

PRAGATISHEEL CEMENT SHRAMIK SANGH

Registration Number – 4060

Head Office – Labour Camp, Jamul, Bhilai (Chhattisgarh), Mo. 9685349162

Branch Office – Rawan (Balauda Bazar), district Raipur (C.G.).

To

Mr Lukas Siegenthaler
Head of the National Contact Point of Switzerland
State Secretariat for Economic Affairs
National Contact Point of Switzerland
International Investment and Multinational Enterprises
Effingerstrasse 1
3003 Berne

Date: 7 January 2012

Dear Mr. Siegenthaler,

Concerns: Holcim Group's companies ACC Limited and Ambuja Cement Limited in India are flouting OECD guidelines

We are writing to you in your capacity as National Contact Point of Switzerland with responsibility for the OECD Guidelines for Multinational Enterprises concerning issues at Holcim's Group companies ACC Limited (Share holding 50.1%) and in Ambuja Cement Limited which from 15 November 2011 stands amalgamated with Holcim (India) Pvt. Ltd.

We, at Pragatisheel Cement Shramik Sangh (PCSS), are a registered trade union (registration no. 4060) representing contract workers in different cement plants in the state of Chhattisgarh. We have a total membership of about 1500 spread over four different cement plants in the state. In this complaint, we wish to bring to your attention a series of on-going breaches of the OECD Guidelines by the Indian cement companies, ACC Limited and Ambuja Cement Limited, both subsidiaries of the Holcim Group.

In this complaint we will primarily focus on:-

- Violation by Holcim of the rights of the contract workers to organize into a trade union and carry on peaceful and legal trade union activities without fear of harassment or dismissal.
- Refusal by Holcim to engage in collective bargaining with registered trade union (PCSS) representing the interests of the contract workers in cement plants.
- Discriminatory practices engaged by Holcim in their treatment of workers
- Violation of human rights of communities surrounding the plants of Holcim

1. BACKGROUND

Contract Workers Are Majority of the Workforce; Engaged in Core Production Work

In the early 1980's, ACC's plant in Jamul employed around 1700-1800 permanent workers and around 1200 contract workers. Over the years, the production capacity of the company has increased, yet its permanent workforce has steadily decreased, while the number of contract workers has remained steady. Consequently, a larger percentage of its workforce is

represented by contract workers, who have no job security, very few benefits and substantially lower wages. As of now (2011), ACC-Holcim factory located in Jamul employs only 300 permanent workers out of a total workforce of approximately 1500 workers – i.e. around 80% of workers at the factory are contract workers.

Contract workers are engaged in all core activities ranging from quarrying operations at the limestone mines, working at the kilns, cement mills, packing house and working on regular maintenance and upkeep of the factory. It would be impossible for the 300 permanent workers of the factory to meet the production target of the plant; hence, it is evident that contract workers are engaged in the core production work of the factory.¹

A similar situation exists in Ambuja-Holcim Cement Factory in Rawan, where contract workers have increased from 50% of the total workforce in 1985, to approximately 80% currently. When production started in 1985, there were around 600 permanent workers and 600 contract workers. While the production of cement has increased from 0.9 MT to 3.5 MT, the number of permanent workers has remained steady at 620, but the number of contract workers has gone up to approximately 2500. These workers are also distributed throughout the plant, engaged in all activities of mining, production, mechanical, maintenance, packing etc.²

So-called 'Contract Work' is Disguised Employment; Contract Workers are Employees of Holcim Group's Companies in Fact

Nominally, the so-called 'contract' workers in the two above-mentioned plants are offered employment through a labour contractor, but the job of the contractor ends as soon as the worker enters the company gates. The worker is assigned work by the company's supervisor and works directly under the company's supervision. The contracts signed by workers with the contractor are merely paperwork, meant to disguise the actual employment relationship between the workers and the cement plant.

In an industrial dispute between the contract workers of ACC-Holcim plant in Jamul and its management, the Learned Industrial Tribunal, in its Award dated 28.2.2006, held that

"Upshot of whole discussion is that there is ample proof on record to show that all the workers under reference worked in the company's various departments, being the employees of the company.... That, the contracts of the company with contractors were sham and camouflage to avoid the rigours of labour laws."

¹ Annexure 1 is a table which lays out approximately how many contract workers are engaged in which activities in the ACC-Holcim plant in Jamul. Annexure 2 lays out the map of the plant with different units. Annexure 3 has photos of contract workers conducting different operations in the plant, many of them risky. The fact that they are contract workers is evident from the white color of their helmets—permanent workers wear yellow helmets.

² Annexure 4 is a statement by Suresh Kumar Bagre, general secretary of the of Chhattisgarh Cement And Khadan Employees Union (INTUC) registration no. 85, which lays out the numbers and distribution of contract workers throughout the Ambuja-Holcim plant in Rawan.

The Learned High Court, in an order dated 22.3.2011, also agreed with this, and held that the contracts are sham and bogus.³

Cement Wage Board Agreement of 1983 and Domestic Law prohibit Contract Labour in the Cement Industry with some exceptions; mandate pay scales equivalent to Permanent Workers

In 1983, both Ambuja Cement Company and ACC Limited were signatories to the Award of Board of Arbitrators (RP Nevatia and G Ramanujam), popularly known as the Cement Wage Board Agreement. This award was the result of an 18-month long arbitration under Section 10A of the Industrial Disputes Act, 1947 in the matter of a dispute between workmen of the Cement Industry and employers of the Cement Industry, represented by the Cement Manufacturers Association (which included both ACC and Ambuja). After Holcim took over ACC and Ambuja, the companies withdrew from the Cement Manufacturers Association, and hence Holcim is not bound by the more recent changes to the Cement Wage Board, but remains legally committed to the Cement Wage Board Award as signed in 1983. According to this Award, “no contract labour shall be employed in the industry by the employer, except in loading (including packing) and unloading operations.” Even in the few instances where contract labour can be engaged, the award stipulates that contract workers should be paid on par with employed workers, including the payment of bonus, allowances and other benefits. The award also lays down the wages of workers according to different categories, the minimum of which is significantly higher than the state-mandated minimum wage.⁴

In addition to the Cement Wage Board which is applicable only to the cement industry, India also has the Contract Labour (Regulation and Abolition) Act which clearly stipulates that contract workers can only be sparingly employed by the companies, and only for jobs that are not of perennial nature, or are not central to the work of the industry. In cases where agreements exist between workmen and management providing additional benefits to contract workmen (such as the Cement Wage Board Agreement), these agreements supercede the Act. The Act also specifically stipulates that it is the responsibility of the Principal Employer (Holcim group companies in this case) to ensure that contract workers are receiving wages and benefits as mandated by law, within the stipulated payment period.⁵

Holcim group companies, ACC and Ambuja, have been flouting both —the Cement Wage Board agreement in relation to contract workers, as also the Contract Labour (Regulation and Abolition) Act. Not only is contract labour prevalent throughout the plants, but —as we show below — the contract workers are not being given the statutory wages and benefits, and there is also a large gap between wages given to permanent employees and the so-called ‘contract’ workers.

