types of workers and the extent to which labour legislation addresses both formal and informal/temporary work. These different approaches in turn shape the rights and protections that workers enjoy. A summary of the key findings from a review of selected examples of legislation in the focus tea-producing countries that define workers and employment, noting certain common approaches and those which highlight specific concerns, follows:

WORKERS ON SMALLHOLDER FARMS AND INFORMAL OR SEASONAL WORK

Bangladesh's main piece of labour legislation excludes agricultural farms with a small number of workers. Similarly, under Indian labour laws only workers on estates and in factories of a certain size have historically been covered under laws relating to plantations and to factories. In both cases, this may have implications for workers on smallholder farms employing fewer workers, who may fall outside of certain labour law provisions.

Under ongoing Indian labour law reforms, these distinctions are maintained to a degree, although it appears attempts are being made to include 'unorganised sector' workers (broadly those in informal labour relationships), at least at the central government level. India is a federal union of a number of different states and labour can be regulated by these states as well as by central government, which results in potentially different approaches to legislation.

Turkey's main labour law defines 'worker' broadly, but also exempts employment relationships in establishments in the agricultural sector with 50 or fewer employees from many of its provisions. It was not possible to review regulations relating to agricultural workers in Turkey as part of this review. Work that is short term in nature (30 days or less) is also exempted from a number of provisions under Turkey's main labour law. Turkey's main labour law does, however, state that workers who are on a fixed term contract should not be subject to different treatment from those on an indefinite term contract, which offers some protection to those on longer fixed-term contracts.

Indonesia's legislation appears to provide a wide definition of 'worker', but recent changes to labour law in Indonesia appear to permit short-term contracts to be renewed indefinitely and to facilitate outsourcing, reducing the overall protection afforded to such workers. The new legislation has been the subject of litigation in the Constitutional Court and it appears that these recent changes may be reversed, restoring some existing protections in Indonesia.³⁷ It should be noted that a lack of available translations means the review of legislation for Indonesia has been more limited.

Kenya's labour law appears to offer some protection to casual employees where they work for a sufficient period of time, by converting their contract into one where a monthly wage is owed. Those who are employed for a period of three months are also entitled to a written contract of employment.

These steps appear to form part of a wider practice among some of the focus tea-producing countries, which attempts to bring casual workers within the fold of a formal employment relationship that might offer further protections. In this regard, Indian legislation prohibits employing workers on a casual basis and continuing to do so for years, with the object of depriving them of the status and privileges of permanent worker.



Taking a different approach but with a comparable purpose in mind, it appears that Malawi seeks to include in the definition of an employee those who are in a relationship of ‘economic dependence’. Rwanda’s approach to defining the employment relationship also appears to include informal workers within its law regulating labour for health and safety purposes, wages, forced labour and discrimination and other protections – in order to attempt to extend protections beyond formal employment arrangements.

Vietnam’s main labour legislation also appears to include a definition of ‘worker without labour relations’ and to seek to bring workers on continuous short-term engagements with the same employer into an indefinite term arrangement. Vietnam’s main labour legislation appears to include a provision that allows for the hiring of groups of workers, on terms negotiated by a representative of the group. While this is a common approach (provision for ‘gangs’ of workers is made under Turkish law, for example) it highlights a further area of potential vulnerability to exploitation.

Sri Lanka’s labour laws have developed in a piecemeal approach. Legislation from the period in which Sri Lanka was a British colony casts a long shadow. Although expertise would be required to understand the full implications of legislation relating to plantations in Sri Lanka, it appears that provisions brought in to regulate Indian migrant labour during that period shape the treatment of workers on estates to this day – resulting in different provision (for example in respect of health and maternity provision) to that for other workers in Sri Lanka, raising particular concerns around discrimination.

CONCLUSION

It is important that those operating within the tea sector appreciate how different countries approach the employment relationship, attempts made to address casual and informal work, and areas where the law appears to be a potential factor in creating vulnerability to exploitation or poor treatment. While law reform may be needed to address such concerns, those concerned about tea workers’ rights should focus on the way in which legislation that seeks to protect informal workers is observed and enforced, as well as examining in detail those areas where the law acts as an indicator of potential for exploitation or discrimination against particular groups of workers, or where loopholes are exploited.

5.3.2 Wages

Selected labour laws from the focus tea-producing countries were reviewed in order to understand approaches to wages and minimum wage setting, and the extent to which permitted deductions from wages might materially or unusually reduce tea workers' pay.

MINIMUM WAGE SETTING

All of the focus tea-producing countries have some form of legislation to address minimum wages. In Bangladesh, Kenya, Malawi and Rwanda the process for fixing wages anticipates differentiation of wage rates across sectors, and in Vietnam the rate can vary across regions. In Turkey it appears that minimum wages are set nationally, but wages for the agricultural sector are addressed in separate regulations. It was not possible to review these to understand their potential impact on minimum wages. In India, minimum wages can include differentiation across regions and sectors. Sri Lanka has national legislation which sets a national minimum wage, and wages boards which set minimum wages for specific industries. There is specific primary legislation on estate labour which sets minimum wages in Sri Lanka.

Issues such as overtime rates appear to be expressly addressed in minimum wage setting legislation in some countries, including Sri Lanka, Turkey and Vietnam. Indonesia's recent legislation appears to have removed sectoral minimum wage rates which have been replaced with an alternative formula.

It was not possible to review this legislation, which the Indonesian Government has been instructed to revise by the Constitutional Court. The future direction on minimum wage in Indonesia at this point in time is therefore somewhat uncertain.



DEDUCTIONS FROM WAGES

Notable examples of deductions that could have a material impact on real wages appear to include legislation in Bangladesh, India and Malawi (although each country provides for a limit on total deductions as a percentage of wages). It appears that Bangladesh expressly excludes the value of employer-provided accommodation, electricity supply and medical assistance, for example, from its definition of wages under its Labour Act, although it appears that some government authorised deductions may be made for these services. India also currently appears to exclude accommodation, medical attendance and services such as electricity and water from its definition of wages, but permits extensive deductions against wages for housing and services authorised by the State(s). Under labour law reforms, although a long list of benefits, payments and 'in kind' provision may be excluded from the definition of wages, these may be deemed to form part of an employee's wages where their value is above a certain percentage. Deductions may also be made for such services in some circumstances.

It is possible that the reforms in India have the net effect of leaving workers worse off in real terms, and at the very least make the position on what counts in terms of wages and what may be deducted highly confusing and open to some level of manipulation.

Malawi permits partial payments in kind in some circumstances. Deductions against wages may be made for amounts not greater than one half of wages, and that are in respect of housing provided by the employer or goods sold by the employer to the employee.

CONCLUSION

For companies, it is important to understand the extent of compliance with required minimum wages and international wage standards in the sector and the consequent impact on adequate standards of living. Where minimum wage rates are set at a particularly low level in respect of the tea sector or tea-producing region, that adds a further layer of concern to be addressed.

The reality in the tea sector is that what a worker receives in pay may be a combination of allowances, rates in respect of hours worked, amounts plucked and subject to deductions for housing, water and other services. Pay arrangements within the sector seem particularly complex and opaque with potential direct impacts on the right to an adequate standard of living and further impacts on rights to health and social security.

5.3.3 ‘Welfare’ provision

The focus countries all appear to make provision for some form of occupational health and safety regulation and some provision for welfare at work, with varying degrees of stringency and to different extents. It also appears that a number of them make additional requirements under legislation in respect of either all employers or employers in specific sectors, such as the estate sector. These requirements are often described as ‘welfare’ provisions, and they can extend beyond working conditions to include provision of homes and other facilities to workers and their families. Examples of such provisions follow.

In Bangladesh, legislation appears to include requirements on estate owners to provide workers and their families with educational and recreational facilities (dependent on the number of workers) and medical facilities. Employers on estates may be required to provide housing and other provisions necessary for daily life. In India, under both current and new legislation, employers are required to provide these facilities as well as housing for workers on estates above a minimum size. In Kenya, it appears employers in all sectors are (subject to certain conditions) required to provide housing and – in some circumstances – the cost of food and medical attention.

A particular concern in respect of the approaches to ‘welfare’ in the legislation reviewed arises in respect of Sri Lanka. Legal provisions brought into force when Sri Lanka was under British rule continue to impact the descendants of the migrant workers they brought from India; for example, medical provision on estates is not yet integrated into Sri Lanka’s national health provision. Given the documented concerns about the discriminatory treatment the descendants of those workers face today³⁸, it would appear that a particular focus on human rights impacts is required in respect of Sri Lankan tea estate workers.

Where matters such as health provision, education, accommodation and living conditions are tied to employment, the employer carries a responsibility to workers under legislation, and the manner in which that responsibility is carried out has human rights implications. The additional financial burden this places on tea production companies also needs to be taken into consideration by other companies within the value chain. As such, issues of worker welfare, medical treatment, education facilities, accommodation and provision of services as part of the employment relationship becomes an issue for the sector as a whole.

5.3.4 Trade unions and freedom of association

All of the focus tea-producing countries appear to have legislation which permits workers to form and join unions – and in most (but not all) cases, the legislation appears to grant workers specific rights on that basis. These rights may also exist under constitutional provisions, but this has not been specifically reviewed. One area of concern in Vietnam, however, is that it is unclear from legislation reviewed on trade unions whether a non-Vietnamese worker has the right to join a trade union.

For all of the focus tea-producing countries except one, it was possible to identify legislative provisions that seek to offer protection for union members and officials from discrimination. In Turkey it appears protection from dismissal for trade union membership is limited to workers who have been employed on indefinite term contracts and have completed at least six months service under the main labour law – but protection from dismissal for union workers appears to be afforded to workers generally under Turkey’s more recent Trade Union law. It is possible that confusion here could be explained by a lack of up-to-date translations or insights from Turkish legal experts. Extensive protections are offered under the Indian legislation (both laws being subject to repeal and law reform) in particular. The review did not identify such provision in the labour laws reviewed in respect of Rwanda; however, this may exist elsewhere.

In respect of non-interference, it appears a variety of legal provisions apply across the sector. These include provisions which appear to grant trade unions freedom to operate (for example, Bangladesh, India, Kenya, Malawi and Turkey to some extent), express prohibitions on actions which amount to interference (for example, in India), and rights of access or opportunity to meet with workers (Indonesia and Rwanda). The current status of Sri Lanka’s legislation on union access to tea estates is unclear based on the review.

Finally, legislation was identified in respect of some of the focus tea-producing countries that appears to protect unions and their members from civil claims in some circumstances – for example, these provisions appear to exist in Bangladesh, India (including under law reform) and Sri Lanka. The position in respect of Rwanda and Vietnam on non-interference is least clear – due, in part, to a lack of access to information – and further investigation is warranted.

In summary, workers across the sector appear to have rights to form and join unions and to enjoy protection if they choose to do so. The extent to which unions are protected from interference under law is mixed. Union membership does not guarantee labour protections. Unions may or may not represent their workers effectively, and they may exclude specific parts of the workforce. However, their effectiveness cannot be improved without protection from interference, and this is an area the tea sector should take particular care to consider in its operations. Finally, the right to form and join trade unions and to freedom of association are likely to be impacted by labour informality, further underscoring the need to address informality across the sector.

5.3.5 Discrimination and harassment

All of the focus countries except Sri Lanka were identified as having some labour laws relating to discrimination in respect of gender, or of race, nationality and ethnicity.

It appears that Vietnam's legal provisions on gender discrimination and equal treatment are among the most comprehensive and developed of all the countries reviewed. These include provisions on part-time working and requirements to promote equal treatment in the workplace. There were limited provisions relating to violence and harassment at work. Provisions to prohibit discrimination for reasons of race or colour exist in Vietnam, but appear comparatively limited. Provisions on discrimination in Turkey include both prohibitions on direct and indirect gender discrimination.

Protection from discrimination for reasons of race, nationality and ethnicity appear more limited. This issue warrants further investigation, since it raises concerns for the protection of ethnic minority and migrant workers.

