

February 14<sup>th</sup>, 2023

We write in response to the Business and Human Rights Resource Centre's ('BHRRC') email of the 13<sup>th</sup> December 2023.

Ahmad Tea appreciates the critical work that the BHRRC is doing to deepen transparency and accountability within the tea supply chain. Ahmad Tea has in fact used the analysis provided through the BHRRC's tea tracker to make improvements to the way we monitor our supply chain and further embed Ahmad Tea's Social Responsibility Standards\* (attached to email). We request for the BHRRC to amend the tea tracker to accurately reflect these changes and publish our Social Responsibility Standards alongside this response.

#### **Supply chain accountability and safeguarding**

The nature of the way Ahmad Tea purchases our tea is that there is no direct relationship with the tea gardens in the sense that we do not own any gardens. All tea is bought in auction in Sri Lanka and there are no regular contracts with tea gardens in place. There is therefore no fixed supply chain as such; but a fluctuating supply chain based on the result of the tea auction. For the purposes of the BHRRC Report, **we can confirm that only some of the Gardens featured in Report 1 and Report 2 in Sri Lanka were part of our supply chain during the time of the reported events. These were Agarapatana Plantations Limited, Horana Plantations, Madulsima Plantations, Kelani Valley Plantations and Maskeliya Plantations.**

To this point, it is important for BHRRC to be sure that the allegations presented in your Report have in fact occurred within a company's supply chain as the risk to reputation and therefore livelihood of the workers in the gardens is at stake. Report 3 for example, provided the wrong source and the dates in the BHRRC Report did not match the date of the event. **Ahmad Tea confirms that it did not buy from this garden during this time.**

Through the monitoring of Ahmad Tea Social Responsibility Standards and the obligation on the part of gardens to report any breach or grievance occurring in their gardens, **we are alerted of events and urge the gardens to share their safeguarding and corrective measures.**

Although we voice our concern at the initial stages, we are careful to ensure the allegation is fully investigated before taking action.

**It is important that the BHRRC does not inadvertently undermine the right to a fair trial through the publishing of allegations which are yet to be tried in Court.** Section 2 of Article 6 of the Human Rights Act 1988 states “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.” This fundamental right to be treated as innocent until proven guilty is also an international human right under Article 11 of the UN’s Universal Declaration of Human Rights.

Again, I emphasise the potential loss of livelihood this could have on a tea garden and to the thousands of workers in that tea estate if tea brands suddenly stop buying from these gardens based on allegations which are yet to be proven in a court of law. In the event that these allegations have been proven under the rule of law, **Ahmad Tea requests the garden to show proof of corrective action and safeguarding to prevent a risk that this will occur again.** Gardens are given a time frame by which to do this and the results are checked by us. This is how we are able to balance the needs of the victim in the case with the livelihoods of the hundreds and sometimes thousands of workers in that garden who would be severely prejudiced by our decision to stop buying from them.

**Turning now to the Reports purported to have occurred in Sri Lanka, it is important to understand the context in which these events happened in order to fully understand the facts in each of the cases. As BHRRC did not offer any context, we feel it necessary to take these events out of isolation and return them to the humanitarian, economic and political context through which they happened.**

Sri Lanka in Humanitarian Crisis: The worsening economic crisis in Sri Lanka has caused such an unprecedented rise in the cost of living that it is more accurately described as a humanitarian crisis. The lack of fertiliser and cost of fuel has plunged many of the tea estates into the most difficult times of their history. Most families in the tea estates are eating only once a day. Children are not able to attend school as they have no food, no stationary, no books and no money for exorbitant cost of bus fares.

**Ahmad Tea continues to prioritise these needs and work with the gardens to provide help, in the form of food distribution, essential rations and school books, where we can.** The urgent request for food for over 6,000 tea worker families which we received at the end of 2022 and our distribution of dry rations to these families, meant we were unable to fully respond to the BHRRC before this date.

