



## Labour Rights Violations in the Thai Poultry Industry Within the Supply Chains of Japanese Companies



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Cover photos. Top and Middle: Thammakaset Farm 2. Bottom: The 14 former Thammakaset Farm 2 workers and a migrant rights activist. Credits for all photos in this report are on file with HRN.

## Executive Summary

Thailand is the world's fourth largest producer and third largest exporter of poultry. Until relatively recently, the poultry industry had escaped scrutiny into labour rights violations compared to other sectors such as garments and fishing. The sector, however, is rife with labour rights violations, ranging from serious human rights violations such as forced labour, to illegal overwork and underpayment, to poor health and sanitary conditions. Migrant workers are particularly vulnerable for many reasons, including the language barrier, informal employment conditions, the isolation of poultry farms, a lack of unions, and weak domestic labour legislation and implementation. The recent 2017 Royal Decree Concerning the Management of Foreign Workers has been criticized as only placing them at greater risk of exploitation.

In recent years, various cases on allegations of labour rights violations within the Thai poultry industry received media attention. A 2015 investigative report focused on labour rights violations among six poultry factories in Thailand owned by four of Thailand's companies involved in the poultry sector: CP Foods Public Company Limited, Centaco Group, Laemthong Poultry Co. Ltd, and Saha Farms Group.<sup>1</sup> A fifth Thai food company in the poultry sector, Betagro, was also connected to a high-profile case of 14 migrant workers on poultry farms who brought a suit against their employer, Thammakaset, one of Betagro's poultry suppliers at the time, for working under forced labour conditions. All five of these Thai companies working in the poultry sector were reported to have labour violations within their supply chains, and all five have either exported poultry products to Japan, had joint ventures with Japanese companies, or conducted some other business with Japanese companies.

This report goes into detail about the labour rights violations faced by the 14 Thammakaset Farm 2 migrant workers, as well as the various legal proceedings they are involved in, including a suit the workers brought against Thammakaset for labour rights violations, in which the workers won some compensation; a suit Thammakaset brought against workers for defamation and theft charges; and a claim against Thammakaset Farm to the National Human Rights Commission of Thailand (NHRCT) alleging forced labour which was dismissed and criticized. The workers reported labour rights violations and indications of forced labour at Thammakaset farm including having their identity documents confiscated, preventing them from leaving the farm; facing a language barrier and absence of clear contract, allowing for their exploitation; being paid below the minimum wage and receiving no statutory overtime compensation; being illegally subject to fines and deductions from their wages; and working illegally long hours and consecutive days without days off. The Thammakaset case was followed by calls for greater protections for the workers and migrants in Thailand by OHCHR's Southeast Asia Regional Office and a joint letter by five UN Special Rapporteurs. The International Labour Organisation Committee also issued recommendations to the government of Thailand to address forced labour practices and the

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<sup>1</sup> Swedwatch, 2015, "Trapped in the kitchen of the world: The situation for migrant workers in Thailand's poultry industry", [http://www.swedwatch.org/wp-content/uploads/2016/11/76\\_thaikyckling\\_151123\\_ab.pdf](http://www.swedwatch.org/wp-content/uploads/2016/11/76_thaikyckling_151123_ab.pdf).

UN Human Rights Council to address threats against the freedom of expression by retaliatory defamation claims against complaining workers and labour rights activists, and problems with trafficking, forced labour, and exploitation of migrants in agricultural sectors. The Thai government also received recommendations in its second Universal Periodic Review in 2016, including concerns about human trafficking, forced labour, and defamation charges to retaliate against labour activists.

Thailand also has duties under the Forced Labour Convention 1930 (No. 29) and other international law to end and remedy labour rights violations with which its domestic law and practice are inconsistent, such as using a definition of forced labour narrower than the Forced Labour Convention's definition and by not criminalizing forced labour outside of human trafficking. This report also examines the duties and responsibilities of the Japanese government. The Japanese government pledged to develop a national action plan (NAP) on business and human rights (BHR) implementing the UN Guiding Principles on BHR in November 2016 and began planning a baseline study in March 2018; however, it is vital that the NAP be developed as soon as possible. Japanese companies have also been criticized for weak Corporate Social Responsibility and due diligence duties in investigating, monitoring, and addressing human rights impacts identified in their supply chains. While there are challenges in integrating different parts of a complex supply chains, without effective CSR and due diligence policies Japanese companies will not be aware of the human rights impacts, including labour rights violations, in their supply chains.