Kenya, Malawi and Rwanda appear to have legal provisions against discrimination in the workplace including for reasons of gender, race, nationality and ethnicity, and include requirements on equal pay. However, while Kenya's labour laws include an express provision to prohibit sexual harassment in the workplace, no such provision was found for Malawi and Rwanda – although this may be covered under criminal or other provisions, including health and safety obligations on employers, that were not a focus of this review. In Indonesia and Bangladesh, provisions relating to equal wages appear to relate only to gender.

No provisions relating to discrimination in the workplace on grounds of race, ethnicity or nationality were identified for India, Indonesia, Bangladesh. These may be covered by other provisions beyond labour laws, and the matter should be investigated further.

This – albeit very limited – review highlights a number of countries that have legislated against gender discrimination in particular.

The picture in respect of discrimination on grounds of race, ethnicity and nationality is more concerning, and provides a potential indicator as an area of human rights risk in those countries where it appears the matter is not addressed or is only addressed in a limited manner.

5.3.6 Child labour

Despite different approaches, the review identified legislation on child labour in all 10 of the focus countries. The general trend, from a review of selected legislation (and as might be expected under the ILO Minimum Age Convention 1973), appears to be a general prohibition on children working under a certain age (the relevant ILO convention provides for entry into work at 15, and at the age of 13 for 'light work', with a minimum age of 18 for hazardous work – or 16 under certain conditions). It appears the focus tea-producing countries typically permit light work from the age of 13 and above.³⁹ In Bangladesh, it appears that children are permitted to work from the age of 12. Bangladesh, unlike the other focus tea-producing countries, has not ratified the ILO Minimum Age Convention.

All of the focus tea-producing countries permit some work by children aged between 13 and 15 (as discussed above), subject to restrictions.

Countries such as Indonesia, Kenya, Rwanda and Vietnam appear to use the express language of 'light work' in their legislation in respect of work that is permitted, and most require that the work not interfere with schooling and the health of the child – but there is notable variation in the restrictions on the nature and amount of work that under-15s are permitted to do across the focus tea-producing countries. Turkey's legislation, for example, includes a list of factors influencing whether work is suitable. It also includes 'jobs producing tea' in regulations that specify work suitable for those between 15 and 18 years old.

All of the focus countries apply some form of prohibition that broadly relates to hazardous work for under-18s (or, in some cases, under-16s). It was not possible to review much of the secondary legislation relating to hazardous work, but the primary legislation in respect of India in particular seemed limited and warrants further attention. To the extent the legislation reviewed expands on what 'hazardous work' means, it was possible to identify examples of hazardous work (for example, in legislation from Vietnam, Rwanda, Turkey and Malawi) addressing activities directly relevant to the tea sector, including lifting and carrying heavy loads, handling of chemicals/insecticides and pesticides or exposure to harmful materials, toxins or carcinogens, and exposure to extremes of temperature. Given that these activities are acknowledged hazards, with impacts on children and the right to health, the impact assessment should also explore not only the issue of child labour involving younger children but also work undertaken by under-18s.

5.3.7 Maternity leave, birth and childcare

All of the focus tea-producing countries appear to make some provision for maternity leave with pay or other benefits based on the review.

Periods of maternity leave appear to vary significantly. In India the maximum amount of maternity leave is 26 weeks, but this reduces to 12 weeks with a third or subsequent child. Vietnam allows six months, plus an additional month for multiple births. In Bangladesh, the maternity leave period is a total of up to 16 weeks – but it appears that benefits are not payable in respect of a third or subsequent child. In Turkey paid, maternity leave (pre- and post-birth combined) is also 16 weeks (18 weeks for multiple births). A period of unpaid leave may be taken for up to six months. The period of maternity leave in Kenya (for the pre- and post-birth period in total) and in Indonesia appears to be three months. For Rwanda, the period is unclear based on information available, but appears to be a possible total of 12 weeks. It would seem that Sri Lanka allows 12 weeks in total (pre- and post-birth, but this is reduced to six weeks for a third or subsequent child. Based on the information reviewed, it appears that estate workers in Sri Lanka are subject to a separate maternity arrangement which provides a certain amount of hospital care, food and a cash payment for a total six-week period pre- and post-birth. This warrants particular scrutiny, since it raises both discrimination concerns and highlights additional impacts and vulnerabilities around non-cash elements of the maternity provision for estate workers. It appears Malawi allows women maternity leave of eight weeks every three years.

Exclusion from maternity benefit and leave is a further concern arising in respect of those in casual and informal labour. Where qualifying periods apply, these may restrict those who can claim maternity benefit, and will have an obvious impact on temporary and casual workers. Women workers who are not registered under the relevant legislation may effectively be excluded from the provision for maternity benefits and leave.



Clearly it is not possible to assess from a review of selected legal documentation alone whether the amount of maternity benefit payable is sufficient to meet the needs of a mother and her dependents. This is, however, the critical issue with implications for both maternal and infant outcomes. One might question what those operating in the tea sector can (or should) do to address a benefit mandated by law but, since the amounts payable to women during maternity leave are based on prior earnings, there is a clear connection between the two. In particular, where women are paid rates for piecework, or where the amounts earned are subject to significant variations, or where payments are excluded from wage calculations, there are obvious links to maternity benefit.

Beyond the issue of maternity leave, the issue of whether women experience discrimination due to pregnancy and birth must be addressed.

It appears that some countries do, for example, prohibit dismissal for reasons due to pregnancy or anything connected with pregnancy (India being one such example), but this was not the case across the board. It also appears that protection from dismissal for reasons connected with pregnancy may be limited to certain workers who have completed a service period, and who work for an organisation of a certain size in Turkey.

5.3.8 Slavery and bonded labour

Slavery is often used as a ‘catch-all’ term for a range of practices that include the institution of slavery, servitude, forced (ie. involving threat of penalty) or bonded labour (usually a debt bond), trafficking and practices similar to slavery. Using information from Nottingham Rights Lab’s Antislavery in Domestic Legislation Toolkit, it was possible to review a summary of the legislation for each of the focus tea-producing countries relating to each of these forms of human rights abuse.

According to the Toolkit, all of the focus tea-producing countries have legislation in place to prohibit people trafficking – and all (with the exception of Vietnam and Turkey) appear to have either a constitutional provision or a criminal law prohibition on the institution of slavery or of dealing in slaves.

From the information available via the database, it appears that in all but two of the focus tea-producing countries there is an absence of criminal law prohibitions against practices and institutions similar to slavery, save where it may form part of the offence of trafficking. The exceptions are Indonesia, where it is reported that there is a prohibition on debt bondage, and in Malawi, where certain practices relating to children are subject to criminal law provisions. It should be noted, however, that (for example) neither the UK nor France are reported to have criminal law prohibitions on practices similar to slavery. The position on practices and institutions similar to slavery, while a legitimate concern, is in no way unique to the focus tea-producing countries. According to a 2019 ETI report⁴⁰, China’s Penal Law prohibits “forcing another person to work by violence, threat or restriction of personal freedom” (Article 244, 2011 amendment), while the Labour Contract Law (2007) also has a number of detailed provisions relating to forced labour. Employment services, including labour agents and intermediaries, are regulated by the Law on Promotion of Employment (2008).

‘Servitude’ is similar to slavery, but denotes a situation in which a person might live and work on their employer’s premises and be unable to leave, but are not ‘owned’ by them. According to the Toolkit, Kenya and Malawi address servitude in their constitution. It can also form part of an offence under laws which address trafficking in Kenya. It appears there is no prohibition on servitude under the criminal laws of Bangladesh, India, Indonesia, Rwanda, Sri Lanka, Turkey or Vietnam – although servitude may form part of the criminal offence of trafficking in India, Indonesia, Kenya and Rwanda.

In respect of forced or bonded labour, according to the Toolkit, Bangladesh and Turkey are reported as having a constitutional prohibition on bonded labour. Kenya, Malawi, Sri Lanka and India have created offences relating to forced and bonded labour, while Turkey and Vietnam have created offences relating to forced labour only. India’s prohibitions against forced and bonded labour include prohibitions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, highlighting the particular discrimination that members of certain castes and tribes have been and are subjected to. It appears that Rwanda has more limited criminal legislation for activities relating to forced and bonded labour (which may also form part of the offences relating to trafficking), and it appears that Indonesia has no criminal legislation relating to forced and bonded labour, other than as part of the offence of trafficking.

Once more, while law reform would address gaps identified in legislation relating to servitude and forced and bonded labour, the extent to which it appears the specific countries discussed above do not have legislation in place suggests that servitude and forced or bonded labour warrant particular focus and action as part of this Impact Assessment.

5.4 Relevant legislative initiatives in selected headquarter and tea-importing countries

Mandatory human rights due diligence for business is a growing legal trend. ‘Human rights due diligence’ in this context is generally the process by which a business identifies, prevents, mitigates and accounts for its human rights impacts (See UNGPs at Principle 17). Examples of the existing human rights due diligence laws in tea-importing countries and those countries where multi nationals in the tea sector may be headquartered are identified below.

These laws vary in terms of the businesses they apply to, whether and which suppliers may be included, and the extent of due diligence required. It is rarely the case that these new laws give victims of human rights violations a direct right of action under the legislation – but other routes to pursue legal liability may exist, depending upon the nature of the claim.

France

France’s Law on the Corporate Duty of Vigilance⁴¹ was one of the earliest legislative initiatives to address human rights due diligence in a business context. It applies to companies registered in France with employees above a threshold number. The law requires companies to produce a vigilance plan which should extend to the company’s own activities, together with those of its subsidiaries and the suppliers and contractors with whom it has ‘an established commercial relationship’. The vigilance plan should identify the risk of severe impacts on (among others) human rights and health and safety. The vigilance plan should be implemented effectively and made publicly available.⁴²

Germany

Germany’s Act on Corporate Due Diligence Obligations in Supply Chains, BGBl I 2021, 2959⁴³, sets out obligations on businesses with a head office or main ‘seat’ in Germany, and with over 3,000 employees (reducing to 1,000 employees as of 2024). The due diligence obligations under the German legislation apply to ‘direct suppliers’, whereas obligations in respect of ‘indirect suppliers’ are triggered by what is termed ‘substantiated knowledge’ of a possible breach of human rights and are not as extensive.⁴⁴

Norway

Norway has introduced its ‘Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions’ (also known as the Transparency Act).⁴⁵ The Norwegian legislation imposes mandatory due diligence obligations on enterprises resident in Norway over a certain size. These obligations extend to subsidiaries and supply chains.⁴⁶

The Netherlands

The Netherlands’ Child Labour Due Diligence Law comes into effect in 2022.⁴⁷ The law covers all companies selling goods or services to Dutch consumers and requires them to identify whether their goods and services are produced using child labour. Companies are required to create a plan to prevent child labour where they reasonably suspect it exists in their supply chains, and must submit declarations to confirm that they have undertaken due diligence to prevent child labour in their supply chains.

Legislation on specific human rights issues

Related to human rights due diligence, a number of states have legislation in place which address specific human rights issues such as modern slavery via reporting requirements. These include Australia's Modern Slavery Act 2018, the UK's Modern Slavery Act 2015 and the California Transparency in Supply Chains Act. These legislative initiatives do not specifically require businesses to undertake human rights due diligence, and are instead focused on reporting what the business does (if anything) to address modern slavery. That said, they are indicative of a wider trend towards regulation which addresses the activities and human rights impacts of businesses outside of the country where they are headquartered, and of their supply chains which form a valuable part of their business model.

The trend in legal regulation on business and human rights is also demonstrated by the number of legislative proposals underway to require human rights due diligence.