We inform you that your Report and request for information have deeply distressed many of our Sri Lankan colleagues, partners and suppliers who are in disbelief that your Report chooses to look at politicised labour disputes in the gardens when many of the tea workers are facing starvation. **We support their view that your Report was contextually insensitive and the distance between yourselves and the reality of what is happening in Sri Lanka, brought with it the memory of its colonial history which, for the tea industry, remains a painful one.**

The rising cost of productivity in Sri Lanka and the relative low production rate in the tea estates compared to other tea origins like Kenya and Assam, is causing less and less Ceylon tea from being purchased. Outside of tea, we are also seeing industries turn to East Africa to find a cheaper more stable alternative.

**Reports such as this, although important to create transparency and accountability in the supply chain, when reported without any contextual considerations, can further motivate industries to leave Sri Lanka; leaving the workers you are advocating for in a position far worse.**

Sri Lanka in Political Turmoil and State Corruption: The recent widespread political unrest which resulted in the former President tendering his resignation reveals the extent of the political turmoil and alleged state corruption at the time of this Report.

The Plantation Companies have shared that the increase of daily minimum wages was a rubber stamp used to carry out the political pledge made by the former President, who was at the time the Presidential Candidate, that he would increase the wages of the plantation

industry to Rs 1000. A leading trade union from the Up Country and key partner to the President's coalition, was fighting for the increase. The Plantation industry warned the then government of the dangerous economic trajectory on which these policies would set the country. Subsequent events speak for themselves.

**Report (1)** The BHRRC Report relies on a paper report from the Daily Mirror, wherein plantation companies have filed a written application challenging the gazette notification to pay the daily wage of Rs 1000 to every worker.

Ahmad Tea is aware and has been following reports on the tea workers action to increase wages and the subsequent wages board decision. After a long struggle, the workers were granted the right to a 'daily minimum wage' of Rs. 1000 per day in 2021.

A minimum wage of Rs.1000 is **different** to what has been described by the BHRRC Report, which states that 'the *daily wage* of Rs.1000 has not been given by tea plantation companies'. The difference between 'daily wage' and 'minimum daily wage' is significant, especially for the labour rights of the workers who are contesting it and the plantation companies who share in their concerns.

We will therefore seek to clarify the BHRRC Report, establish the facts and respond to the allegations as follows:

(1) Daily Minimum Wage and not the Daily Wage:

All ten named companies in Report 1 of the BHRCC Report, have confirmed that many of their workers were being paid well in excess of Rs. 1000 minimum daily rate prior to the wages board decision. This was stated by the Honourable Court of Appeal in their Order issuing formal notices dated 5<sup>th</sup> April 2021, where the Court rejected the application for interim relief on the grounds that most workers were already being paid far in excess of Rs.1000 and therefore there would be no prejudice caused to plantation companies pending the final decision of the Supreme Court which will consider the wage board ruling to pay the new minimum daily wage rate, due to be heard on 4<sup>th</sup> March 2023.

The Court of Appeal stated: "... by the time discussions commenced in 2020, with regards to a wage increase, approximately 50% of the employees were drawing a salary well in excess of Rs.1000 a day."

The disputes in the BHRRC Report have arisen from the fact that some harder working and therefore more productive tea workers were being paid in excess of Rs. 1000, whilst the least productive workers were getting paid Rs. 880. The decision by the wage board to establish the minimum daily rate to go up to Rs. 1000 caused payment to move away from a productivity based wage regime to a minimum daily wage regime. This unsettled those workers who had been earning more than Rs. 1000 by being more productive and working more hours. Incidentally, several models presented by the Regional Plantation Companies requesting for the productive workers to earn more than the daily minimum rate of Rs 1000, was rejected by the trade unions taking this collective action to the wage board.

The Plantation companies therefore had to make a choice to end the previous productivity benefits, which was not mandated by law and follow the ruling and pay a daily minimum wage to all workers and impose a minimum of 8 hours of work.