This report concludes with recommendations to various stakeholders. To Japanese companies with links to Thai poultry companies, the report recommends they commit to the UN Guiding Principles on Business and Human Rights, establish policies that suppliers must not engage in labour rights violations, release the names of poultry suppliers, develop due diligence and monitoring policies to identify supplier violations, publicly release their criteria and procedures sufficient for evaluation, and engage in dialog with supplier workers and other stakeholders.

To Thai poultry companies, farms, and factories, the report recommends they take immediate steps to comply with domestic and international labour standards, inform workers of their responsibilities and rights in their own language, train supervisors to respect workers' rights, and engage in dialog with workers. To the government of Thailand, the report recommends it develop a national action plan on BHR, enact legislation better complying with the 1930 Forced Labour Convention and ratify its protocol and other core ILO and related conventions, prevent harassment of workers bringing complaints, and reject recent poultry industry proposals to hold workers at work for longer periods and for more consecutive days. To the Japanese government, the report recommends it hasten development of a national action plan on BHR, implement legislation for corporate responsibility reporting, mandatory due diligence of human rights impacts in supply chains, and a customs code to provide publicly available tracking information of imported products, and restrict imports of products made through forced labour.

## I. Introduction

Recent cases have highlighted the prevalence of forced labour and labour exploitation of workers, particularly migrant workers, in Thailand's poultry sector. Export of Thai chicken meat is highly lucrative and the industry is rapidly growing, making Thailand one of the largest producers and exporters of poultry in the world. The huge demand for labour in the sector has encouraged neighbouring countries, particularly Myanmar, to provide a great number of migrant workers which constitute a driving force in the Thai economy. However, these migrant workers are encountering serious labour rights violations, including those associated with forced labour, including identity documents confiscation, underpayment, overwork and limited break times, and illegal wage deductions.

In this report, Human Rights Now—a Tokyo-based international human rights NGO focusing on human rights issues in the Asia region—summarizes its research into these practices in the Thai poultry sector, including our interview with affected workers. The report urges all stakeholders, including Thai farms, Thai poultry exporters, Japanese poultry importers, the Thai and Japanese governments, and Japanese companies and their Thai counterparts to take immediate and effective action to end, remedy, and avoid future labour and human rights violations of migrant and other workers in Thailand's poultry sector.

## II. Background on Migrant Workers in the Thai Poultry Industry

### A. General Problems with Labour Rights Among Migrant Workers in Thailand

To place labour rights violations against migrant workers in Thailand's poultry sector into context, it is important to recognize the general social and legal situation in Thailand making it relatively easy for employers to exploit migrant workers and difficult for them to seek relief and restitution from employers.

First, labour rights violations, including forced labour and human trafficking, have been reported across many goods-producing sectors in Thailand with recently publicized violations occurring in the fishing,<sup>2</sup> garment,<sup>3</sup> and poultry sector as described below. Global competition within the sectors drive employers to lower costs, giving them incentives to lower wages, require excessive working hours, and create poor working conditions.<sup>4</sup>

Migrant workers are particularly vulnerable as they often face language barriers; a lack of awareness of their rights; a lack of viable channels for raising complaints and finding relief; strong incentives not to protest exploitation to avoid deportation, harassment, or punishment; discrimination; informal employment conditions; a lack of union protection; and little to no protection in practice from domestic laws.<sup>5</sup> Many migrant workers pay large recruitment fees in both their country of departure and Thailand and incur large debts even before beginning work.<sup>6</sup>

Thailand's criminal law also allows private parties to begin criminal prosecutions against persons they allege to have committed a crime against them. Employers have used this to lodge criminal defamation claims against workers and activists alleging labour rights violations as a way to harass and silence them.