2. HOLCIM GROUP COMPANIES VIOLATE THE RIGHTS OF CONTRACT WORKERS TO ORGANIZE

The managements at ACC-Holcim, Jamul and Ambuja-Holcim, Rawan have employed several tactics to stop contract workers from organizing themselves into a trade union—

³ Relevant extracts from the Industrial Tribunal Award dated 28.2.2006 and the judgment of the Chhattisgarh High Court dated 22.3.2011 are given in Annexure 5.

⁴ Relevant extract from the Cement Wage Board Award of 1983 is given in Annexure 6

⁵ Relevant extract from the Contract Labour (Abolition & Regulation) Act is given in Annexure 7

ranging from dismissal of employees to foisting of false criminal cases against them. The precarious nature of employment of contract workers makes them particularly vulnerable to the coercive tactics of the management. Some instances are listed below:

ACC-Holcim Intimidated Contract Workers who had Filed Petitions Against the Company

The management responded with threats, coercion and violence to the efforts of Pragatisheel Cement Shramik Sangh in assisting contract workers to file petitions in the Labour Court to secure their right to permanent employment, in accordance the law.

- Denial of work: When contract workers first organized and lodged a legal complaint against the company, the management punished them by drastically cutting down the number of days for which the workers were given employment. Workers who had been working for 25-26 days in the months before, started being offered work for 2, 3 or 5 days a month; month after month. Some workers are still being harassed for being a member of PCSS and taking part in litigation against the company, by withholding of their benefits.⁶
- Coerced into accepting retirement: Many of the workers who had participated in the Union's complaint against the management were forced to accept voluntary retirement and look for work elsewhere. Some of them did so because they were being denied work for months on end; others did it because they were threatened with dire consequences if they refused to proceed on voluntary retirement.⁷ Out of 350 employees who were still working at the beginning of the litigation, over 200 were forced out in this manner in the next 5 years before the Industrial Tribunal announced its award.

ACC-Holcim lodges false criminal and civil cases against Union members for participating in Union activities

The company has lodged multiple cases against Union office-bearers and other active members. Some of the Union members have upwards of 10 cases against them⁸. Most of these cases arise out of petty criminal complaints of 'disturbing public tranquility' which are filed by the company when union members engage in democratic protests or demonstrations organized by the Union. Since these cases drag on for 8-12 years, and presence at each hearing is necessary, this means that each falsely accused Union member has to devote several days per month just to attend court cases. Given that Union members are all contract workers, each day spent at the court means the loss of a day's precious wages. Hence, the court process itself is a greater punishment than any that would result from a conviction under the offence.

In addition to criminal cases, the company has also filed a civil suit against the office-bearers of the Union, and other active members, for a claim of Rs. 8,200,000. This is supposedly to compensate the company for loss of productivity due to Union activities, but is actually an

⁶ Annexure 8 is a statement by three casual labourers of the ACC-Holcim plant, in which they recount how they were given 0 days of work for a year, in order to punish them for participating in litigation, and their benefits are still being withheld by the company.

⁷ Annexures 9 and 11 are statements by two contract workers of ACC-Holcim plant, in which they recount how they were forced to accept voluntary retirement by the company officials.

⁸ Annexure 12 is a statement by a contract worker of ACC-Holcim, who was dismissed for being an active member of the Union and still has 14 cases lodged against him, including a civil suit.

effort to destroy the trade union itself. Given that the respondents are all contract workers, who make approximately Rs. 4000 each month, the value of the claim is itself laughable.

ACC-Holcim employs other techniques to harass workers associated with PCSS

The company has dismissed some workers who have been active in union activities⁹. In other cases, the company harasses union members by placing them in difficult jobs where the work is dangerous¹⁰. In one case, the company forced the union office-bearer to work continuously for 32 hours, simply in order to frustrate his efforts to join his PCSS colleagues in a public meeting called by the Union¹¹.

ACC-Holcim denies benefits to those contract workers who are associated with PCSS, while extending them to other contract workers

Another way by which the management actively violates the rights of the workers to be associated with a trade union of their choice is by actively discriminating against workers associated with PCSS. In words of the Vice-President of PCSS:

“In order to put pressure on the contract workers associated with Pragatisheel Cement Shramik Sangh, the company gives benefits to those contract workers who are not associated with our union, and actively discriminates against those who are our members. For instance, contract workers associated with Chhattisgarh Cement Karmchari Sangh get 20% bonus, travel allowance, Wage Board arrears and Performance Bonus at the rate of Rs 22.42 per day. Contract workers with our union do not get travel allowance or wage board arrears, and only 8.33% bonus, and Performance Bonus at the rate of Rs. 8.97 per day.”¹²

Such discrimination amongst workers is prohibited under domestic and international law as an unfair labour practice.

Ambuja-Holcim illegally dismisses workers with PCSS for demanding their statutory rights

Contract workers in the Ambuja-Holcim plant have been denied even their statutory minimum rights (such as an 8 hour work day, government mandated minimum wages, basic safety equipment). PCSS has been trying to organize these workers for the past year to demand these basic rights, but the company has been regularly penalizing workers for being associated with the union. Between 80 - 100 workers have been illegally dismissed for participating in union activities. Workers are informed, with the connivance of the Ambuja-Holcim company, that the work with their contractor is ending, and hence they are let go. However, the contractor's work does not really end—it merely ceases for a period of a week

⁹ Annexure 12 is a statement by a contract worker of ACC-Holcim, who was dismissed for being an active member of PCSS.

¹⁰ Annexure 13 is a statement by a contract worker of ACC-Holcim who has been given a dangerous and difficult job to perform, simply because he is actively engaged with PCSS.

¹¹ Annexure 14 is a statement by a contract worker of ACC-Holcim, who is a member of the Executive Board of the Union, and who was prevented from attending a public function of PCSS by being put to work for 32 hours straight.