An interactive map produced by Norton Rose Fulbright and correct as of November 2020 identifies legal developments on business and human rights, including legislative proposals on mandatory business and human rights due diligence⁴⁸. Possibly the most significant development in this area is the European Commission's Sustainable Corporate Governance Initiative, including a proposed European Union Directive on mandatory human rights and environmental due diligence, released at the end of February 2022.⁴⁹ The proposed directive creates legal obligations to conduct human rights and environmental due diligence on some EU and non-EU based companies. The due diligence obligation extends to the company's operations, those of its subsidiaries and established business relationships in its value chain. Due diligence includes identifying and either preventing or mitigating adverse impacts or, where adverse impacts occur, stopping or (where it is not possible to stop them) minimising impacts.⁵⁰

Tea importation and human rights

While imports are often subject to a range of regulations relating to issues such as product safety, countries have turned to import legislation to address forced labour in particular – and tea imports may be caught by these measures. EU proposals announced by the Commission in 2021, and reaffirmed in the EU Commission's strategy to promote decent work worldwide in 2022, include a proposed legislative instrument to ban the importation of products into the EU where these are made with forced labour.⁵¹

Goods to be imported into the United States may be detained by US Customs and Border Protection where there is reasonable information to suggest they have been produced using forced labour.⁵² In addition, legislation in the US has been enacted which prevents goods produced in the Xinjiang region from being imported unless there is good evidence to show they were not produced using forced labour.

As the market for tea changes, however, it is not yet clear whether importing countries from the Middle East or elsewhere will change the focus on human rights and forced labour developing elsewhere – and what the consequent result would be for human rights in tea-producing countries.

5.5 Certification Standards

In agriculture industries, including the tea industry, voluntary certification standards are increasingly implemented and relied upon to ensure products are produced sustainably. These certification schemes are typically developed and operated by private regulatory initiatives, usually from the global North. The certification label on products aims to communicate to consumers that workers' rights and the environment in which the product was produced were protected, in order to address consumers' increasing interest in social and environmental issues.

This section will explore some of the best-known certification schemes in the tea sector, along with examples of other models: Rainforest Alliance, Fairtrade, Trustea, World Fair Trade Organization (WFTO), B-Corps and Sainsbury's Fairly Traded. Rainforest Alliance and Fairtrade are the two most prevalent certification schemes. Both schemes are based in the global North and certify a multitude of products to govern conditions for exports into EU and OECD markets (Langford, 2018⁵³). Contrastingly, Trustea is a certification scheme developed in the South (India) and is specific to tea. WFTO and B-Corps certifications certify entire business operations rather than specific products, and Sainsbury's Fairly Traded tea is a company-run certification initiative.

This review acknowledges that some lives have been improved and that there have been benefits to society by means of certification schemes (Munasinghe et al., 2021⁵⁴; Lalitha, 2013⁵⁵; Ochieng et al., 2013⁵⁶). At the same time, it is recognised that research into the actual impacts of these schemes is wanting. This review aims to present different programs and present some findings from studies of those programmes in action. The section will conclude with an overall reflection and analysis of the structure and purpose of certification schemes.

5.5.1 Rainforest Alliance

5.5.1.1 BACKGROUND, MISSION AND APPROACH

Established in 1986, there are now 2.3 million Rainforest Alliance (RA) certified farms in over 70 countries including 145 certified tea estates to standards set by the Sustainable Agriculture Network (SAN). In 2007, RA partnered with Unilever and began to certify tea. It is now the world's largest certifier of tea – in 2020, 23% of the global tea supply was RA certified (Rainforest Alliance, 2021⁵⁷).

RA's vision is of “a world where people and nature thrive in harmony” and its mission is to create “a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities. (Rainforest Alliance⁵⁸)”

The primary focus of the programme is forests and biodiversity, followed by climate, rural livelihood, and human rights. The RA certifies farms against the RA Sustainability Agriculture Standards (Rainforest Alliance, 2021⁵⁹), relying on social audits to monitor compliance with the standards (Ochieng et al., 2013).

To obtain certification, farms undergo a certification audit followed by annual audits. The audit conducted in year three determines if a farm remains RA-certified or not. The RA is also a founding member of the International Social and Environmental Accreditation and Labelling Alliance, an organisation aimed at strengthening social and environmental certification schemes (ISEAL, 2022⁶⁰).

5.5.1.2 HUMAN RIGHTS BENEFITS

Various studies and evaluations by RA have demonstrated that RA certification has had a number of human rights benefits for workers on participating tea estates. For example, improved access to the global market through direct buyers rather than relying on tea auctions (Ochieng et al., 2013), the provision of free healthcare (Pillon, 2021⁶¹), improved waste management systems, and water quality monitoring (Ochieng et al., 2013). According to RA's latest impact report, "certified estates were found to have fewer cases of worker absences related to illness" (Rainforest International, 2019), owing to improved health of their workers.

5.5.1.3 HUMAN RIGHTS CHALLENGES

Others claim the programme costs less and has less rigorous requirements than other certification schemes, and is often seen as more 'business-friendly' (Canning 2020⁶²; Reynolds et al., 2007⁶³). For instance, the current Standards Committee of RA has 50% industry members and just 16% producers, compared to NGOs and certification bodies which together fill less than half the seats on the committee (Rainforest Alliance, 2020⁶⁴). The RA Standards Committee has no trade union members.

RA is also critiqued for not making payment of living wages mandatory, and for seeking to create change in the industry through market-based premiums – as opposed to fixed prices, which would protect farmers from market volatility (Henderson & Nellemann, 2012⁶⁵).

Weak monitoring has been identified by several studies as a notable issue with the scheme (Brad et al., 2018⁶⁶; LeBaron, 2018⁶⁷). The failure of social audits to effectively uncover serious human rights violations was demonstrated in the 2015 exposé of poor conditions on Assam tea estates (BBC, 2015⁶⁸) as well as by recent claims of systemic sexual harassment brought forth by women tea workers from Malawi (Dugan, 2021⁶⁹).

Additionally, the fact that participating farms are responsible for paying for their audits places financial burden on the farm and detracts from the independence of the auditor (Boiral & Yves 2010⁷⁰).

5.5.2 Fairtrade

5.5.2.1 BACKGROUND, MISSION AND APPROACH

Fairtrade is one of the most recognised sustainability labels globally. They are co-owned by more than 1.8 million workers and farmers. The initial fair trade products in the 1950's were handicrafts and coffee through a new fairer business model that eliminated the middle-man (Stenzel, 2013⁷¹). In 2022, there are 1,880 Fairtrade certified producers in 71 countries, with 106 Fairtrade certified tea producers (Fairtrade International). Fairtrade International certifies both smallholder and estate tea producers (Raynolds, 2017⁷²).

The self-reported mission of Fairtrade International is "to connect disadvantaged producers and consumers, promote fairer trading conditions and empower producers to combat poverty, strengthen their position and take more control over their lives. (Fairtrade International⁷³)"

The three pillars of the Fairtrade model are minimum pricing, premiums, and standards. There are separate Fairtrade Standards for small-scale producers and hired labour organisations (including plantations and estates). FLO-CERT, the independent certification body of Fairtrade International, conducts social audits to monitor compliance with the standards.

All producers must go through an on-site audit prior to selling any Fairtrade certified products. Once the producer is certified, two confirmation audits are typically conducted during a three-year certification cycle with possible unannounced audits as well (Fairtrade International). Fairtrade is a member of the International Social and Environmental Accreditation and Labelling Alliance, an organisation aimed at strengthening social and environmental certification schemes (ISEAL, 2022).

5.5.2.2 HUMAN RIGHTS BENEFITS

Multiple studies funded by Fairtrade International report that Fairtrade certification has had positive effects on the livelihood and human rights of workers on certified tea estates. For example, an increase in income resulting from larger and better-quality tea yields (van Rijn et al. 2020⁷⁴; Raynolds, 2017), positive impacts regarding maternity leave (Siegmann et al., 2020⁷⁵), improved access to the market, and stability of prices (Makita, 2012⁷⁶). Fairtrade reports on various improvements to tea farms and estates resulting from investment of the Fairtrade premium. For example, in Malawi, a tea estate has invested their premium in infrastructure to provide clean drinking water for thousands of people in the community (Fairtrade International⁷⁷).

5.5.2.3 HUMAN RIGHTS CHALLENGES

Critics argue while Fairtrade has resulted in improved wages for cooperative workers, in terms of hired labour, studies have found that wages of workers on tea estates are not significantly affected by certification (Meemken et al. 2019⁷⁸; Lucassen, 2016⁷⁹; Vermeulen & Dengerink, 2016⁸⁰; Siegmann et al., 2020; LeBaron, 2018). Fairtrade itself acknowledges that workers on certified farms “have not seen enough progress on wages” (Fairtrade Foundation⁸¹).

It is also critiqued for lack of worker awareness regarding their rights under the Fairtrade Standards. On certified tea estates, interviews with workers in India found most of the workers unaware of Fairtrade and the corresponding standards and protections (Lucassen, 2016; Makita, 2012; LeBaron, 2018). This lack of awareness is likely connected to another issue highlighted by stakeholders: weak implementation and monitoring, particularly on estates and estates (Jaffee & Howard, 2016⁸²).

Furthermore, tea estate stakeholders assert that the benefit of certification is felt more by the estate owners than the workers (Makita, 2012). Stakeholders have pointed to the exclusion of workers regarding the Fairtrade premium decisions (Besky, 2014⁸³). Fairtrade states that they “believe farmers know best how to spend this money”, and for estates decisions about how to spend the premium are to be made by worker committees (Fairtrade Foundation⁸⁴). However, findings from studies show lack of worker involvement and lack of transparency in decisions regarding the investment of the Fairtrade Premium (Blowfield & Dolan 2010⁸⁵; Besky, 2014; Makita, 2012; Fair World Project 2014⁸⁶).

5.5.3 Trustea

5.5.3.1 BACKGROUND, MISSION AND APPROACH

Trustea is a private regulatory initiative established in 2013. As opposed to RA and FT, Trustea is industry-specific, with its standards applying only to tea, and country-specific, only operating in India. Trustea focuses on the domestic tea market in India. When India first began producing tea, it was all exported. However, India now consumes the majority of the tea it produces (Langford, 2018). By 2019, Trustea has certified almost half (48%) of the tea produced in India annually.

Trustea aims “to sustainably transform the Indian tea industry for the benefit of consumers, workers, farmers and the environment” (Trustea⁸⁷). Their focus is smallholder tea farms, which account for roughly half of the tea produced in India (Langford, 2021⁸⁸).

The Trustea code is derived from Indian regulations and global sustainability principles to address the three pillars of the programme: environment, safety, and livelihoods. The code distinguishes between standards that apply to smallholder groups, factories, and estates.

Trustea relies on social audits to monitor compliance with its Code. The cost of Trustea certification is less than other certification schemes. The Trustea audit protocol includes criteria that go beyond the scope of typical social audits, such as a requirement that 50% of workers interviewed be women, interviewed by female auditors. Trustea is a member of the International Social and Environmental Accreditation and Labelling Alliance, an organisation aimed at strengthening social and environmental certification schemes (ISEAL, 2022).

5.5.3.2 HUMAN RIGHTS BENEFITS

There is less research regarding the impacts of Trustea certification compared to Rainforest Alliance and Fairtrade International. However, researchers report that Trustea launched a producer outreach programme consisting of free training to smallholder farmers, to raise awareness of chemicals and the law (Bitzer & Marazzi, 2021⁸⁹). The Trustea Code adopts a local perspective, by incorporating traditional agricultural practices and translating the Code into local languages. Additionally, the lower cost of certification lessens the financial barrier to entry for small and medium-sized producers. The governance structure of the programme has given a voice to producers, which is unique in an industry typically controlled solely by buyers (Bitzer & Marazzi, 2021).

5.5.3.3 HUMAN RIGHTS CHALLENGES

Critics of Trustea point to the governance structure of the programme. They highlight that tea workers and farmers have no direct representation in the programme, while almost the entire rest of the tea sector is somehow included. An in-depth case study into Trustea found that while “reaching small tea growers is one of Trustea’s main objectives, this has not promoted high levels of smallholder inclusiveness” (Bitzer & Marazzi, 2021). Others have pointed out that while Trustea appears to be an India-driven initiative, the key founding organisations are in fact from outside India (Langford, 2018).