### B. Relevant Laws on Labour Rights and Migrants

#### 1. Domestic Law on Labour and Labour Organisation protections

Labour laws offer protections to legal migrant workers, such as the Thai Labour Protection

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<sup>2</sup> ILO, "Employment practices and working conditions in Thailand's fishing sector", ILO, 2013, <http://www.ilo.org/dyn/migpractice/docs/184/Fishing.pdf>

<sup>3</sup> Clean Clothes Campaign, "Report Migrant Workers in Thailand's Garment Factories", 2014, <https://cleanclothes.org/resources/publications/migrant-workers-in-thailands-garment-factories>

<sup>4</sup> ILO, "Report IV Decent Work in Supply Chains", 2016, p.2, [http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS\\_468097/lang--de/index.htm](http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang--de/index.htm)

<sup>5</sup> Finnwatch, "Breaking the cycle of exploitation Recommendations for responsible recruitment of migrant workers in Thailand", Mar. 2016, p.6, [https://www.finnwatch.org/images/pdf/cycle-of-exploitation\\_final.pdf](https://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf); ILO, "Report IV Decent Work in Supply Chains", 2016, p.2, [http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS\\_468097/lang--de/index.htm](http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang--de/index.htm).

<sup>6</sup> Finnwatch, "Employment available in exchange for debt, Working conditions in the Thai broiler industry", Sept. 2015, p 41, <https://www.finnwatch.org/images/pdf/chickenproductionThailand.pdf>.

Act of 1998,<sup>7</sup> providing labour protections such as requirements on wages, working hours, welfare, and occupational safety, health and environment, and the Labour Relations Act of 1975,<sup>8</sup> providing a framework for protecting freedom of association, collective bargaining, and industrial relations, as well as other legislation, decrees, and notifications which modify and implement them. While most protections apply the same to foreign migrant workers as Thai nationals, there are some issues for which migrant workers receive less protection, such as limits in the formation and operation of unions for migrant workers under the Labour Relations Act.<sup>9</sup>

Even for laws that offer equal protection to migrants, in practice, according to an ILO survey with Thai employers across sectors, half of the employers reported not treating migrant workers as having equal rights as Thai workers.<sup>10</sup> At the same time, these labour laws are practically unenforced to a majority of workers. According to a 2015 ILO report, about 56% of the nation's total workforce, amounting to 21.4 million workers, was informal, generally meaning not formally registered or complying with labour regulations.<sup>11</sup> IOM reports that it is particularly difficult to enforce labour rights and standards in the agriculture and fisheries industries,<sup>12</sup> and Finnwatch reports that Thailand has not been able to effectively regulate, monitor, or manage working conditions of migrant workers.<sup>13</sup> One reason is because both employers and employees have been reported as being unaware of labour and labour organization laws.<sup>14</sup>

## 2. Poultry Industry Proposals to Weaken Labour Standards for Poultry Workers

Notably, Thai poultry industry leaders are currently petitioning the government to weaken labour standards for poultry workers without tripartite consultation with public authorities and workers' organisations. In a letter to Thailand's Department of Labour Protection and Welfare titled "Request for legislative drafting for poultry farm industry", dated 3 January

<sup>7</sup> Labour Protection Act, B.E. 2541, 1998,

[http://www.labour.go.th/en/attachments/article/18/Labour\\_Protection\\_Act\\_BE2541.pdf](http://www.labour.go.th/en/attachments/article/18/Labour_Protection_Act_BE2541.pdf)

<sup>8</sup> Labour Relations Act B.E. 2518, 1975, [http://www.mol.go.th/sites/default/files/images/other/labourRelation2518\\_en.pdf](http://www.mol.go.th/sites/default/files/images/other/labourRelation2518_en.pdf)

<sup>9</sup> See Eliza Marks and Anna Olsen, "The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion", 2015, p.8,

<http://www.antitraffickingreview.org/index.php/atjournal/article/view/84/141>; US Department of State, "Thailand 2016 Human Rights Report", <https://www.state.gov/documents/organization/265588.pdf>

<sup>10</sup> Elaine Pearson, "The Mekong Challenge Underpaid, Overworked and Overlook The realities of young migrant workers in Thailand (Vol.1)", ILO, 2006, [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_bk\\_pb\\_67\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_67_en.pdf), pp. 53-54, 57.