¹² Annexure 15 is a statement by the Vice-President of PCSS, documenting, inter-alia, the discrimination against contract workers of ACC-Holcim associated with PCSS.

or so, and at the end of this period, the contractor replaces the active union members with new workers and restarts the same work.¹³

The Union has complained to the appropriate government authorities about this, and the Assistant Labour Commissioner (Central), i.e. a representative of the Union government, has started conciliation proceedings, but the company has remained absent from most of these meetings. The company has also taken punitive action against its employees who attended these meetings by dismissing them from work.¹⁴

Ambuja-Holcim lodges false criminal complaints against Union leaders and active members, leading to their arrests, dismissals, false cases

In March 2011, security officers of Ambuja-Holcim lodged false criminal complaints against 8 of the leading union organizers, resulting in arrest warrants against all of them and forcing all the organizing activity in the area to come to a standstill. It can be easily demonstrated that the Union leaders were not even present at the incident site at the time it is alleged that the security guards were roughed up in a scuffle¹⁵. Yet, the company, with the connivance of the local administration, has successfully managed to have a Union leader put away in jail for the past 8 months. The company is utilizing this opportunity to intimidate all workers in the area, and prevent them from opposing the company in any form.

Interestingly, prior to this alleged incident, contract workers in the Ambuja-Holcim company had filed criminal complaints against the same security officers who are the complainants in the above incident, for criminal intimidation and violence against workers. However, not only has no action been taken on those complaints, rather the contract workers who filed the complaint have been dismissed and false criminal cases have been put against those workers as well.¹⁶

The company has lodged multiple cases against office-bearers of the Union, and has even tried to implicate their family members in criminal offences, which are demonstrably false. In one case, the union members and members of the affected family were sitting with the Sub Divisional Magistrate in his office, discussing the false arrests of some other union members,

¹³ Annexures 16 and 17 are statements by two contract workers with Ambuja-Holcim who describe how they were dismissed for taking part in Union activities and demanding their rights.

¹⁴ Annexure 18 contains the correspondence of the Union with different government authorities raising, inter alia, the issue of illegal retrenchment of contract workers. Letters by the Union to the Additional District Magistrate dated 19.10.10 and to the Assistant Labour Commissioner dated 13.12.2010 talk about more than 75 contract workers being dismissed. Since then even more workers have been dismissed by the company. Annexure 17 also contains a statement from a worker who attended these meetings, and describes that another worker was dismissed from work simply for attending these meetings.

¹⁵ Annexure 19 contains the complaint filed by the New Trade Union Initiative – an Indian Trade Union Federation to which PCSS is affiliated - with the Labour Secretary, Union of India, dated 22-3-2001, about victimization of union activists of Pragatisheel Cement Shramik Sangh and others in Rawaan village, Chhattisgarh, and documents the particulars of this and related incidents.

¹⁶ Annexure 20 contains the statement of one of the contract workers who made a complaint against a security officer. This security officer later filed a false criminal complaint against the union leaders leading to the arrest of one of them. The statement documents the harassment faced by the contract worker and his subsequent dismissal from the company.

when the company officials called up the police station to complain that at that very time, these family members were engaging in criminal behavior in front of the company gate.¹⁷

3. REFUSAL OF HOLCIM GROUP COMPANIES TO ENGAGE IN COLLECTIVE BARGAINING WITH PCSS TRADE UNION REPRESENTING THE INTERESTS OF CONTRACT WORKERS

Despite multiple initiatives taken by PCSS, the managements of Holcim group's companies have repeatedly refused to engage in conversations with the Union or come to the negotiating table with them.

ACC-Holcim refuses to meet with Union representatives; Refuses to accept representation

Prior to the passing of the Industrial Court Award in 2006, the management would refuse to meet with the PCSS Union representatives on the excuse that they are not a "Representative Union." After the Award of the Industrial Court in an Industrial Dispute relating to regularization of contract workers in favor of the Union, the management refused to meet with the workers saying that they would meet with them, only if they come in their individual capacity and not as Union representatives.¹⁸

Since 2006, the management does meet with Union representatives, although it still does not engage in collective bargaining. Even when it assures the workers that it has accepted certain demands of the Union in principle, it does not implement those agreements.¹⁹

In 2011, when the Union representatives went to meet with company officials to urge the implementation of the order of the Honorable High Court of Chhattisgarh regarding regularization of contract workers, the company officials refused to receive the representation made by the Union, which had to be eventually sent to them through a courier.²⁰

ACC-Holcim refuses to attend conciliation proceedings to resolve issues of contract workers

The Union has made several representations to the designated government authorities on denial of rights to contract workers. When the designated government official (the Assistant Labour Commissioner, ALC) has initiated conciliation proceedings to resolve the issues, the management of the company is routinely absent from such meetings and does not even bother to inform the Union or the ALC office of the reasons for its absence²¹.

ACC-Holcim refuses to negotiate, worker Maqbool Ali dies without any relief

Contract workers have now been demanding regularization of their employment for over two decades. Meanwhile, two courts have ruled that the contracts under which the workers are employed are "sham and bogus" and they should be given regular employment. Instead of

¹⁷ Annexure 21 is the statement by the secretary of the local PCSS branch, documenting several instances of false cases against union members.

¹⁸ These details are listed in Annexure 15, which is a statement by the Vice-President of PCSS, in points 8 and 9.

¹⁹ For instance, in 2009, in response to the demands of the Union, the company assured the contract workers that they will be provided with full safety gear by July 2009, but these have yet to be given to them. See Annexure 15.

²⁰ Copies of the letter sent by the Union and the reply eventually received from the company are in Annexures 22 and 23.

²¹ Annexures 24 and 25 are letters from the ALC office documenting the absence of the company in several conciliation proceedings. The statement of the Vice-President of the Union mentions them in Annexure 15, point 11.

complying with these orders, the company has appealed them in higher courts.²² The union has repeatedly urged the company to come to the negotiating table and not indulge in further litigation.²³ However, the company has pointedly refused to talk with the union,²⁴ and has instead appealed the latest order in the High Court. Given the slow rate of disposal in Indian courts, this means that it may take another five to ten years, before the matter is disposed off finally. In the meanwhile, many of the original workers who had made the complaint two decades ago, have left the company, grown old and infirm, and will not be able to benefit from a permanent job, even if the final ruling is made in their favor.

Particularly poignant is the case of Maqbool Ali, who worked for more than 25 years as a contract worker at ACC-Holcim. His long years of work transporting slag had caused him to suffer from respiratory disorders, including asthma. He was a key member of the union, and his testimony in the Industrial Court is central to the case. The company was ordered by the Industrial Court to give him permanent employment in 2006, and this order was again upheld by the High Court in 2011, but the company has appealed the order. Unhappily, Maqbool Ali passed away this July. He remained a contract worker with ACC-Holcim throughout his 25 years of work, and died before he could get any relief. It is to prevent more such cases from happening that the Union is asking the company to negotiate with the workers, than drag them through lengthy litigations that few of them will survive.