5.5.4 World Trade Organization

5.5.4.1 BACKGROUND, MISSION AND APPROACH

The World Fair Trade Organization (WFTO) is a member-owned and -run global network and certifier of social enterprises that practice Fair Trade Principles. The organisation was formally established in 1989 and now has enterprises in 76 countries (World Fair Trade Organization⁹⁰). The WFTO strives to certify enterprises that “pioneer models of business that put people and planet first” (Doherty et al., 2020⁹¹).

The WFTO certifies mission-led enterprises against the 10 Principles of Fair Trade. Certification and monitoring of members rely on independent audits, self-assessment, and peer review (Beardon, 2020⁹²). The WFTO certifies the whole business as 100% Fair Trade rather than a specific product. Certified enterprises can use the WFTO label on all their products (Beardon, 2020; Hutchens, 2010⁹³). There are very few WFTO-certified tea companies, but they include Mai Savanh Lao and Nepal Tea.

5.5.4.2 HUMAN RIGHTS BENEFITS

The WFTO advances gender equity and women’s empowerment through various means, such as encouraging women’s participation in decision-making, providing skill-development opportunities for women, and re-valuing the work done by women, to ensure that they are paid at a minimum the same as their male counterparts (World Fair Trade Organization; Hutchens, 2010). In comparison to Fairtrade International and RA, stakeholders have argued that WFTO prioritises producers, and is the “highest you can get” in terms of the impact of the standards (Archer, 2020⁹⁴).

5.5.4.3 HUMAN RIGHTS CHALLENGES

Critics of the WFTO note that the producer involvement requirement of the programme is vague, and is left up to the discretion of the producer organisations (Davenport & Low, 2012⁹⁵). Investigations into WFTO-certified organisations found that WFTO standards failed to address structural barriers faced by women workers and producers (Hutchens, 2010). Others argue that by prohibiting the participation of large-scale producers, the organisation has “excluded some of the most marginalized populations including migrant workers” (Bennett, 2020⁹⁶).

5.5.5 B-Corps

5.5.5.1 BACKGROUND, MISSION AND APPROACH

The B-Corps movement began in 2006 as a network working to change our economic system to “make business a force for good” (B Lab⁹⁷). Certified businesses consider their social and environmental impact rather than only their financial returns. There are over 4,000 certified B Corporations across 77 countries, in more than 150 different industries. In 2022, there are over 50 B-Corp certified tea companies, including two Unilever tea brands (T2 and Pukka). These are not to be confused with Benefit Corporations⁹⁸.

The B Lab certifies companies according to social and environmental performance, accountability, and transparency (B Lab, 2020). Similar to WFTO certification, B-Corp certification concerns the entire business rather than a particular product. To be certified, a company must score at least 80 out of 200 across five dimensions of impact: governance, community, workers, environment, and customers.

5.5.5.2 HUMAN RIGHTS BENEFITS

B-Corp certified organisations note that B-Corp certification is different from other ethical certification schemes because it takes an inclusive approach, taking into account every stakeholder in the business, including ‘forgotten stakeholders’ (Puro, 2018⁹⁹; Hlavka, 2017¹⁰⁰). According to one B-Corp-certified tea brand, certification communicates to customers and the industry their commitment to be “agents for positive change in the tea category” (Unilever, 2020¹⁰¹). Another B-Corp-certified tea brand reported that in order to increase their community score in the B-Corp certification assessment, they established education, health, and cattle-lending programmes for the tea workers and the surrounding community (Teatulia¹⁰²).

5.5.5.3 HUMAN RIGHTS CHALLENGES

Critics of the B-Corp movement highlight the lack of transparency in terms of what the scores reported actually mean. Other issues noted concern over the dependence on self-reporting without sufficient oversight, and the lack of independence from the certifying body (André, 2012¹⁰³). The pick-and-choose approach to B-Corp certification has also been flagged by critics as a major issue. Organisations are given the power to selectively choose and ignore areas of impact in order to achieve certification. For example, “companies can become B-Certified even if they have done nothing to assess or manage their human rights impact” (Mullen, 2020¹⁰⁴).

5.5.6. Sainsbury's Fairly Traded tea

5.5.6.1 BACKGROUND, MISSION AND APPROACH

In 2017, Sainsbury's announced that its tea brands would no longer be certified by Fairtrade International and that it was launching its own ethical certification scheme: 'Fairly Traded'. This decision affected almost 250,000 farmers. Sainsbury's representatives stated that they made the decision to move their brands away from Fairtrade due to the lack of transparency regarding the Fairtrade premiums they had been paying. They remarked, "we were paying these premiums, but it wasn't clear where the money was going. Fairtrade isn't good at keeping tabs on it" (Subramanian, 2019¹⁰⁵). The Director of Sainsbury's noted, "the Fairly Traded tea pilot builds on what we've achieved with the Fairtrade Foundation" (Sainsbury's¹⁰⁶). NB Sainsbury's announced in March 2022 that they were discontinuing this initiative, but we have included it in the review as an example of a corporate attempt at certification (Goncalves, 2022¹⁰⁷).

5.5.6.2 HUMAN RIGHTS BENEFITS

According to Sainsbury's, from 2018-2019 certified producers accrued £441,700 in Fairly Traded Social Premium. From this, three producer organisations in Malawi and Rwanda received funding for social projects. These projects include supporting building schools in the community, building bridges, and installing water pumps. The programme established an anonymous hotline, called Sainsbury's Rightline, for farmers and workers to report any issues with the programme (Sainsbury's).

5.5.6.3 HUMAN RIGHTS CHALLENGES

Fairtrade tea producers in Africa published an open letter to Sainsbury's rejecting the new programme following its announcement. They argued that the "model will bring about disempowerment" as the programme's standards were not developed with producer consultation – and that decision-making power regarding premiums would shift away from farmers and towards Sainsbury's executives in the UK. Additionally, despite the implementation of the Sainsbury's Rightline grievance mechanisms, there have been very few reports coming through the hotline (Sainsbury's).

5.5.7 Conclusion

Each certification scheme discussed in this section has distinctive elements in its approach to certification. A fundamental difference between the first three schemes discussed (RA, FT, Trustea) and WFTO and B-Corps is that WFTO and B-Corps certify the entire company and all its operations rather than a particular product. Fair for Life is another ethical certification scheme that shares elements of the programmes discussed in the section. However, unlike RA and Fairtrade International, Fair for Life certification involves the entire supply chain in the North and South, including business and labour practices (Jaffee & Howard, 2016). The Sainsbury's Fairly Traded certification was, until it was discontinued in 2022, the only company-run certification programme for tea. This concluding section will outline several of the reported benefits and challenges shared by the different certification schemes.

It has been proposed that the continued existence and proliferation of ethical certification schemes shows that consumers care about the ethical origins of their products – and are willing to pay more for products that they believe have been sourced ethically (Chatterjee et al., 2021¹⁰⁸). Furthermore, research has shown that ethical certification schemes have raised societal awareness and prompted inquiry into the conditions for farmers and workers (Mori Junior et al., 2016¹⁰⁹). While certification programmes may reserve seats on committees for worker representatives, research has found that the overall impact of the certification schemes on worker voice is negative, particularly on estates.

Critical research points to the top-down bureaucratic nature of certifying organisations. This structure can lead to a stark disconnect between the decision-makers and the workers on the ground (Raynolds, 2017). Scholars identify the exclusion of marginalised actors from certification schemes as the 'invisibilisation effect', in which power asymmetries are ignored (Bitzer & Marazzi, 2021). While certification schemes often include standards protecting workers' rights to organise and collectively bargain, research has shown that in areas where unions in the tea sector were particularly strong, certification schemes may detract from the unions' role in protecting workers' rights (Neilson & Pritchard, 2010¹¹⁰). Researchers point to the undermining of existing worker representation and organisation such as unions (Thomas, 2021¹¹¹). Furthermore, stakeholders have highlighted the lack of context-sensitivity as a significant weak point of the certification schemes, particularly certification schemes from the global North (Boström et al., 2015¹¹²).

The voluntary nature of the schemes and corresponding lack of enforcement power was a shared critique of all the certification schemes discussed. As a result, researchers note that violations may be identified, but they are rarely remediated (Raynolds, 2018¹¹³). Additionally, researchers argue that because voluntary certification schemes lack the power to enforce consequences, true corporate accountability under the schemes is impossible (Raynolds, 2018). Echoing this sentiment, the Executive Director of the Fair Food Standards Council argues that “standards without enforcement are nothing” (CIW, 2015¹¹⁴). The reliance on audit by certification schemes has also been suggested as a limitation to the effective monitoring of human rights abuses (LeBaron et al, 2017¹¹⁵).

According to the Rainforest Alliance, “certification alone cannot solve any country’s entrenched socio-economic problems” (Rainforest Alliance¹¹⁶). Research has shown that in localised contexts, certification schemes have been associated with dimensions of improved livelihood (Challies, 2013¹¹⁷). Overall, the impact of certification schemes on the livelihood of tea workers is questionable (LeBaron, 2018; Makati, 2012; Jaffee & Howard, 2016). However, certification schemes in the tea sector have opened up space for deeper conversations regarding sustainability – including the human rights of the workers along the tea supply chain (Christian¹¹⁸).



5.6 Corporate policies and standards

Many companies publish their own sets of human rights standards and policies, especially those that are headquartered in countries where this is a legal requirement (see section 5.5, above). Some of these will be voluntary and expressed in the form of codes of conduct for their suppliers, while others are mandatory, such as companies' Modern Slavery Statements that are required by UK law. Some companies go above and beyond these policies and proactively attempt to address human rights issues in their supply chains. In this section, we review the human rights-related policies of the three biggest tea brands, two large tea suppliers and two national producers.

5.6.1 Brands

The three biggest global tea brands, **Unilever**¹¹⁹, **Tata Consumer**¹²⁰ and **Twinings**¹²¹, all have publicly available Human Rights Policies signed off at leadership level. They each state that they recognise that respecting and protecting human rights is part of their responsibility as a business, and commit to doing so in line with the key international human rights instruments.

Unilever and Twinings go further, by acknowledging that they also have the ability to “positively impact” the lives of people in their supply chains. Both companies also state that where national law and international human rights standards differ, they will aim to follow the higher standard, and will adhere to national law where they are in conflict, while still seeking to respect international human rights. Tata Consumer does not make reference to national laws.

Unilever and Twinings both refer to the expectations they have of their suppliers in delivering on human rights, but only Twinings' policy refers to “systemic human rights risks” in the industry, and commits to working collaboratively to address these. (Unilever does refer to “systemic risks” but only in the context of requiring greater due diligence particular countries.)

Twinings' ‘Sourced with Care’ responsible sourcing programme involves buying tea directly from 127 approved tea estates and smallholder farms in China, Kenya, India, Argentina, Indonesia and Sri Lanka, agreeing forward contracts and paying what it describes as “a fair price” for its tea. It potentially affects 500,000 workers, farmers and their families living on estates and farms in Twinings' tea supply chain. The company has developed its participatory Community Needs Assessment to understand the needs of farmers, workers and communities in its tea supply chain. This covers gender, health and nutrition, children's rights, lands rights, livelihoods, water and sanitation, natural resources, farming practices, housing and working conditions. It then seeks to address those needs through tailored interventions, such as women's health and empowerment, better dialogue between workers and management through community development forums and access to water and sanitation, in partnership with local partners and NGOs.