<sup>11</sup> Jack Huang, "The Overview of Informal Sector in Thailand", 27 Apr. 2017, Chinese Taipei Pacific Economic Cooperation Committee, <http://ctpecctw.blogspot.jp/2017/04/the-overview-of-informal-sector-in.html>, citing "ILO (n.d.). Social Protection for Thailand's Informal Economy Workers".

<sup>12</sup> Dennis Arnold and Kevin Hewison. "Exploitation in Global Supply Chains: Burmese migrant workers in Mae Sot, Thailand", 2005, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.632.3947&rep=rep1&type=pdf>; IOM, "Situation Report on International Migration in East and South-East Asia", 2008, p.93, [http://publications.iom.int/system/files/pdf/situation\\_report.pdf](http://publications.iom.int/system/files/pdf/situation_report.pdf)

<sup>13</sup> Finnwatch, "Employment available in exchange for debt, Working conditions in the Thai broiler industry", Sept. 2015, p 41, <https://www.finnwatch.org/images/pdf/chickenproductionThailand.pdf>

<sup>14</sup> Sakdina Chatrakul Na Ayudhya, "The Thai Labour Movement: Strength Through Unity Challenges and Recommendations", Oct. 2010, [http://www.fes-thailand.org/wb/media/documents/The%20Thai%20Labour%20Movement\\_Sakdina%20Chatrakul%20Na%20Ayudhya.pdf](http://www.fes-thailand.org/wb/media/documents/The%20Thai%20Labour%20Movement_Sakdina%20Chatrakul%20Na%20Ayudhya.pdf)

2017, and in a follow up letter to the National Human Right Commission of Thailand titled “Request follow-up and acceleration of Ministerial Regulation amendment on Labour Protection”, dated 15 January 2018, Thai poultry industry representatives<sup>15</sup> petitioned for two changes to labour laws for poultry workers.<sup>16</sup> On 9 August 2018, the Thai Labour Ministry announced moving forward to draft the proposals into new ministerial rules.<sup>17</sup>

The first industry proposal would allow employers to hold poultry workers for longer periods at work before allowing them to leave. Current law requires, if an employer requires a worker to rest more than two hours in a day, the employer must pay the worker for the extra rest time. This prevents employers from holding workers at work into the late night, through long mid-day rest breaks, without paying them extra. The industry wants to change this law to allow them to the ability to require workers to stay at the job longer, allowing four rest hours instead of two before the employer has to pay them for the extra rest time. This will allow employers to hold workers at work up to 18 hour days without extra pay.

The second industry proposal will allow employers to have poultry workers work double the number of consecutive days without a holiday. Currently, employers can ask workers to work a maximum of four weeks of consecutive work days without a holiday (accumulating the weekly holidays to a single holiday period later). The industry proposal increases this maximum period to 8 weeks of consecutive days without a day off that employers can ask of workers. Both of these proposals allow greater exploitation of poultry workers by employers and are serious threats to worker welfare. HRN requests that the government of Thailand reject them and that civil society advocate against these exploitative proposals.

### **3. Procedures addressing foreign migrants entering Thailand**

The rules, regulations, and procedures addressing foreign migrants entering Thailand are complex and multi-layered. These procedures include, very briefly, memoranda of understanding (MOU) signed between Thailand and its neighbors for formal regularized entry, the most significant of which in terms of the number of migrants is the MOU between Thailand and Myanmar;<sup>18</sup> the Nationality Verification (NV) process to regularize foreign workers that entered irregularly (i.e., not under a MOU procedure);<sup>19</sup> and regulations to

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<sup>15</sup> Broiler Breeder Association, Thai Broiler Processing Exporters Association, Broiler Association, Export Broiler Association, Thai Poultry Veterinary Association (TPVA), Thai Commercial and Export Meat-type Duck Farmer, The Poultry Promotion Association of Thailand, The Animal Husbandry Association of Thailand

<sup>16</sup> The letters are on file with Human Rights Now.

<sup>17</sup> Department of Labour Protection and Welfare (Pattarawan Pinkaew spokesperson), “LPWD Is Looking to Release Labor Protection Law for Poultry Farms” [translated], 9 August 2018, News No. 208/2018.