Ambuja-Holcim refuses to attend most conciliation meetings called by the Assistant Labour Commissioner (Central) or abide by the agreement reached in the meeting

Contract workers at Ambuja-Holcim under the aegis of PCSS have filed a complaint with the appropriate government authorities, including the labour department, regarding non-payment of minimum wages, overtime wages, illegal retrenchment etc. Acting on these complaints, the Assistant Labour Commissioner (Central) held eleven meetings in Raipur on 5 December 2010, 7 January 2011, 27 January 2011, 2 February 2011, 18 February 2011, 4 March 2011, 25 March 2011, 27 April 2011, 11 May 2011, 26 June 2011 and 13 July 2011.²⁵

Of these various meetings, the company has been present for only one meeting, which was held on the 27 January 2011. At this meeting, the company representatives agreed to many demands of the Union, such as provision of Employment Card, Wage slips to contract workers, opening of Provident Fund accounts for contract workers, the provision of sanitation facilities for workers.²⁶ At this meeting, the company requested additional time to consult with its departments on taking back illegally retrenched contract workers, and the next meeting was scheduled for 2 February 2011. However, the company never attended any subsequent conciliation meeting, nor has it abided by the agreement reached. The intransigent nature of the company has delayed solving these disputes in an amicable way.

²² See Annexure 5 for relevant extracts of the Industrial Court Award and the Chhattisgarh High Court judgment.

²³ Annexure 22 is the copy of the letter that was sent to the company by the Union on 20.4.2011

²⁴ See Annexure 15, the statement of the Vice-President of PCSS

²⁵ Annexure 18 contains the correspondence of the Union with the Additional District Magistrate raising six issues around employment of contract workers, and with the ALC for another three issues. The annexure also contains the letter of the ALC directing the company to attend the conciliation meetings.

²⁶ Annexure 26 contains the proceedings before the Assistant Labour Commissioner (Central) Raipur dated 27.01.2011, 2.2.2011 and 18.2.2011 documenting the conciliation agreement reached and subsequent absences of the company representatives.

Promises made by top officials of Holcim and Holcim group companies in India have not been followed

In July 2008, in response to strong protests against exploitative practices employed by Holcim group companies in India, top officials of Holcim and Holcim group companies in India agreed to meet with representatives of affected farmers and contract workers. On behalf of Holcim, this meeting was attended by Mr. Peter Geysel – Deputy Head, Corporate Communications, Holcim (Switzerland), Mr. Toshniwal – Business Head, Northern, Ambuja Cements, Mr. Karmakar, ACC-Holcim, Mumbai, and Mrs. Pearl Tiwari – Vice-President and Head, Ambuja Foundation, Mumbai.

Farmer and Labour representatives meeting with these top officials made oral and written representations highlighting the various problems being faced by them, such as the non-compliance of the Rehabilitation policy of the state, the gross violation of labour laws, issues of development, environment related issues, and exploitation of natural resources of the state.²⁷

Even after this meeting, where top officials of the Holcim group's companies were informed about various problems, there has been no effort by the management to resolve any of these problems. While the officials agreed in principle to some demands, such as disbursement of government mandated minimum wages to contract workers, and legally mandated double wages for overtime work, even these minimum standards are not being maintained in these plants. One of the plant employees of Ambuja-Holcim who attended this meeting to raise some of the employee related issues was punished by being transferred to a faraway location.²⁸

4. HOLCIM GROUP COMPANIES ENGAGE IN DISCRIMINATORY PRACTICES AGAINST CONTRACT WORKERS

The very practice of engaging contract workers to carry out core operations is an attempt by the Holcim group's companies to avoid the responsibilities of an employer towards his workforce and to exploit the vulnerability of the workers to increase the profits for their shareholders. Consequently, there are large differences between the wages and benefits provided to the permanent workforce and the contract workers, even though they may be employed in the same department, doing similar work. This discrimination flouts the universally accepted principle of "Equal work, equal pay" and is in violation of the Cement Wage Board Agreement as well. Some of the instances of discrimination are given below:

- a. *Minimal and sub-minimal wages to contract workers:* Under domestic Indian law, every worker is entitled to receive subsistence level wages, called Minimum Wages, and it is the responsibility of the Principal Employer to ensure that all workers are receiving their wages in the requisite time. Currently, the minimum wages in the state of Chhattisgarh range from Rs. 164 to Rs. 181.50 (i.e. \$3.28 to \$3.63)²⁹ per 8-hour

²⁷ Annexure 27 contains the representation made to Holcim officials on 8.7.2008 regarding problems faced by farmers and contract workers with the ACC plant in Jamul and the Ambuja plant in Rawan.

²⁸ Annexure 28 contains the Press Note released by representatives of farmers and contract workers who met with top officials from Holcim company, including those from Switzerland, on 8th July 2008.

²⁹ The exchange rate is taken as \$1=Rs. 50

workday depending upon their skill level, and workers in urban areas are also entitled to Rs. 10 per day city allowance.

In ACC-Jamul plant today, the contract workers are paid between Rs 169 to Rs 210 per day, depending upon their level of skill and their experience (the upper limits are slightly above the minimum wage rate for their skill level) which usually leads to a monthly income of Rs. 3,000 – Rs 4,000.³⁰ In comparison, permanent workers and casual workers are paid Rs 13,000 to 15,000 per month; rates which are comparable to the ones mandated in the Cement Wage Board Award.³¹

Many contract workers in ACC-Holcim are not even receiving the legally mandated minimum wages. The contract workers in the mines are being paid only Rs. 120-130 per day, and several contractors do not pay their workers Rs. 10 per day of the city allowance.³²

The situation in Ambuja-Holcim is even worse – many contract workers at the Rawan plant are not even receiving government stipulated minimum wages, which flouts the Minimum Wages Act of the Government of India. A few years ago, this practice of paying subminimum wages was more widespread, but after PCSS started organizing the contract workers, many of them are now receiving minimum wages.³³ However, even now, it is estimated that more than 100 contract workers are receiving subminimum wages.³⁴ Even these paltry wages are paid erratically to these workers. None of the contract workers are given any wage slips, as mandated by law, and hence it is impossible for them to furnish proof of how much they are paid, or when they are paid. The permanent workers at Ambuja-Holcim make wages comparable to those of their counterparts in ACC-Holcim and roughly follow the wage guidelines of the Nevatia award.

- b. *Employment at will*: Unlike permanent employees, the company can fire contract workers and alter their working conditions at will. Contract employees who raise their voices against poor working conditions are simply retrenched (as documented above), or punished by being given fewer days of employment per month (above). The employer does not show any reason, or offer any benefits to a contract employer who is dismissed.
- c. *Erratic Payment of Wages*: Contract workers at Ambuja-Holcim are often paid very erratically, much later than the date when their payment becomes due. This flouts the Payment of Wages Act, 1936 and also the Contract Labour (Regulation & Abolition) Act, 1970 which makes it the responsibility of the Principal Employer to ensure that wages are paid on time. Several workers have not been paid for the past

³⁰ Annexure 29 has wage slips for the month of November 2011 from several contract workers at ACC-Holcim., showing that they are being paid at the rate of Rs. 169 to Rs. 182 per day (including city allowance), and also that some contractors are not paying them at the increased minimum wage rates (of Rs. 164 per day), and are in violation of the Minimum Wages Act.