The UK company Taylors of Harrogate (owned by a family company – Bettys and Taylors) makes a public commitment to Ethical Trading¹²² which states that it “understand[s] the importance of long-term sustainability for the farms and communities [they] rely upon to supply [their] products.” In addition to expecting their suppliers to adhere to a code of conduct and using certification labels, the company also commits to “paying sustainable prices for quality products, aiming to meet farmers' costs of production as a minimum”. It goes further, claiming “Our preference is always to develop a direct relationship with farmers ensuring that we have regular face-to-face contact, long-term commercial agreements and investment in sustainable business projects.” The company demonstrated this in practice during the Covid-19 pandemic when it made five further commitments, including providing humanitarian support (a £500,000 global Covid-19 relief fund), honouring its long-term agreements and contracts and looking to grow volumes, shortening its payment terms and credit, and publicly reporting on progress against these commitments.

Ethical Tea Partnership

Some of the companies mentioned above are members of the Ethical Tea Partnership (ETP). The Ethical Tea Partnership (ETP) is a membership organisation with 48 members, (retailers and companies that are involved in the sourcing, trading, or packing of tea) who jointly collaborate on programmes and pilots that tackle issues and challenges across seven tea growing countries in Africa and Asia. They work alongside private sector partners and local NGOs to help the ETP reach its mission to “improve the lives and livelihoods of tea workers, farmers, and the environmental sustainability of tea”.

ETP activities address gender equality and improving women's empowerment, improving economic stability for farmers and workers and mitigation and adaptation measures to tackle climate change. ETP's newest partnership with ActionAid in Kenya is a two-year programme designed to empower 600,000 smallholder farmers and 300,000 informal workers in three tea growing communities in Kenya. The programme seeks to “build safe environments for the most vulnerable (women and children), support women to challenge gender-based violence and understand their rights, support farmers to diversify their incomes through access to entrepreneurial training and finance and influence policy change.”

5.6.2 Trading/production companies

Of the larger trading companies, Finlays does not appear to have a publicly available stand-alone human rights policy, but includes a “Workplace and Human Rights” section in its Code of Conduct for its own employees¹²³. This offers “guidance” on issues such as discrimination and harsh treatment, adhering to local laws on pay, benefits and working hours, prohibiting child or forced labour, and providing a reporting mechanism for concerns. It does not explicitly commit to human rights as such, in particular where they exceed local legal requirements.

However, Finlays’ Gender Equality and Diversity Policy has been held up by civil society as an example of good practice. The Federation of Women Lawyers of Kenya¹²⁴ reported that “There is a strong sense, across the work-force about commitment by the company to promoting gender equality, not least because JFK [James Finlay Kenya, a subsidiary of Finlays] has established the position of a Gender Empowerment Manager as a senior management portfolio” and that “JFK’s gender protection interventions have resulted in improved social and economic environment for women workers.”

The large German trader OTG’s human rights policy refers to the core ILO conventions and to issues such as payment of living wages and equal opportunities for estate workers, as well as improving the quality of life and working conditions of smallholders and their employees (although it is not explicit about whether these are commitments, aspirations or merely areas of concern). It commits to long-term relationships with partners, but emphasises that the company is limited in what it can achieve on its own, pointing to its membership of ETP and Rainforest Alliance certification as important factors in delivering on human rights.

While Camellia does not appear to have a human rights policy per se, its 2020 ESG Report¹²⁵ outlines a number of human rights-related areas in which it makes commitments, including “increasing wages” and “improving housing, education and healthcare.” It requires its operations to have in place policies and procedures for “equality, health, personal development, training, diversity, and... education, housing and sanitation.” It ensures or provides educational and medical services on all its tea estates. It says it ensures that modern slavery and human trafficking are not taking place in its operations or supply chains, and that it prohibits the use of child labour even in countries where it is permitted. Following legal proceedings in 2020 around claims of alleged rape and sexual assault made by employees in Malawi, Camellia upgraded its governance and safeguarding oversight functions in line with the UNGPs, and established a Board-level Committee to help “review [its companies’] policies, disciplinary procedures, education, training, safeguarding, zero tolerance of employee gross misconduct, as well as social responsibility and governance policies and processes”. It has also implemented a number of gender-empowerment strategies.¹²⁶

PGI does not appear to have a human rights policy, but its Modern Slavery Statement¹²⁷ asserts that “no company within the Group permits slavery, forced labour, child labour, or any use of force or coercion in its operations” and that each company in the group is responsible for systems to ensure this. It also states that each of its companies “aims to provide higher standards for its employees than those required by local labour laws and seeks to improve upon them by implementing labour and social standards emanating from external accreditation bodies, which include Ethical Tea Partnership, Rainforest Alliance, Fairtrade, UTZ and MPS-ECAS.”

And, finally, it says that its companies seek to benefit the wider communities within which they operate by offering “development projects in water & sanitation, education, health and, more recently, in extending the electricity grid to their villages.” A legal case against PGI is currently in process with complainants on its Lujeri tea estate claiming systemic sexual abuse, including rape. The case is due to be heard in the UK’s High Court in June 2022.

Business and Human Rights Resource Centre survey

In 2021, The Business & Human Rights Resource Centre asked 65 tea producer, packer and retailer companies about their human rights policies and standards¹²⁸. (They also asked them to disclose the estates and bought-leaf factories that they source their tea from, to be held centrally in a Tea Transparency Tracker on Wikirate¹²⁹.) Of the 29 companies that responded, the survey found that eighteen “had Freedom of Association... clearly mentioned as a key requirement in their supplier engagement policy”, “demonstrably have a policy against violence and harassment in the workplace;” “address payment of legal minimum wages and non-discrimination in payment of wages and benefits, and have explicitly mentioned these in their supplier engagement policies.”

Five “claimed to be part of a collective bargaining agreement (CBA)”, four “claimed to have made a commitment towards living wages” of which two “are currently committed to paying living wages to their direct employees... [while] [o]thers are working on closing the living wage gap, in partnership with IDH (the sustainable trade initiative)”. None of the companies “provided evidence of a policy limiting the use of minimum plucking quantities/piece-rated wages by their suppliers, [although] some ...do have a policy against the use of subcontracting or fixed-term contracts to deter suppliers from using these to avoid regular employment relationships.”

5.6.3 Production companies

It is not within the scope of this review to map the human rights policies of the many thousand tea production companies around the world. However, in the next phase of this HRIA, THIRST intends to conduct a global survey of tea production companies to understand their perspective on human rights, their policies and commitments, and what helps and hinders them from meeting the human rights expectations of their customers, the buying companies.

5.6.4 Retailers

As mentioned earlier in this review, according to Oxfam (and others), supermarkets have strong potential leverage over their supply chains due to their influence over pricing and volumes. In 2018, Oxfam's Behind the Barcodes campaign¹³⁰ highlighted shortcomings in the human rights policies of the main supermarkets in the UK, USA, the Netherlands and Germany. It assessed 16 supermarkets against 97 indicators of policies relating to transparency and accountability, workers, small-scale farmers and women. In the first year, some failed to score completely, and most scored very low on human rights policies relating to workers and to women. Among the case studies illustrating the negative impact of weak human rights policies was 'Addressing the Human Cost of Assam Tea' – which is one of the key sources for the section on human rights impacts below.

Oxfam called on the European Parliament and European Commission to introduce mandatory human rights due diligence, ensuring “that companies are required to identify, prevent, mitigate and account for negative impacts of their business on the rights of people in their supply chain” throughout their global supply chain and that “victims of exploitation and abuse have the right and opportunity to seek redress when companies have failed their duty to exercise due diligence.”

Over the subsequent years, most supermarkets' scores increased; several supermarkets were galvanised into introducing gender policies and some, like Aldi South, introduced human rights policies for the first time.



Three British supermarkets, Tesco, Sainsbury's and Morrisons, hold the top scores (46%, 44% and 33% respectively) with the German supermarket Lidl and the US supermarket Walmart in fourth and fifth place with 32% and 29% respectively. German supermarkets scored the lowest, including 3% for Edeke, (who did not score at all in the first year) and 5% for Kroger. The lower-scoring companies usually scored zero on the women's rights indicators.

Oxfam's latest report focuses on the inequities spotlighted by the Covid-19 pandemic, and – in respect of tea – responding that “there is a need for appropriate policy measures to bridge the gap between a living wage and prevailing wages in the tea sector in Assam, and efforts are needed from all actors in the supply chain to help increase the wages of the tea plantation workers.”

Virtually all the major UK supermarkets, plus Typhoo and Keith Spicer, are members of the Ethical Trading Initiative, a multi-stakeholder scheme that describes itself as an “alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe”. Membership entails commitment to the ETI Base Code, whose nine clauses are based on the ILO conventions – both within their own operations and in their supply chains.

Research has shown that “social standards are increasingly entering into the governance and regulatory practices of higher end regional [including in Kenya and South Africa] supermarkets chains and are beginning to create expanded coordination and norms among their partners and competitors.”¹³¹

SECTION 2

Human Rights for tea workers and farmers in practice



6. Vulnerable groups

People at the very start of any agricultural supply chain are invariably highly vulnerable to human rights breaches; Oxfam and others have ascribed this to “a radical weakening of the bargaining power of small-scale farmers and workers”, as the power of supermarket grows alongside “trade liberalization and deregulation of agricultural and labour markets.”¹³²

But there are certain groups among agricultural workers that are more vulnerable than others. Special attention needs to be paid to the ways in which these groups are vulnerable, the extent of their vulnerability and the different approaches that may need to be taken to mitigate their particular vulnerability.

For example, low pay for a male tea factory employee could be resolved through a collective bargaining agreement to raise his salary – or he could train and apply for a better-paid role within the factory, or seek work outside the tea sector altogether. But, as the evidence below demonstrates, a woman working in the same estate as a tea plucker is likely to be paid on a daily and/or piece-rate basis, not to be offered training and promotion opportunities (or be prevented by social norms from taking up any such offers), to be stigmatised by her position as a tea plucker, and may not be allowed by her family to see work outside the estate. Multiple and intersecting identities make some even more vulnerable; for example, if that woman is also from a marginalised community – such as a low caste – is disabled, very young or very old, and a migrant, her vulnerabilities will be multiplied and amplified.



6.1 Women

It should go without saying that all of the human rights covered in this document apply equally to women¹³³. However, women are often more vulnerable to breaches of human rights than men, or are vulnerable in different ways. “...women get to old age through lifetimes of many disadvantages including overwork, disempowerment, health issues, and poverty exacerbated by lack of access to land and credit.”¹³⁴

Tea production provides income-earning opportunities to millions of women around the world. They account for 58% of the tea workforce in India (Government of India, 2021), 35% of estate workers and 65% of smallholder farmers in Malawi¹³⁵ and 60% in Sri Lanka¹³⁶. However, they experience economic and employment discrimination, sexual abuse and coercion and violation of maternity rights¹³⁷.

For example, in West Bengal the collapse of an eight-month-pregnant woman who had been forced to continue working triggered a string of protests which were, according to the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF), “fuelled by systematic abuse of workers’ rights on the estate, including long-standing problems over the denial of paid maternity and sick leave and inadequate housing.”¹³⁸

Societal norms in many tea-producing countries mean that women rarely own the land that they farm. In Kenya, for example, a study found that “even though 31.7% of females farmed tea, very few owned land.”¹³⁹ On estates, power dynamics between low-paid women workers and predominantly male supervisors also exposes them to a high risk of sexual abuse and coercion.

Research has found that women employed on commercial estates – where the workplace and domestic space are closely linked – are more likely to be survivors of domestic violence. In Kenya, for example, allocation of scarce housing by all-male village elders creates a high risk of sexual abuse¹⁴⁰; and in Malawi there is “a systemic problem of male workers at estates abusing their positions of power in relation to the women working under their supervision with rape, sexual assault, sexual harassment, sexual coercion and discriminatory behaviour.”¹⁴¹

While tea estates generally make medical facilities available to workers, there are significant gaps in meeting reproductive rights; for example, in protecting the health of the mother during pregnancy, maternity leave benefits, breastfeeding breaks, and pre-natal and post-natal care¹⁴².