<sup>18</sup> Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers, 13 Feb 2016, [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_160932.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_160932.pdf); this MoU repealed an earlier MoU that was in place since 2010. Unlike legally binding and formal bilateral agreements, MOU’s are informal mechanisms in the form of executive agreements between ministries of two or more countries. In South-East Asia, MOUs are more common than bilateral agreements for regulating recruitment and placement of migrant workers between countries. While there have been some amendments, the Finnwatch report gives an general idea of the complexity of recruitment processes under MOUs. [https://www.finnwatch.org/images/pdf/cycle-of-exploitation\\_final.pdf](https://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf), p. 40.

<sup>19</sup> The steps of the Nationality Verification procedure is outlined in the Finnwatch report,



apply for and receive a so-called pink card, temporary resident and work status for foreign workers without regular status under an MOU or NV process.<sup>20</sup> The key points to note about them are that, first, the rules focus on economic and national security but not the protection of migrant workers *per se*, and, second, the procedures and costs for regular migrant entry into Thailand create a situation in which brokers charge high fees to bring migrants into the country and complete their paperwork, creating the potential for debt bondage situations and exploitation of workers. Regulations on foreign worker permits,<sup>21</sup> for example, require “documents, evidence and securities” the sufficiency of which is at the discretion of a competent official<sup>22</sup> and, in addition, a variety of fees,<sup>23</sup> not including broker fees. Demand for brokers is also driven by the fact that foreign migrants do not have knowledge of these procedures, and documentation and paperwork must be conducted in Thai or English, which may be difficult for foreign migrants without language skills.

Migrant workers that have entered Thailand without following one of these procedures are considered irregular and vulnerable to further exploitation to avoid detection and punishment under the 2017 Royal Decree on Managing the Work of Aliens, which punishes employers and employees for the employment of irregular migrants and related offenses.<sup>24</sup> Positively, the Decree punishes employers which hold the passports of migrant workers. However, the other punishments, such as employing irregular workers, have also been reported to lead employers to abandon irregular workers during a period of enforcement in 2017, leaving the workers vulnerable without addressing the root causes of their vulnerability. The law was amended on 6 March to reduce penalties and add other provisions to prevent the worker confusion, and enforcement restarted from 28 March 2018.<sup>25</sup> The UN Working Group on Business and Human Rights (BHR) noted that enforcement re-started before the national identification process to regularize migrant workers had been completed and it recommend the government extend the deadline or facilitate the processing of cases.<sup>26</sup> Concerns about employers hiding or abandoning migrant

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[https://www.finnwatch.org/images/pdf/cycle-of-exploitation\\_final.pdf](https://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf), pg. 41.

<sup>20</sup> The text for this law is available at <http://www.local.moi.go.th/law93.pdf> (in Thai). Rules on permits for workers are available on a Thai government website at:

<https://www.doe.go.th/prd/alien/law/param/site/152/cat/89/sub/0/pull/category/view/list-label>.

<sup>21</sup> “Re: Request for Permit, Issuance of Permit, Renewal of Permit and Prescription of Securities for Bringing a Foreign Labour to Work for an Employer in the Country”, B.E. 2559 (2016) (“Request for Permit”), [https://www.doe.go.th/prd/assets/upload/files/bkk\\_en/e14929c6fa61cd3c149ed7c7ec6f0b14.pdf](https://www.doe.go.th/prd/assets/upload/files/bkk_en/e14929c6fa61cd3c149ed7c7ec6f0b14.pdf)

<sup>22</sup> “Request for Permit”, B.E. 2559 (2016), Cls. 4-5,

[https://www.doe.go.th/prd/assets/upload/files/bkk\\_en/e14929c6fa61cd3c149ed7c7ec6f0b14.pdf](https://www.doe.go.th/prd/assets/upload/files/bkk_en/e14929c6fa61cd3c149ed7c7ec6f0b14.pdf)

<sup>23</sup> “Ministerial Regulation on Prescribing the Fees for Bringing a Foreign Labour to Work for an Employer in the Country” B.E. 2559 (2016)