The indirect effect of what the wage board's decision has done by imposing this minimum daily wage is:

- Forced men who had previously worked for half a day (4 hours) but enjoyed a full days wages, to have to work a full day (8 hours)
- Women who were working a full day and paid beyond Rs 1000 on the basis of their productivity, to be paid the daily wage and not being rewarded for their productivity.

**We therefore believe there is an indirect gender discrimination to this law and are waiting to see the full impact of what the wage board's minimum daily rate has had on women. We hope that this gender impact assessment will be considered at the Supreme Court Hearing and that the views of female workers will be properly represented on the 4<sup>th</sup> March 2023.**

(2) The Minimum Daily Wage of Rs 1000 is being paid by the named Plantation Companies

The Court of Appeal on the 5<sup>th</sup> April 2021 ruled that no interim relief can be given to any tea plantation whilst awaiting the Court hearing of March 4<sup>th</sup> 2023 and that all tea plantation companies must comply with the wage board ruling that a minimum daily wage of Rs. 1000 is paid.

**All plantation companies that Ahmad Tea buy from and that have been named in the BHRCC Report have started paying the minimum daily wage from the date of this Court of Appeal interim relief refusal hearing on the 5<sup>th</sup> April 2021.** This has been verified by our own independent legal investigations, which confirms that no action has been taken by any worker to the Labour Department for failure to provide the daily minimum wage of Rs 1000 as set by the wage board.

Furthermore, the Chairman of the Planters Association, Senaka Alawattegama (who is also CEO of Talawakelle Plantations) confirms that from the moment the parliamentary gazette was issued stating the need to pay the new minimum wage, all companies did comply<sup>1</sup>.

**Ahmad Tea has received assurances from the Tea plantation companies named that the wage decided by the wage board is paid to every worker who works an eight hour day and that this daily minimum wage is the ‘highest daily minimum wage’ available in Sri Lanka when compared to the other 45 wages boards across Sri Lanka.**

**Report 2:** Horana Plantation Company (Alton Estate) and Maskeliya Plantations (Katukelle Estate)

The Report is misleading in that it implies Ahmad Tea has been supplied by and has a connection with the other Estates that were listed in this Report. This is not the case. Ahmad Tea has bought teas from Alton Estate and Katukelle Estate only and we refer to this part of the Report in isolation.

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<sup>1</sup> Quote from Senaka Alawattegama provided by the Ethical Tea Partnerhips on 3<sup>rd</sup> January 2023.

Due to the criminal charges that have been brought, we are not able to impartially investigate these issues and we trust that BHRRC understands the need for a fair and integral criminal trial, which includes the admissibility of evidence and protection of witnesses under the rule of law when pending a court hearing. Ahmad Tea would be acting in contempt of Court if using commercial influence to investigate criminal charges which are still awaiting trial. Due to this and the fact that BHRRC has given no information on what the revenue-sharing system is and why it has been described by BHRCC as 'unfair', we are only able to rely on our correspondence with Horana Plantation Company and Maskeliya Plantations who have explained that the plantation companies and the workers' unions entered into a collective agreement in 2019 with respect to wages and other matters in which the wages were increased. Part of the agreement reached with the Plantation companies and the Unions was that they would work together to support the improvement of productivity of the industry and that at the Estate level they would move to a productivity lined wage regime based on revenue share/out-grower models.

The Union then changed their direction and moved the Government to constitute a wage board increase based on the minimum daily wage to Rs. 1000 (as outlined above). The renegeing of their commitment to move to a productivity lined wage regime and instead push for a daily minimum wage was not favoured by all the workers and we voice our concern over the discriminatory impact this has had on women who have historically benefited from a productivity lined wage regime.

**We have not seen any analysis on the gender impact that the highly politicised daily minimum wage earnings has had and urgently request BHRCC to investigate this point.**

**We also request that before media allegations are reported by the BHRRC for a company response, that the BHRRC fact checks allegations through human rights protection bodies such as the Sri Lankan Labour Department and the Sri Lankan Human Rights Commission chaired by a prominent female human rights lawyer. This has clearly not been done by the BHRCC; as revealed by the obvious lack of understanding of the issues arising herein.**