In Sri Lanka, wellbeing metrics for women tea workers fall below the national average: “The national malnutrition rate for reproductive-age mothers...is 16 percent, rising to 33 percent for female estate workers. And while 16 percent of newborn babies nationwide have low birth weight, on estates that number rises significantly, to one in every three newborns... Breastfeeding patterns are also inadequate, with just 63 percent of estate workers engaging in exclusive breastfeeding for the first four months of a child’s life, compared to 77 percent in urban areas and 86 percent in rural areas, according to research conducted by the Institute of Policy Studies. The situation is made worse by the demands of the industry. Since many women are daily wage labourers, earning approximately 687 rupees (just over five dollars) each day, few can afford to take the required maternity leave.”¹⁴³

Lack of adequate childcare facilities also create problems for women workers; for example, in Bangladesh “Only 18.9% of respondents stated that their employers had arranged a childcare facility for working mothers in the garden.”¹⁴⁴ Meanwhile, 85% of the women interviewed for a study on working conditions in Assam said they were unable to use the legally-mandated crèches for their children, as they were too far away from the workplace.¹⁴⁵

A number of initiatives are underway to address these issues, including a gender policy framework adopted by the Tea Association of Malawi¹⁴⁶, Finlays’ expanding gender strategy (including a target of 30% women in management by 2022¹⁴⁷), Twinings’ Women Empowerment Framework¹⁴⁸,

UN Women and Unilever’s partnership to develop an “Intervention Programme to inform the development of a Global Framework on Women’s Safety”¹⁴⁹, and Camellia’s settlement with sexual abuse claimants for compensation, along with measures to improve the safety and security of female employees and improve conditions for women in the wider community, including a Women’s Empowerment Initiative¹⁵⁰.

It should be noted that gender is an additional factor in the vulnerability of all the following groups. For example, it is female children that are more vulnerable to trafficking for sexual exploitation and domestic servitude, women who are more likely to be ostracised and/or accused of witchcraft in old age, and women migrants who are more likely to be deprived of their rights and subjected to sexual abuse.

6.2 Children

The US Department of Labor’s 2020 List of Goods Produced by Child Labor or Forced Labor¹⁵¹ included tea from Malawi and Rwanda (although in 2016 the list included Kenya, Malawi, Rwanda, Tanzania, and Uganda). Children of smallholder tea farmers are particularly vulnerable to exploitation during peak harvesting season, when they may be required to help with the harvest.

According to the Tea Board of India, approximately 80,000 children or more work on tea estates. In Kenya, in 2002, more than 30% of the tea pickers were reported to be under the age of 15. In China, the Ministry of Education’s “work and study” programmes have included primary schoolchildren being sent to pick tea.¹⁵² In Sri Lanka, 73% of children started to help out on the farm before they reached their 12th birthday¹⁵³.

The low financial state of Sri Lankan tea labourers hampers children’s access to better education and healthcare, and their poor living conditions – with little to no privacy – poses a risk to child protection. Twinings reports that “In Yunnan [China], child mortality is double that of urban areas due to lack of access to healthcare.”¹⁵⁴

Children, particularly girls, on tea estates are vulnerable to trafficking due to the poverty and poor living conditions of their families. For example, there have been media reports of girls from impoverished families on Assam tea estates being trafficked into domestic slavery after being promised good jobs in distant cities¹⁵⁵.

In smallholder settings where farms are more dispersed and informal, many of the rudimentary protections available to formal estate workers would be absent, leaving children in danger of exploitation, and deprived of education, healthcare and protection from traffickers. Smallholder farmers (in Sri Lanka – but likely to apply to other countries too) are more likely to conscript their children into working on the farm at peak seasons (Kaempfer et al, 2020).

On the other hand, research by Save the Children in Sri Lanka found that children of tea farmers were less likely to drop out of school than children of tea labourers on small to medium estates, who may be relied on to help their parents during the harvest season (Kaempfer et al, 2020).

6.3 Older people

Literature on the human rights impacts on older people in the tea sector is scarce, but we found a limited amount of information on the issue.

The impacts for retired tea workers have been documented in Bangladesh: “Since only registered tea-garden workers are entitled to free treatment, older adults face significant difficulties in obtaining adequate health services for their illness after retirement.”¹⁵⁶ Low pay throughout their working lives means that they are unlikely to have any savings and they lose their eligibility to free healthcare – such as it is – just at the time when they are most likely to need it. Healthcare workers also raised concerns about the lack of expertise and support for “addressing the complex chronic conditions of the older people.” (Rahman, 2021)

A retired tea worker in North East India told researchers described her situation: “Retired, no benefits, no firewood, no pension. I have no house. My husband died 10 years ago, but I have not received my husband’s pension. The estate has not provided me a house so I made it on my own.” (FIAN et al, 2016)

All retired workers in India are entitled by law to a pension and employers are required to pay into a Provident Fund towards this throughout their term of employment. However, workers frequently report long delays or underpayment of these statutory benefits. In some cases, they miss out because they are unaware of their entitlement.¹⁵⁷

In South India, people who retire after having worked on estates for 40 years are facing a financial crisis, as the company has deferred their end of service gratuity payments. The payment is something they have been relying on getting for many years. Without it they are unable to pay off debts, to buy housing or land (they are no longer permitted to live in estate accommodation) or to subsist independently. The result is not only destitution, but social stigmatisation.¹⁵⁸

Although these examples are primarily from India, wherever the colonial tea estate model operates, the vulnerabilities of the elderly are likely to be similar. Inadequate rural healthcare and transport systems and lack of social security are also likely to cause significant challenges to smallholder farmers in old age. For example, “The majority of older Kenyans are farmers, most living without modern amenities... Their perceptions of old age revolve around health issues, food insecurity, their need for money, worries about support and care, and feelings of displacement in a modern, globalizing world.” (Cattell, 2021)

Again, the problems of vulnerability in old age have an added gender dimension; “[s]ome older women, especially widows, may be dispossessed of their homes by relatives.” (Cattell, 2021) and “[r]eliance on families... places a heavy burden on female relatives who are called upon to forego education, employment or other economic engagement in order to care for older relatives.”¹⁵⁹

6.4 Migrants/Ethnic and social minorities

Migration, caste and ethnicity are factors in the vulnerability of tea workers – on two levels.

Firstly, the permanent workforce on many tea estates – particularly in South Asia – are the descendants of migrant (often indentured) labourers, and often from so-called lower castes and tribes. Their state of dependency on their employers and their isolation from the majority community into whose area they have moved has been maintained through multiple generations. This makes them particularly vulnerable to forced labour and discrimination.

Secondly, while many temporary workers on tea estates and small tea farms are from within the community, including families of tea workers, at peak seasons there may be in-migration of additional labour who are vulnerable to poverty and deprivation of basic amenities – since they are not eligible to the same benefits as permanent employees, and may not be as well protected by labour laws or trade union membership.

The descendants of migrant labourers brought from other more impoverished areas to physically remote tea-growing areas has meant that these workforce communities have often remained isolated and unintegrated.

The colonial structure of tea estates, which have been largely retained to this day, operate like mini-states within the state, giving tea company management a high level of power over their workers. “As in the colonial period, the estates function as a parallel governance structure, with little active involvement by the state, whether in setting wages or in monitoring working and living conditions. This places workers and their families in a relationship of total dependence on the estate.”¹⁶⁰

In Assam, for example “[t]he culture of the tea sector accepts and promotes paternalism on tea estates; tea estate managers have excessive control over workers and their families’ lives and this makes it very difficult for workers to speak up, for fear of being victimised or penalised by tea estate management. This has led to an identity crisis for the community.”¹⁶¹

Where workers are brought from a different country altogether, the lack of self-determination is further exacerbated by lack of statehood. For example, tea workers in Sri Lankan tea estates are of Indian origin, and were only granted Sri Lankan citizenship in 2004. Until then, they had “no nationality, no right to vote, to work officially, to open a bank account or to obtain state land... [and] no possibility to apply for documents like a passport or birth certificate.” At the time, it was expected that attaining Sri Lankan citizenship would enable tea workers to “enjoy more choices for a better life”, but the reality has been “prolonged exclusion ...from state institutions”¹⁶³ and their lives continuing to be governed by their employers instead.



7. Human rights impacts

International human rights law is generally understood to place primary responsibility for the protection of human rights upon countries. In line with the UNGPs (often described as an ‘expected standard of conduct’) and over and above national legislation, businesses have obligations to respect human rights. A significant step towards respecting human rights is for each business to identify, prevent, mitigate and account for its impacts on human rights (UNGPs at Principle 17). Part of that process within the tea sector includes the identification of those rights and rightsholders most at risk, including where risk arises as a combination of business activity and other structural or social issues (See UNGPs at Principle 13).

The human rights listed in sections 7.1 to 7.7 below – with the relevant impacts on tea workers and farmers – were selected because they are the ones most frequently referred to in the literature covered. The impacts described are from a wide range of publications by trade unions, NGOs, academics, the media, lawyers, and international bodies over the last few decades. It is not intended to be an exhaustive list of sources and there are likely to be many other documents which could and should have been consulted. However, the reference sources used here have been chosen to cover as wide a range of perspectives and countries as possible.

7.1 The right to Freedom from Slavery and Forced Labour

The US Department of State and the International Labor Rights Forum have identified the use of forced and/or child labour in the tea industries of Kenya and Malawi (among other countries).¹⁶⁴

The UN’s special rapporteur on contemporary forms of slavery reported from his recent mission to Sri Lanka: “I witnessed that women and girls are disproportionately affected by contemporary forms of slavery in Sri Lanka which is closely interlinked with significant levels of gender inequality, patriarchal attitudes and intersecting forms of discrimination...”¹⁶⁵

Research in India uncovered “a coherent pattern of labour exploitation including forced labour at the base of global tea [...] supply chains”, with under-provision of services driving tea workers to borrow money for food or medical care, and thus creating debt bondage. And “...because female tea workers often combine paid work within the tea industry with unpaid care work for their families, and risk losing the entire family’s housing if they were to leave her job, women are further tied to the estates.” (LeBaron, 2018).

While the provision of free housing is often cited by the industry as a benefit to workers, this cements their dependence on their employers, as the accommodation is dependent on a family member working in the estate – regardless of the pay and conditions. The threat of eviction and lack of alternative employment near the estate means “workers are actually working as bonded labourers.” (FIAN et al, 2016).

Reports on working conditions in China are now scarce, but in 1997 a Chinese dissident reported that one third of China’s tea is produced by Laogai camps¹⁶⁶, and it seems likely that some portions of Chinese tea are still produced by prison labourers.¹⁶⁷ Tea packaging was among the activities reported at two of Xinjiang’s largest Uyghur internment camps¹⁶⁸ and, although it is a separate process from tea production, is still part of the tea value chain.

7.2 The right to Freedom of Association and Collective Bargaining

While findings may vary from country to country, this review found that most workers on tea estates in the focus countries appear – at least in theory – to be represented by formal trade unions that have succeeded in securing some benefits for workers. However, in most of the focus countries, unions in the tea sector are “weak, fragmented and inactive”¹⁶⁹, and union leaders do not always represent the interests of the estates workers.

In Sri Lanka, for example, it is reported that trade unions have become mere political vehicles for leaders and parties seeking to build their future, and similarly in Kerala, India, trade union leaders tend to be “caste Hindus or Christians, all male and largely Malayalis [ie from Kerala]”,¹⁷⁰ while workers are mostly Dalit (lower caste) Tamils from the neighbouring state. In 2015, this gave rise to a grass-roots women workers’ movement and the forming of the industry’s first all-women trade union to emerge from the workforce itself, known as Pempilai Orumai, meaning ‘Unity of Women.’¹⁷¹ It is one of the few examples (if not the only example) of a trade union emerging from the body of women tea workers themselves – yet, in 2019, it reported having just 240 members, and that it was unable to communicate directly with management.¹⁷²

In Malawi, it is claimed that “the absence of a strong trade union in the sector gives undue power and influence to the Tea Association of Malawi”¹⁷³ – but the first-ever collective bargaining agreement in the Malawian tea industry was signed in 2016, and various organisations are helping to build the capacity of union representatives to engage effectively with employers.¹⁷⁴

However, the literature shows that workers can face retribution, punishment, and discrimination by management if they go on strike or (in countries where they are not automatically enrolled) join unions. For example, in India, management often responds to workers’ protests against particular issues with lock-outs that deprive workers of the means of survival and force them to stop their protest. As chronic malnutrition is widespread among estate workers, such lockouts can lead to starvation (Rosenblum and Sukthankar, 2014).