[https://www.doe.go.th/prd/assets/upload/files/bkk\\_en/0b3b8e3d65203cc42ff0f8071a1fc0ea.pdf](https://www.doe.go.th/prd/assets/upload/files/bkk_en/0b3b8e3d65203cc42ff0f8071a1fc0ea.pdf). Finnwatch, “Breaking the cycle of exploitation Recommendations for responsible recruitment of migrant workers in Thailand”, Mar. 2016, p.6, [https://www.finnwatch.org/images/pdf/cycle-of-exploitation\\_final.pdf](https://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf)

<sup>24</sup> Royal Decree on Managing the Work of Aliens B.E. 2560 (2017) (Foreign Workers Decree), 22 Jun. 2017, <http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/065/1.PDF> (in Thai).

<sup>25</sup> The new amendments are summarized in Suriyong Tungsuwan, “New Amendments to the Work Permit Law and New Notification Requirements for Employers and Employees”, Baker McKenzie, 18 April 2018, <https://www.bakermckenzie.com/en/insight/publications/2018/04/new-amendments-to-the-work-permit-law>.

<sup>26</sup> UNWG on Business and Human Rights, “Statement at the end of visit to Thailand by the United Nations Working Group on Business and Human Rights”, 4 April 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E>

workers to avoid punishment and the law not addressing root causes of migrant worker vulnerability still remain. Labour experts have also criticized the lack of enforcement and government oversight of the law leaving migrants “no safer” than they were before, still vulnerable to corrupt brokers and exploitative companies.<sup>27</sup>

#### 4. Laws and International Duties on “Forced Labour” in Thailand

The Forced Labour Convention 1930 (No. 29),<sup>28</sup> which Thailand ratified in 1969, requires states to suppress the use of forced or compulsory labour (Article 1(1)). Article 2(1) defines “the term forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>29</sup> According to the ILO Committee of Experts, the phrase “menace of any penalty” should be construed broadly, referring widely to penalties used to compel someone to perform work or service, including direct or indirect coercion, psychological threats, or non-payment of wages.<sup>30</sup> Further, where deceit and fraud are involved in the original work offer, as is often the case with migrant workers in Thailand, the worker’s acceptance cannot be considered knowing and voluntary.<sup>31</sup> Regarding the Convention’s duties, in 2016 the ILO Committee recommended that the Thai Government strengthen its efforts to address practices such as non-payment of wages, confiscation of identity documents, physical violence and poor working conditions to suppress forced labour.<sup>32</sup> Despite the duty to implement domestic legislation compliant with the Forced Labour Convention, Thailand does not currently criminalize forced labour as a stand-alone crime.

The Anti-Human Trafficking Act B.E. 2551 (2008)<sup>33</sup> addresses some situations of forced labour, but incompletely. It establishes crime of trafficking as bringing a person (in various ways, such as by buying or selling the person) into a situation of exploitation (which includes forced labour) “by coercion, force, abduction, fraud, deception, abuse of power, or offering of monies.”<sup>34</sup> There are two major shortcomings with this standard for forced labour compared to the Forced Labour Convention standard, however. First, the act does not establish a crime of forced labour in cases where the worker is not brought into the

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<sup>27</sup> Richard Sargent & Sophie Deviller, “Extortion and abuse: Myanmar workers arrive debt-laden in Thailand” AFP News, 4 Oct 2018, <https://sg.news.yahoo.com/extortion-abuse-myanmar-workers-arrive-debt-laden-thailand-050712212--finance.html>.

<sup>28</sup> Forced Labour Convention, C29, 28 June 1930, <http://www.refworld.org/docid/3ddb621f2a.html>

<sup>29</sup> Id., Art. 2.

<sup>30</sup> ILO Standards on Forced Labour: the new protocol and recommendation at a glance’, 2016, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_508317.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_508317.pdf)

<sup>31</sup> ILO, ‘Forced labour and trafficking: a casebook of court decisions: a training manual for judges, prosecutors and legal practitioners, Geneva’, 2009, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_106143.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106143.pdf)

<sup>32</sup> ILO, ‘Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF)’, 2017, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

<sup>33</sup> Anti-Human Trafficking Act B.E. 2551 (2008), [https://en.wikisource.org/wiki/Anti-Human\\_Trafficking\\_Act,\\_BE\\_2551\\_\(2008\)](https://en.wikisource.org/wiki/Anti-Human_Trafficking_Act,_BE_2551_(2008))

<sup>34</sup> Id., Sec. 6(1).

situation of forced labour by coercion, etc., for example, if the worker voluntarily enters a job which later turns into a forced labour situation. Second, even for cases where the worker is brought into the situation by, e.g., deception, the act's standard for forced labour is narrower than the Forced Labour Convention's standard.