³¹ Annexure 30 has wage slips from casual workers and permanent workers showing monthly wages of Rs. 13,000 to Rs. 14,000 per month.

³² Such instances are detailed in the statement of the Vice-President of PCSS in Annexure 15.

³³ See Annexures 16, 17, 20 and 31 for statements from contract workers at Ambuja documenting that they were being paid subminimal wages even in 2010 and simply dismissed when they demanded minimum wages.

³⁴ See Annexure 4 where the General Secretary of Chhattisgarh Cement & Khadan Employees Union (INTUC) gives instances of places where the contract workers are still being denied minimum wages today.

two months and are facing severe financial crisis³⁵. While permanent employees get paid regularly on time, and receive documentation in the form of wage-slips, contract workers in Ambuja-Holcim have no documentation of prior payment and current non-payment of wages.

- d. *Denial of pension and provident funds:* The Indian law makes it mandatory for employers to enroll their workers in Provident Fund schemes (PF), which ensure emergency funds and pension funds for the employees. Both employees and employers contribute to the PF funds, and full details of these deposits have to be given to the employees. While this is applicable for all workers, permanent or contract, in practice full use of these benefits is usually available only to permanent employees.

At ACC-Holcim, contract workers have been enrolled in such schemes but most of them have not received full documentation of their PF accounts³⁶, consequently, many of them are denied pension benefits³⁷.

Many contract workers at Ambuja-Holcim are not being given any PF benefits³⁸. Even though on 27 January 2011, the management of the company along with the representatives of the contractors agreed before the Assistant Labour Commissioner (Central) that PF accounts for all contract workers will be opened within 2 days³⁹, most contract workers still do not have any Provident Fund accounts.

Even those contract workers whose PF contributions are being deducted from their wages have not been given any receipts, nor have they been given a PF account number. Since many contract workers at Ambuja-Holcim do not receive any wage slips from either their Principal Employer or their contractor, they are not aware how much, if any, deductions are being made for the Provident Fund, and what their PF accounts are. They also have no proof of how long they have been employed at the plant, and hence all this makes it impossible for them to claim any pension benefits later on.

- e. *Health Benefits:* In ACC-Holcim, permanent employees get access to the company-run hospital, but such access is denied to contract employees (although, they used to be given such access earlier). Instead, the contract employees of ACC-Holcim are supposed to be covered under the state-run ESI (Employers State Insurance) scheme, for which deductions are being taken from their pay every month. However, in many cases, deductions are happening on a monthly basis for several months (in a few cases, up to 2 years), but the employees have not yet received their ESI card

³⁵ Annexure 31 is a statement by a contract worker in Ambuja-Holcim documenting how he has not received any payment for the two months of work in November and December 2011.

³⁶ See Annexure 15 for a statement by the Vice-President of PCSS regarding the problems of PF accounts in ACC-Holcim Jamul.

³⁷ See Annexure 9 for the statement of a contract worker of PCSS who is being denied pension funds from the PF account after they have become due to him.

³⁸ See statements by contract workers in Ambuja-Holcim in Annexures 31 and 32, deposits on whose behalf are not being made into any PF accounts. Annexure 33 shows the wage slip of one such worker documenting that no deductions for Provident Fund deposit is being made from his wages in June and July 2011.

³⁹ See Minutes of the conciliation proceedings before the Assistant Labour Commissioner (Central) in Annexure 26

which proves their eligibility to receive ESI benefits⁴⁰, showing that the company has not yet forwarded the names of these employees to the ESI offices.

In ACC-Holcim, currently the company is forcing contract workers to undergo a medical examination to judge their fitness to perform duties. Workers are apprehensive that this medical examination conducted by company doctors will be used to target those contract workers who are members of the Union, particularly those whom the Industrial Court and the High Court have considered eligible for regularisation. Additionally, after the examination is conducted, the contract worker has to bear the entire costs of any additional tests or treatment which he is mandatorily required to undergo following the examination⁴¹. The Union has repeatedly asked the management that the workers should be allowed to submit records of medical exams conducted by independent doctors with the ESI dispensaries, since the workers are eligible for free consultation and treatment under the ESI scheme, but the company has not yet responded to their demands⁴².

In Ambuja-Holcim at Ravaan, contract employees do not even receive ESI benefits and consequently, receive absolutely no health benefits as a result of their employment. The permanent employees, along with their families are permitted full and free use of all facilities of the hospital set up by the Ambuja Foundation, and any referrals for treatment made by the hospital. However, contract workers, like all other residents of the village are only permitted to make use of the hospital's outpatient facilities.

- f. *Safety*: Workers complain that the more difficult and dangerous jobs are largely given to contract workers. When a worker is required to, say, conduct some welding at a height, hanging from a harness, it is always a contract worker who is asked to do the job. Jobs that require getting into the grinding cell of the raw mill for cleaning, or getting into some pipe are also preferentially given to contract workers. Jobs involving working in the high temperatures of the kiln, that were initially only given to permanent workers, are now all being done by contract workers who receive minimal training and facilities⁴³. Sometimes contract workers are given dangerous jobs as a punishment for participation in union activities⁴⁴.

Many of the accidents caused in the plants are due to gross negligence of the company officials, and their absolute indifference towards the safety and security of their workers. On 15th August 2010, 4 workers, including 3 casual workers were severely burnt in an accident in the ACC-Holcim plant in Jamul, which resulted solely due to wrong instructions given by the company officials to workers, who were being

⁴⁰ See statements by two ACC-Holcim contract workers who have not yet received their ESI cards and their respective payslips showing ESI deductions in Annexures 34-37

⁴¹ Annexure 38 contains a statement by a contract worker of ACC-Holcim documenting how he had to spend considerable money from his own pocket in order to comply with the medical examination requirements of the company and was threatened that he would be declared medically unfit, if he refused to obey them.

⁴² Annexure 39 is the letter written by the Union raising this demand.

⁴³ Annexure 40 is the statement by the treasurer of PCSS documenting some of the dangerous jobs in the ACC-Holcim plant that are now being done by contract workers. Annexure 3 has photos of contract workers performing many of the unsafe jobs.

⁴⁴ See Annexure 13 for the statement of a contract worker in ACC-Holcim

forced to perform a risky job for which they had received no training.⁴⁵ Of these 4 workers, 2 eventually lost their lives as a result of this accident and 2 others have had to undergo long treatments. The casual attitude of the company towards the lives of workers is evident even in the tardy treatment and paltry compensation that was awarded to the family of the deceased contract worker⁴⁶.