7.3 The right to an Adequate Standard of Living

The Global Living Wage Coalition’s definition of living wage:

“The remuneration received for a standard workweek by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transportation, clothing, and other essential needs including provision for unexpected events.”

The Living Income Community of Practice’s definition of living income:

“The net annual income required for a household in a particular place to afford a decent standard of living for all members of that household. Elements of a decent standard of living include: food, water, housing, education, healthcare, transport, clothing, and other essential needs including provision for unexpected events”.

The tea sector provides employment to tens of millions of workers (over half of whom are women) and a livelihood to several million smallholder farmers, while also indirectly supporting millions more¹⁷⁵. The global popularity of the beverage is projected to be sustained, which means that it is likely to continue to provide a source of income for the foreseeable future¹⁷⁶ – although increasing mechanisation is starting to affect jobs¹⁷⁷. In some tea origins, such as India and Sri Lanka, there is a well-established system of industrial relations on tea estates, and most permanent estate workers are trade union members.

However, even where these systems are established, the sector is characterised by very low incomes – often below international poverty lines, even when they meet minimum wage levels and are agreed through collective bargaining. Gaps between prevailing and living wages range from 13.5% and 15% in South India¹⁷⁸ and Sri Lanka (Srinivasan, 2019) respectively, through 34% in Malawi (reduced considerably by the Malawi Tea 2020 Programme), to 62% in Kenya¹⁷⁹ and 81% in Assam (Banerji and Willoughby, 2019). Low wages are leading to malnutrition, indebtedness and risky survival strategies, such as transactional sex (in Malawi) and child labour and trafficking (Kateta, 2013). Figures for China are not easily available, but there have been reports of very low incomes for Chinese tea pluckers.¹⁸⁰

In most focus countries, workers are provided with free housing, healthcare and primary education (see, for example, India’s Estates Labour Act) – but these often are of very poor quality (Sharman, 2018). Extensive health problems, many associated with poverty wages, are associated with working on tea estates. For example, in India, workers can only afford to buy low-cost vegetables such as potatoes (FIAN et al, 2016). Workers in both India and Kenya reported having to skip meals in order to pay for medication or their children’s education, leading to malnutrition. Malnutrition, along with jiggers¹⁸¹, backache, and family planning are reported to be the most common health issues at Kenyan tea estate clinics¹⁸². Women on tea estates are more likely than their compatriots to suffer from anaemia. Another health impact of low wages emerged in Malawi, where many tea pickers were reported to be infected with HIV – as some women engage in transactional sex to supplement their incomes (Kateta, 2013).

There is also a significant gender pay gap in the tea sector; for example, in 2020 it was “9.2 per cent in India, 25.8 per cent in [Vietnam] and 42.7 per cent in Indonesia.”¹⁸³ In Sri Lankan tea estates, “...women have to work twice as long as men to earn the minimal wage by plucking tea leaves.”¹⁸⁴

Smallholder tea farmers often lack capital, skills and technology, or have fragmented and therefore uneconomic holdings – further fragmented in contexts like Kenya where land is divided between inheriting children.¹⁸⁵ They are usually highly dependent on Bought Leaf Factories – although in Vietnam they are establishing more small and mini-processing facilities¹⁸⁶. An ILO study confirmed that in Sri Lanka, “[t]he majority of females working on the smallholdings were unpaid family workers,”¹⁸⁷ and that in Indonesia “female unpaid family workers... experience earnings equal to zero” (Pinedo, 2020) – a situation that is likely to be similar in other tea-growing geographies.

For Indian smallholder tea farmers, “the prices they are paid for fresh tea leaves, more often than not, tend to be below the cost of production”¹⁸⁸. Plus, they are as vulnerable as estates to “persistent low prices, rising input costs, and devastating climate change effects”,¹⁸⁹ with less access to credit to carry them over lean gaps.

7.4 The right to Just and Favourable Conditions of Work

7.4.1 Health and safety

Occupational health hazards for tea pluckers include musculoskeletal injuries from carrying heavy loads¹⁹⁰. For example, a professor of orthopaedics examined Kenyan claimants in a legal case that is being brought against Finlays and found evidence of injuries to their spines¹⁹¹. But tea factory workers are also vulnerable to health hazards, such as exposure to tea dust, which can lead to serious respiratory problems (Raj, 2020).

Insufficient and inadequate PPE is also common, with researchers often finding examples of workers spraying pesticides without the protective equipment required by law¹⁹². For example, in 2010, a 25-year-old tea worker in Assam collapsed and died while spraying tea bushes. Neither he nor any other spray workers had been wearing any personal protective equipment to protect themselves from the poison on that day, or during the 75 previous days of spraying.¹⁹³

In some Assam estates, as in other focus areas, housing is dilapidated and toilets are either in poor condition or non-existent (Sharman, 2018). Most workers do not have access to safe drinking water, so despite doctors' warnings they have no choice but to drink the contaminated water, leading to cholera and typhoid (Banerji and Willoughby, 2019). These hazards are compounded by lack of health knowledge which, for example, prevent Kenyan smallholder women from making informed choices about health behaviour, including poor menstrual hygiene management (Shields, 2015).

Tea estates in most countries provide healthcare facilities, but these are often unable to cope with the extent of health problems of the workforce and community. Researchers have repeatedly found that medical facilities in the focus countries are either not available or are inadequate, while medical staff are poorly trained and frequently absent (LeBaron, 2018).

7.4.2 Working hours

The ILO estimates that tea sector workers' working hours "range from 37.5 hours in Indonesia, 42.5 hours in Viet Nam, to 54.3 hours in India" (Pinedo, 2020). Indian tea weekly workers' hours increased from 47 in 2000 to 54.4 in 2012.

While working hours in tea estates are technically within ILO recommendations of eight hours a day, it is hard, physical labour in challenging environments. Because tea plucking is usually paid in a combination of daily wage and piece rate, pluckers will work for as many hours as it takes for them to achieve a target weight, and more if they are trying to earn more – to meet needs such as education or medical costs for their families. But they cannot simply go home once they have finished plucking; the tea needs to be taken to a collection centre and weighed before they are paid. They are "never paid overtime" for this extra time.¹⁹⁴

Research by Oxfam in Assam found that "Including the unpaid domestic work women do, by the time they go to bed...they have done around 13 hours of physical work" (Banerji and Willoughby, 2019 – emphasis added). Tea companies strongly contested the claim¹⁹⁵ when the report was published, but they were focusing only on the paid part of the workers' day, demonstrating the lack of management awareness of the pressures that unpaid care place on their workers. This issue is not, however, unique to the tea industry.

Oxfam's report also found that male workers who typically do pruning, spraying and weeding work on estates also complained of being overworked; one worker said "If the work should be done by four people, they will employ two, and will save the cost of two workers."

As in most other agricultural sectors, the working hours of smallholder farmers and their families and hired labour are not regulated, but are likely to be as punishing as those of estate workers – if not more so, since the farmer's entire subsistence relies on the success of each harvest. They are therefore likely to do whatever is necessary to maximise this, even if it means working excessive hours that can be injurious to their health.

7.4.3 Regular work

In most tea-producing countries, there is a core of “permanent” or company-employed workers, supplemented by additional temporary contracted workers during the peak harvesting season or at other busy times.^{196, 197}

As discussed above, women who work on tea estates throughout much of Asia are permanently tied to their employment through bonds of debt and housing dependency. Yet, ironically, this does not necessarily provide them with regular work and income throughout the year. Work is dependent on the season and on the amount of tea they can pluck. At low season – and if they are sick, elderly or pregnant – their income suffers.

While the men who do have work on the estates are paid by time (rather than piece rate), many have little or no regular work. This leads to problems such as drug abuse and alcoholism (Debdulal et al, 2019), which in turn are drivers of domestic violence¹⁹⁸.

In recent years – as prices paid for green tea leaves have stagnated and costs of production have risen – there has been increasing casualisation in the tea industry. For example, in Kenya the increasing mechanisation of tea harvesting and outsourcing of factory processing has resulted in job losses, heavily impacting women workers. Furthermore, workers employed directly by the company receive a “union-negotiated wage and the package of employment privileges” which are not offered to temporary workers; they “are hired on insecure terms” and “are typically employed on short contracts, sometimes for as little as a few days. This renders them ineligible for union membership, and most earn less than half the daily salary of a company employee. If they are unable to work due to sickness, they will not be paid”¹⁹⁹.

As estates are abandoned and more and more tea is bought from smallholder tea farmers, former workers are forced to seek temporary work; for example, for former employees of an abandoned estate in Assam “getting regular employment is uncertain” and they “do not get any other additional benefit as they used to get in their own estate like ration, tea, etc.” (Debdulal et al, 2019).

7.4.4 Harsh treatment

The tea industry has a history of coercion and violence, as this article documenting the origins of Assam’s tea sector recounts:

In the mid to late nineteenth century, “...the violators [of the indentured labour system on tea estates] who fled were given harsh punishments by the planters who had been given extra-legal authority...the cruelties meted out to the labourers by their European masters [took] the form of flogging, making them do extra work, confining them for days without food, humiliating and threatening them with trained dogs that would find those who fled and much more... Rapes, flogging, confinement, and other brutalities were committed against the “coolie” women.”²⁰⁰

Kenyans also complain of harsh treatment by the British during the colonial period (1920-1963) when they expanded the lucrative tea sector to the African continent. They claim that in addition to land-grabbing (see ‘Land rights’ section below) they “suffered gross human rights violations and serious violations of international humanitarian law including killings, rapes, torture, and arbitrary detention, committed by or on behalf of the United Kingdom”²⁰¹.

Such complaints are not confined to the history books, however. Today, Kenyan tea estate workers are demanding compensation from their former employer, Unilever (until recently one of the world’s biggest tea-trading companies), who they claim failed to protect them from predicted violent attacks in 2007. And Unilever itself reports that “[a] study by the UN Women (1200 respondents), indicated that women experience physical, sexual, and verbal abuse in and off the estates in Assam.”²⁰²

In recent years, legal cases have been brought against tea companies by women workers in Malawi and Kenya, alleging “systemic sexual harassment including rape, assault and discrimination”.²⁰³ Companies facing such allegations include Lujeri and its owner PGI, and Camellia. Leigh Day lawyers who represent the women describe the problem as “systemic”, due to the power dynamics between female workers and male supervisors. They also explain that, because of their extreme poverty, the women “often submit to the sexual harassment for fear of losing their employment.”²⁰⁴

The relationship between workers and managers can often become tense, as workers’ dissatisfaction with their pay and conditions builds up, sometimes erupting into violence by both parties.

Management responded to the protests with ‘lockouts’ cutting off workers’ wages and rations, and with threats of arrest and imprisonment. Similarly, in Sri Lanka, wage protests have escalated to the point where management are “demanding weapons and weapons training to defend themselves from physical threats by estate workers”.²⁰⁵ In Assam, protests following the collapse and death of a tea worker spraying pesticides without PPE (see the ‘Health and safety’ section above) ended with the fatal shooting of two workers and serious injury of 15 others when police opened fire on the protestors.²⁰⁶

7.5 The right to Freedom from Discrimination

7.5.1 Gender

In the organised tea sector of most of the focus countries, not only are women concentrated at the lowest paid level of the workforce and are generally barred from promotion opportunities, but there is a disproportionately high number of female casual workers compared to males in the tea sector (eg. FIAN et al, 2016). Male tea workers tend to be paid according to the time worked, while women's pay – since they are primarily engaged as pluckers – is piece-rated, which means that “women cannot expect to progress to higher wage levels and remain pluckers drawing standard piece-rated wages for the duration of their engagement as workers.”²⁰⁷

Trade unions tend to be male-dominated so women workers' voices often go unheard. A 2017 study in Assam found that “women are strategically left out from the political and economic domain of the Workers' Union.”²⁰⁸

Women's comparatively lower levels of education and the financial pressures they face while raising their families leaves them less scope to take economic risks.²⁰⁹ It is reported that on tea estates in Bangladesh “[w]omen suffer from a variety of diseases and because they are not particularly empowered, they are neglected, deprived and disadvantaged in the family life as well as in the community.” (Rahman, 2021)

Women may be at greater risk of other forms of exploitation and discrimination in a smallholder context. A woman married to a smallholder tea farmer may be given no choice but to work on the farm (for no pay), will be more isolated than on an estate, and have no formal structure available to her to seek redress for any violence or sexual abuse she may suffer. For example, in countries such as Tanzania, where women are traditionally barred from land ownership, they are entirely dependent on the male relative who owns the land – even though they do the majority of the physical labour on the farm²¹⁰. They may also be poorly represented at a governance level; for example, in Malawi “Women form a significant part of growers but the [National] Steering Committee [of Smallholder Tea Growers] did not have representation from women.”²¹¹

BSR's background research for a study on Empowering Women in Kenya's Tea Sector found that “[i]n some countries, women face widespread restrictions in access to basic resources for production including land, productivity-enhancing inputs like fertilizer, technical assistance, credit, and more... many smallholders also face significant challenges in meeting personal health, nutrition, and other basic needs.” (Shields, 2015)

In Kenya, where tea is predominantly a smallholder crop, a gender needs assessment by IDH and the KTDA Foundation found that among smallholder tea farming families “there were gender disparities at the household, factory, marketplace (i.e. tea value chain) and macro policy levels...despite the availability of laws and organizational processes that protected and promoted women's involvement in the tea value chain.”²¹²

7.5.2 Ethnicity/caste

Tea workers are often migrants or indentured labourers (or their descendants) from poorer regions. This creates divisions which lead to ethnic discrimination. For example, in Sri Lanka, tea workers of Tamil origin report being barred from promotion, claiming that “The estate companies resist any upward mobility from our community” (Srinivasan, 2019). This community only gained Sri Lankan citizenship in 2004. In Assam, the descendants of indentured labourers transported from Central India remain isolated and disadvantaged²¹³.

In South India, Kerala, Tamil-speaking Dalits (so-called ‘untouchables’ or ‘outcastes’) constitute the majority of the labour force and report being “trapped in low paying jobs”²¹⁴. While on retirement, Dalit estate workers are reported to be reluctant to return to their native villages, where they are subjected to a more intense form of caste discrimination than their ancestors had originally come to the estates to escape (Raj, 2020). In Kenya in 2007, as part of country-wide, pre-election inter-community violence, workers on Kenyan tea estates from outside the area were subjected to violent attacks by members of the local community, including murder and rape (Leigh Day, 2020).

But, regardless of ethnicity, being from a tea estate can itself be grounds for discrimination; for example, in India, a researcher claims that “Tea estate workers are one of the most stigmatised and marginalised communities in India” (Raman, 2020), while in Sri Lanka “Tea estate workers are still not treated as citizens...They are treated as inferior and face discrimination.”²¹⁵

7.5.3 Employment/migration status

In India, although the law does not distinguish between temporary and permanent workers within estates, temporary workers are widely reported to be excluded from coverage of benefits accorded to permanent workers (Rosenblum and Sukthankar, 2014), such as medical facilities (FIAN et al, 2016).

7.6 The right to Land

The tea industry has historically been complicit in directly depriving indigenous people of their land. In 2019, lawyers on behalf of 110,000 members of Kenya’s Kipsigi and Talai communities submitted a complaint to the UN about their forceful eviction from their lands in 1934 by British colonialists to plant tea²¹⁶.

The submission says “much of the affected land... remains in the possession of multi-national tea companies such as Unilever Plc, Williamson Fine Tea Limited and John Swire & Sons Ltd. These companies continue to make vast profits from the exploitation of fertile tea estates which were originally stolen from the Victims during the colonial period, while the Victims must eke out a living on lesser land.”

While most tea estate workers may not be indigenous to the areas where they are now settled, as stated, the majority are descendants of indentured migrant labourers who were indigenous to their place of origin²¹⁷. For these descendants, the links to their original homelands and inheritance systems has been severed. Lack of land entitlement diminishes their self-determination and reinforces their dependence on the estate. Having worked for generations on estates owned by companies or governments, some tea workers are now demanding the right to own the housing and land in and on which they live.

For example, young people in West Bengal are beginning to fight for land rights for themselves and their families, seeking “to break an intergenerational cycle of labour” which perpetuates the dependence of tea workers on their employers. Thousands of children of tea workers are now using social media, marches and official land rights applications to campaign for land for estate workers.²¹⁸

8. Root causes

This section is intentionally brief because it is in the subsequent phases of this Human Rights Impact Assessment (of which this literature review is phase one) that a deeper, more nuanced understanding of the causes underlying human rights breaches in the tea sector will be explored from multiple perspectives. International market dynamics, national contexts (including social norms affecting majority women workers) and the role of governments (including weak or non-existent implementation of labour laws) will inevitably play a significant role. But, in the meantime, the following issues emerged from the literature reviewed as some of the underlying causes of human rights breaches in the tea sector:

- **The historic structure and location of tea estates**, which disempowers workers. Indentured workforces imported from more impoverished areas (Rosenblum and Sukthankar, 2014) and physical isolation giving rise to the absence of alternative employment opportunities, along with the lack of tenure rights for workers, have led to their complete dependence on their employers. (FIAN et al, 2016). Strict, colonial-era hierarchies have created structural inequalities that further disempower workers.
- **Multiple power imbalances throughout the system;** between women and men, workers and supervisors, supervisors and managers, producers and buyers, etc. Those with the least power carry the greatest risk.
- **The oligopsony power of a few large buyers** over many smaller local producers (IDH, 2016). The packaging, branding and marketing stages of the tea value chain globally demonstrate high market concentration, with just seven companies accounting for 90% of tea traded into European and North American consumer markets in 2006 (BASIC, 2019). The auction system through which most tea is sold is heavily biased in favour of these powerful buyers.²¹⁹
- **The inequitable distribution of the retail value of tea** means that the majority of value is concentrated at the packaging, branding and retail end of the value chain, leaving a minimal share for producers to spend on labour and benefits (Banerji and Willoughby, 2019). The power of large brands and retailers has grown exponentially, eroding the bargaining power of producers, while further weakening their ability to provide decent pay and working conditions for their employees (Willoughby and Gore, 2018).
- **Rising production costs, static prices.** Meanwhile, producers are also facing rising costs of inputs such as machinery, fuel and wages. At the same time, consumer prices – while increasing nominally – have remained static in real terms for many years (LeBaron, 2018).
- **The heavy reliance for realising human rights in their tea supply chains on certification bodies** by tea companies – especially in Europe and North America (LeBaron, 2018). These bodies were not necessarily designed to carry the full weight of human rights responsibility. For example, Fairtrade was established to ensure a fair price for small tea growers (Fairtrade), yet its revised hire labour standards for tea cover a wide range of labour and human rights.²²⁰
- **Lack of protections for smallholder tea growers.** Smallholder farmers struggle to access finance²²¹ and are vulnerable to price shocks due to prioritising the tea cash crop over food crops (Kenya: Shields, 2015). Larger growers and estates have the advantage over them of technical knowledge (Kenya: IDH, 2016) and access to sensitive market information (China: Wu, 2009).

9. Alternative approaches

Across the tea sector, there are a host of current or recently-concluded alternative approaches to employment and trading systems that seek to meet some of the challenges outlined in this report.

These include alternative business models (such as worker-instigated co-operatives and start-ups using new technology to connect smallholders direct to customers), new ideas for how to trade tea in such a way that farmers benefit (such as Forum for the Future's Tea Swaps²²²), tools for the industry to find fairer ways of purchasing tea (such as IDH's Sustainable Procurement Kit²²³), programmes that seek to empower women and their communities while improving worker/management communication (such as Care International's Community Development Forums²²⁴) – and many more.

THIRST will bring these initiatives together in a supplement to this report so that others in the industry will find inspiration, motivation and guidance to adapt, scale up, or replicate some of these approaches in other contexts – or across the industry as a whole.

The supplement will also contain links to tools and guidance documents designed to help the tea industry tackle some of the issues outlined in this report.



10. Conclusion

The tea industry is a vast and powerful global industry that has thrived for nearly 200 years, and is not diminished by the changing trends within it – including a shift of its biggest markets from Europe and the West to Turkey, the Middle East and Asia. It provides employment to many millions of people and, in so doing, supports millions more in some of the world’s poorest countries.

The countries that produce tea and the countries that buy it have signed up to a host of human rights commitments and labour rights conventions and covenants, and some tea-growing regions have reinforced these with human rights declarations of their own. Each tea-producing country also has a range of laws that protect the rights of tea workers and farmers – although these vary in content and definition. Many tea-importing countries also have laws designed to protect the workers in their global supply chains.

The largest and most powerful buying companies have published human rights policies in which they outline their commitment to international human rights standards and outline their expectations of their suppliers. Many belong to the Ethical Tea Partnership, through which they fund projects to improve the lives of tea workers and farmers and their environment. In addition, many of these companies – as well as many retailers – use certification standards to signal to consumers that their tea is produced on fair and sustainable principles.

However, despite the success of the industry, the international and regional human rights instruments, the national laws, the certification standards, and company policies pledging to uphold human rights, THIRST’s literature review found that on every human rights dimension we examined, there were sector-wide breaches. Women, children, older people and migrants are particularly vulnerable to these human rights breaches – and are the least empowered to challenge them.

A number of initiatives have been tried or are underway to try to address some of this plethora of problems, including different business models, new ways of trading tea, innovations in community organisation and worker/management communications, and more. Further research into their effectiveness and long-term monitoring of these initiatives will provide valuable lessons for the industry, as it seeks ways to bridge the gap between the human rights intentions of the industry and the countries it operates in, and the reality experienced by tea workers, farmers and their families. Individual initiatives like these may help to tackle some of the localised issues within the sector, but other issues are likely to be addressed only through systemic change.

In the next phases of THIRST’s Human Rights Impact Assessment of the Tea Sector, we will further explore the root causes of that human rights gap – and how to bring about systemic change. We will do this in collaboration with those who understand the industry best, as well as those who understand human rights, industrial relations, community development and economic justice best. Between us we will develop a ‘highway map’ for the industry, towards a more equitable future – in which tea workers and farmers are able to live healthy, dignified lives within a thriving 21st century global industry.

11. Endnotes

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²³ The review is not intended to be exhaustive. For example, it does not extend to legislation produced by federal or regional bodies within countries, nor to secondary legislation and regulation, save where expressly mentioned. The review did not include case law or legal practice. These are important aspects which warrant future examination, and which would give a more complete picture.

The review's primary focus is on labour and employment laws. Other aspects of the law (for example, criminal or company law) also shape the experiences of tea sector workers, but are not the focus of this review. The review does not extend to compliance with laws and regulations (nor capacity to comply), which is an essential issue to be addressed as part of the sector-wide human rights impact assessment.

This review was undertaken at the end of January 2022. Changes to the laws, treaties and international instruments discussed and the parties to them beyond that date are inevitable, and so this review is merely a snapshot. Finally, obtaining complete and up-to-date versions of documents in English – such as national laws – is not always possible, and some sources of legislation discussed may not up to date, accurate or may have been incomplete when reviewed.

²⁴ UNGPs Principle 12 plus commentary

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contact@thirst.international

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