ACC-Holcim has repeatedly refused to give gumboots and raincoats to contract workers who are expected to work in the open during rainy season, although such protective gear is provided to all permanent employees⁴⁷. Even safety glasses and masks are not replaced when they become dysfunctional due to wear and tear⁴⁸.

In Ambuja-Holcim, the company provides only safety helmets to contract workers and no other safety equipment. Safety boots are provided only if the worker makes a payment for them. If a safety helmet gets damaged for any reason, the worker has to shell out the entire cost of the helmet from the paltry wages he gets. Contract workers are repeatedly injured in workplace accidents, but the company has taken no steps to ensure observance of safe practices⁴⁹.

- g. *Food and housing benefits*: In ACC-Holcim, permanent workers are allotted housing quarters in the Housing Colony of the company, and are given Housing Allowance if they chose to stay elsewhere. They are also eligible for Housing Loans. However, contract workers get no such benefits. Canteen rates are also different for contract and permanent employees—a plate of rice that the permanent worker can purchase for Rs 4.50 is available to the contract worker for Rs. 20⁵⁰.
- h. *Overtime wages*: By law, all workers are required to be paid overtime at the rate of double their regular hourly wages, when their work exceeds 48 hours a week, or 9 hours a day. While permanent employees at ACC-Holcim and Ambuja-Holcim are given this benefit, it is routinely denied to many contract workers at these plants. In ACC-Holcim, many contract workers are made to work 200-250 hours of overtime in a month, which is a flagrant violation of a worker's right to an 8 hour workday. In Ambuja-Holcim, security guards are required to work for 12 hours every day.⁵¹

⁴⁵ Annexure 41 contains the statement of New Trade Union Initiative, "Swiss Multinational kills workers" documenting the accident in ACC-Holcim plant in Jamul on 15 August 2010.

⁴⁶ Annexure 42 is the statement of a contract worker who witnessed the fatal accident in the plant caused by gross negligence and carelessness of the company management, and illustrates the indifference of the company towards workers' lives, and that the discrimination between contract and permanent employees continues even in cases of death.

⁴⁷ See Annexure 40, which contains the statement of the treasurer of PCSS.

⁴⁸ See Annexure 13 for the statement of a contract worker in ACC-Holcim who is repeatedly denied functional safety gear.

⁴⁹ Annexure 43 is the statement of a contract worker of Ambuja-Holcim who has suffered two major accidents while working for the company, documenting the gross violation of safety standards in the company and its indifference towards health and safety of contract workers.

⁵⁰ Annexure 40 is the statement of the treasurer of PCSS regarding the differential benefits available to contract and permanent workers.

⁵¹ For details in ACC-Holcim, see the statement of the Vice-President of PCSS in Annexure 15 which documents some such instances. For details about Ambuja-Holcim, see the statement of the General Secretary of the Chhattisgarh Cement & Khadan Employees Union in Annexure No. 4 which gives instances of contract workers who do not receive overtime wages.

It should be noted that the practice of denying overtime wages to contract workers is a widespread practice, especially in Ambuja-Holcim plant⁵², despite the assurance of top officials in July 2008 that this practice would be curbed.

5. Violation of human rights of communities surrounding the plants of Holcim

When Holcim-affiliated cement plants were initially set up, vast amounts of agricultural lands were acquired from local farmers for situating these plants. The official rehabilitation policy of the Chhattisgarh state clearly lays down that when private agriculture lands of farmers are acquired, one member of each such affected family must be given permanent employment in the said concern. This policy has explicitly stated that temporary, contractual employment would not qualify as rehabilitation. However, in the case of both the Jamul and Rawaan plant, even now, there are a large number of farmers who have yet to be rehabilitated in terms of permanent employment, despite the fact that they have been making representations to various successive managements.

Non-Compliance with Rehabilitation Policies of the State and Non-Fulfillment of Promises

Several hundreds of acres of fertile agricultural land was acquired for the Cement Plant affecting several hundred families. This land for the plant had been acquired in the year 1983 by Modi Rubber and an agreement was executed assuring the following.

1. Locals would be given preference in employment.
2. One member from each family of those farmers whose lands are acquired, would be given permanent employment as per their capabilities and requirement.
3. In training related to industrial activity, locals would be given priority.

Modi Rubber sold the plant to Ambuja Cement, later acquired by Holcim, but the farmers who have lost their land cannot be denied their rights by a simple change of management or transfer of the ownership of the company. While Holcim can naturally not be held responsible for the decisions of previous managements, it can also not be exempted from the liability of providing employment as had been assured by its predecessors.

Destruction of Local Livelihoods in Rawan area; Migration of local families to other areas for work

The arrival of the cement plant has destroyed the livelihoods of many local families who were dependent upon land. Those families which owned land got a little bit of compensation, but only around 50 local families got a permanent job out of the hundreds whose land was acquired. Additionally, there were a large number of landless peasants, mainly belonging to the Gond (Adivasi) communities or other marginalized communities, who earned their livelihoods by working on other people's lands. These peasants have been dispossessed of their livelihoods when the company took over the lands where they worked, and despite making several representations to the company, they have never been rehabilitated in any way.⁵³

⁵² See Annexures 31 and 32 for statements from contract workers at Ambuja-Holcim who are not receiving overtime wages. Annexure 33 has wage slips from of a contract worker demonstrating that overtime (5.5 days in July 2011 and 1 day in June 2011) are being paid at the regular daily rate.

⁵³ Annexure 44 which contains the statement from an adivasi resident (member of an indigenous community) documenting the ill-effects of the Ambuja –Holcim company on the livelihoods of marginal farmers and landless peasants, resulting in increased migration of these families to other areas in search of livelihoods.

The arrival of the company has also caused a decrease in the productivity of the land. First of all, the amount of water utilization by the company, and its capture of local water sources, has adversely affected the availability of water for irrigation purposes. The company has rented borewells of local farmers allowing it to exploit local water sources in an unchecked manner, at the expense of drying up the aquifers of the local communities. In the year 2011, the company also diverted the water from the irrigation canal to its power plant, which otherwise would have filled the village ponds of more than 40 villages downstream of the diversion. Secondly, the dust pollution caused by the activity of the plant and the mines causes the dust to settle on the agricultural land, decreasing its agricultural productivity. Consequently, the productivity of the land has now gone down to a half or quarter of its productivity a few years ago.⁵⁴

Because of this loss of livelihood, many local families are being forced to migrate every year to other areas looking for work.

Reverse Discrimination against local youth in Rawan looking for employment in the Ambuja-Holcim factory

Ambuja-Holcim plant has employed a deliberate policy of employing outsiders, even for short term work, thus perpetrating a reverse chauvinism against the local villagers. Their understanding is that local youth are more forceful in demanding their rights and building local linkages. Thus, only about 50 local people are employed in permanent jobs (whereas permanent workers number around 650), while out of 2300 contract workers, only about 30% are from the local area. In this way, the local population suffers doubly—their lands are taken away by the company, and jobs resulting from the company are deliberately denied to them.⁵⁵

Even in cases where local persons are employed by the company in Rawaan, willful arbitrariness in giving employment is obvious: in some cases, all adult members of a particular family have been given permanent jobs; while in nearly half of all families whose land was acquired for the plant, not even a single member has been granted a job, even as a contract worker.

Structural damage due to blasting in the Ambuja mines; danger to the safety of residents in the neighboring villages

Villagers in areas neighbouring the mines complain that blasting occurs dangerously close to inhabited areas. Most of the houses in these villages are mud houses and a large number have been damaged due to the vibrations caused by blasting. Even newly built permanent structures have developed cracks or their roofs have collapsed⁵⁶. While the villagers have sought compensation from the company, none has been granted so far.

⁵⁴ Annexure 32 contains the statement of a village 'panch' of Bhadrapali village documenting the fact that the Ambuja-Holcim company has denied employment to local, affected populations, caused severe water shortage and adversely impacted local agriculture. Annexure 45 is the statement of the Head of the Village Committee of Pausari, a village neighbouring the mines of Ambuja-Holcim, documenting the impact of the company on the availability of water, farm productivity, and livelihoods in the area.

⁵⁵ This fact is mentioned in the statement of an Adivasi resident of village Rawan in his statement in Annexure 44. That few jobs from the company are available to local residents is also mentioned in the statement of the 'panch' of Bhadrapali in Annexure 32 and in the statement of the Head of village committee of Pausari in Annexure 45.

⁵⁶ Annexure 46 contains photos from village Pausari showing structural damage to village houses due to mining activity.

It is reported that blasting activity occurs so close by that rocks also occasionally rain upon the inhabited areas in the village. Around 2-3 months ago, residents of village Pausari reported that a very heavy rock weighing nearly 40 kgs fell on the village land next to a house. This is a constant source of danger to the resident population in the village⁵⁷.

Encroachment of public lands by Ambuja-Holcim plants, Brutal suppression of those who protest against such encroachment

The company has encroached upon large tracts of common village land in the village of Bhadrapalli. After making several representations to the company protesting this encroachment, the villagers have now lodged a case against the company⁵⁸.

Additionally, the Children's Park made by the company next to the Housing Colony for its permanent staff has also encroached upon public government land. Families who have resisted the company's plans to encroach upon their land have had to face severe harassment, including physical attacks on family members, attacks on their quarters, stoppage of work of any employee in the family etc.⁵⁹

The school run by Ambuja Foundation for the children of its permanent staff has also encroached upon public land in the village. Again, the village representative who raised this issue had to face severe harassment at the hands of the company.⁶⁰

These issues faced by the communities surrounding the Ambuja-Holcim plant have been brought to the notice of the company several times⁶¹, but the company has never made an initiative to change any of its practices.

6. HOLCIM GROUP'S COMPANIES IN INDIA ARE IN VIOLATION OF SEVERAL PROVISIONS OF THE OECD GUIDELINES

We contend that these practices constitute a breach of the following provisions of the Guidelines:

II. A. 1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.

The contract labour practices of Holcim-ACC and Holcim-Ambuja, which have as their cornerstones poverty wages and employment insecurity, violate the requirement in the Guidelines for enterprises to support the achievement of sustainable development.

⁵⁷ The Head of the village committee of Pausari describes the structural damage in her statement in Annexure 45, and also describes the rock that fell on the village.

⁵⁸ Statement of the 'panch' of village Bhadrapali mentions this in his statement in Annexure 32.

⁵⁹ Annexure 47 has the statement of a permanent employee of Ambuja-Holcim company regarding the multiple ways in which the company is harassing him and his family in order to get them to vacate their plot of land adjoining the Ambuja-Holcim plant, which the company wants to illegally acquire. Annexure 48 has photos which document the encroachment of public land by the company and the damage caused to the his house and family members by repeated attacks. Annexure 49 contains letters written by him to the company management protesting his harassment.

⁶⁰ Annexure 50 contains the statement of a permanent employee, who is a trade union leader and a village committee member, documenting how the Ambuja-Holcim company victimized him for opposing the illegal encroachment of village land by the company run school.

⁶¹ Annexure 51 is a letter from farmers of affected villages to the company, dated 1.5.10, listing the problems that farmers face due to the plant. This is only one example of several such representations.

II. A. 4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.

The extensive use of contract labour by ACC-Holcim and Ambuja-Holcim, far from encouraging human capital formation, actively contributes to its erosion, as the companies are steadily decreasing its permanent workforce and replacing it with contract workers. Besides, the company does not offer adequate training to over 75% of its workforce. While permanent employees are offered regular job trainings and skill enhancement trainings, the contract workforce is only offered safety training, and is expected to learn other skills on the job. Thus, many contract workers, even after working for the company for more than 20 years, are still doing the same work they were doing when they first joined the company, and have not acquired higher skills, not graduated to higher positions.

II. 9. Refrain from discriminatory or disciplinary action against workers who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.

During 2000-2005, ACC-Holcim, Jamul took punitive action against many workers who were part of a litigation seeking regularization in the company, by offering them reduced employment. Where they had been regularly offered 25-26 days of work each month for several months before the complaint was lodged, this was reduced to 2, 3 or 5 days of work after the litigation started.

Similarly, Ambuja-Holcim at Ravaan also took punitive action against workers who sought a meeting with the Assistant Labour Commissioner (an official with the Labour Department of the government) to complain about working conditions in the plant. Several workers were dismissed immediately following their visit to the ALC. Even the worker who met with top officials of Holcim (Switzerland), Ambuja Foundation, Ambuja-Holcim and ACC-Holcim in special meeting called in July 2008 for the purpose of resolving outstanding issues concerning farmers and workers was punished for his participation by being transferred to a distant location.

IV. 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

IV. 2. Within the context of their own activities avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

The updated Guidelines contain a new chapter on Human Rights, which require enterprises to avoid infringing on the rights of others and in the cases of subsidiaries to avoid causing or contributing to adverse human rights impacts and to address such impacts when they occur. While these recommendations refers to all human rights, the Commentaries to Chapter IV highlight in particular those rights set out in the Universal Declaration of Human Rights and codified through the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the principles concerning fundamental rights set out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

We contend that Holcim-ACC has violated the following human rights through its extensive and abusive longstanding system of contract labour:

- *No Social Security:* ACC-Holcim and Ambuja-Holcim, by employing contract labour and denying them proper medical benefits, security of employment and proper retirement benefits are denying their workers their right to social security enshrined in Article 22 of the Universal Declaration of Human Rights, which reads “*Everyone, as a member of society, has the right to social security ...*” as well as Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes “*the right of everyone to social security, including social insurance.*”
- *Denial of just and favourable conditions of work:* Article 23(1) of the Universal Declaration of Human Rights recognizes the right to just and favourable conditions of work, which are defined in Article 7 of the ICESCR as:

“(a) *Remuneration which provides all workers, as a minimum, with:*

(i) *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*

(ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*

(b) *Safe and healthy working conditions;*

(c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*

(d) *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”*

Several contract workers in ACC-Holcim and Ambuja-Holcim are not even getting the legally mandated minimum wage for their work. While some contract workers are being paid minimum wages, even these are far below the rates allowed to them by the Cement Wage Board Agreement that is binding on these companies, and which secures “fair wages” for the workers. As enumerated above, contract workers in these companies often work under hazardous conditions, are denied health benefits, and do not receive opportunities of promotion despite decades of working in the same company and gaining extensive experience. Furthermore, they are often made to work for long hours without overtime benefits, and also do not get paid vacation benefits even after years of service.

- *Violation of the principle of “equal pay for equal work”:* This principle, which is enshrined in Article 7(a)(i) of the ICESCR (above), reiterated in Article 23(2) of the Universal Declaration of Human Rights and also forms one of the four fundamental principles in the ILO's Declaration on Fundamental Principles and Rights to Work, is grossly violated through the practice of contract labour, which discriminates between permanent employees and contract workers. As explained earlier, permanent employees performing similar work are hugely favoured in terms of remuneration and benefits linked to employment, over contractual employees, who are paid paltry wages and get insignificant benefits of employment.
- *Denial of freedom from arbitrary arrests and detentions:* Article 9 of the International Declaration on Human Rights declares that “*No one shall be subjected to arbitrary*

arrest, detention or exile.” This principle is grossly violated by the Holcim group companies in India who routinely lodge false cases and complaints against union members and other workers who demand their statutory rights.

- *Violation of the right to own property:* Article 17 of the International Declaration on Human Rights declares that
 - (1) *Everyone has the right to own property alone as well as in association with others.*
 - (2) *No one shall be arbitrarily deprived of his property.*

By encroaching on village land held collectively by the villagers, Ambuja-Holcim company flagrantly violates this principle. What is worse, villagers who speak out against this encroachment are threatened with bodily harm, dismissal from work, and other severe consequences.

V. 1. b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment;

In addition to violating the human rights provisions of the Guidelines, ACC-Holcim's and Ambuja-Holcim's contract labour practices also contravene Chapter V which sets out specific standards on labour rights. The commentary in Chapter V says that “[a] *disguised employment relationship occurs when an employer treats an individual as other than an employee in a manner that hides his or her true legal status.*” ACC-Holcim and Ambuja-Holcim companies, in using contract workers, disguise the true relationship of these workers with the company as employees, which enables them to deny living wages and employment benefits to the vast majority of their real workforce, and restrict it only to the minority of workers who have permanent jobs. Chapter V clearly lays down that “*enterprises are expected to structure their relationships with workers so as to avoid supporting, encouraging or participating in disguised employment practices.*” In addition to this, the Cement Wage Board Agreement, to which both these companies are signatories, is categorical that contract labour must be limited only to loading and unloading activities, and the packing plant; but in reality, the use of contract labour in these companies is widespread and prominently deployed even in core activities.

ACC-Holcim and Ambuja-Holcim, through their extensive use of contract labour, undermine the ability of the vast majority of their workers to exercise their rights to union representation and collective bargaining with the companies' managements, controlled by Holcim. All attempts by contract workers of Ambuja-Holcim to organize themselves into a trade union have been met with high-handed responses by the company, which include dismissal of workers leading the movement, and the lodging of false criminal complaints against them. Similarly, ACC-Holcim trade union leaders are also facing several cases, as described above, merely for organizing routine trade union activity. Thus, these Holcim affiliates in India are violating V.1(b)

V.1. d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations;

Contract workers in Ambuja-Holcim plant at Rawan are being paid less at rates substantially below the statutory minimum wages mandated by law, and also their wages have been withheld for the past two months. Many contract workers in ACC-Holcim plant in Jamul as well as those in Ambuja-Holcim plant at Rawan are routinely made to work long workdays exceeding 8-hours, and are not given the legally mandated double wages for overtime work. This amounts to forced or compulsory labour; hence, Ambuja-Holcim violates one of the four fundamental principles in the ILO's Declaration on Fundamental Principles and Rights to Work, and also the Guidelines V.1(c)

V.1. e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

Furthermore, the principle of non-discrimination in employment enshrined in V.1(e) is violated by these affiliates, since they practice discrimination against contract workers as compared to permanent employees, who perform comparable work. As outlined above, permanent employees enjoy substantially higher wages, and additional benefits such as stability of work, medical benefits, job training, increased safety considerations, etc.

V. 3 Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern

All attempts made by the union to negotiate with the company in good faith have been rebuffed. In the case of Ambuja-Holcim at Rawan, each of the eleven conciliation meetings convened by state and central Assistant Labour Commissioners (ALC) over the last year have been attended by the workers, but the management of the company has attended only one of such meetings. Even ACC-Holcim routinely absents itself from the ALC meetings to engage in conciliation meetings with PCSS and resolve outstanding issues of contract workers.

In the case of ACC-Holcim, ever since the High Court passed the order in March 2011, directing the company to regularize the employment of some contract employees, PCSS sent the order of the copy to all the officers of the company, asking the management to come to the table and negotiate how the order will be implemented. At first the company refused to accept the representation of the Union, but when it was sent through a courier, it only sent a cursory reply to the Union claiming that a month after the order was passed, the company was still "studying" the order. After failing to receive any reply from the company to its offer of negotiation, the Union staged a 4 month long sit-in protest in front of the factory gate demanding a response from the company, but have failed to receive any reply.

V.5 In their operations, to the greatest extent practicable, employ local workers ...

As described above, Holcim affiliated Ambuja plant at Ravaan has made it a deliberate policy to employ outsiders as its employees, and refuses to honour the commitment made by its predecessor to give permanent jobs to locals, especially those whose families have lost their lands to the projects, or whose livelihoods have been otherwise affected.

7. NEXT STEPS

We request the Swiss NCP to offer its good offices to resolve this issue in an effective and timely manner. The company should immediately and unconditionally employ the contract

workers on a direct basis, offer employment to local communities affected by the plant and engage in good faith negotiations with the Pragatisheel Cement Shramik Sangh in order to resolve all related issues as stated in this submission.

Thanking you,

Yours sincerely

(Kalyan Singh Patel)
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