The Anti-Human Trafficking Act defines "forced labour or services" as  
compelling other persons to work or provide services by putting such person in fear of injury to life, body, liberty, reputation or property ... by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.

Briefly put, this standard requires methods which make a worker both "in fear of injury" and "unable to resist", while the Forced Labour Convention only requires the work to occur "under the menace of any penalty" while the worker works non-voluntarily.

For both of these shortcomings, the Anti-Human Trafficking Act remains insufficient for meeting Thailand's duties under the Forced Labour Convention. We recommend a new law specifically prohibiting forced labour under the 1930 Forced Labour Convention's definition of forced labour.

### **C. Background on the Poultry Industry in Thailand**

In addition to the general social and legal situation in Thailand described above which lead to labour rights violations among migrant workers and restrict their ability to demand their rights and remedies for violations, the poultry sector itself has issues which invite labour rights violations among migrant workers. This section provides some background about the poultry sector in Thailand, and the next section will summarize the situation which leads to labour rights violations.

Thailand's abundance of natural resources has facilitated the development of its agricultural sector, ranking as one of the leading nations within the industry.<sup>35</sup> The poultry sector is a major component of Thailand's booming production of agricultural commodities; the country is the world's fourth largest poultry producer and third largest poultry exporter, with its exports still growing.<sup>36</sup> Around 30% of poultry products are exported and 70% are consumed domestically.<sup>37</sup> In 2017, the total production of the Thai poultry industry was

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<sup>35</sup> Netherlands Embassy in Bangkok, "The Poultry Sector in Thailand", Dec. 2016, p.1, <https://www.rvo.nl/sites/default/files/2016/12/FACTSHEET-POULTRY-SECTOR-IN-THAILAND.PDF>

<sup>36</sup> WATT Global Media, "The world's leading broiler, turkey and egg producers", <https://www.wattagnet.com/directories/80-the-world-s-leading-broiler-turkey-and-egg-producers>. WATT Global Media, "Thai poultry meat exports set to grow in 2017", 19 Jan. 2017, <https://www.wattagnet.com/articles/29539-thai-poultry-meat-exports-set-to-grow-in-2017>

<sup>37</sup> Netherlands Embassy in Bangkok, "The Poultry Sector in Thailand", Dec. 2016, p.1, <https://www.rvo.nl/sites/default/files/2016/12/FACTSHEET-POULTRY-SECTOR-IN-THAILAND.PDF>, p.1.

recorded to be 1.87 million tonnes, and the amount exported at 720,000 tonnes.<sup>38</sup> Chick production capacity is estimated at 35-36 million birds a week in 2018, 2 million more than 2017.<sup>39</sup> Out of this total export, 216,173 metric tonnes were exported to Japan from January to July 2017. Figures for 2017 record Japan as the largest export market for Thai poultry products at 51%.<sup>40</sup>

The sector has expanded rapidly within Thailand over the last 20 years, moving from predominantly rural small-scale productions with a domestic-market focus to industrial production, catering to export and international markets.<sup>41</sup>

In 2004, the Thai poultry industry suffered an outbreak of Highly Pathogenic Avian Influenza (HPAI), a virus that can be transmitted and prove fatal for both birds and humans. The impact to the Thai poultry industry was devastating, resulting in the death of around 62 million birds and an estimated financial loss of \$631 million. There were also 12 human fatalities as a result of the disease.<sup>42</sup> Prior to the outbreak, Thailand was the world's fifth largest exporter of poultry meat, but it subsequently lost this position due to the prevalence of HPAI.<sup>43</sup> However, gradual stability of Thailand's poultry industry and the outbreak of HPAI in other nations<sup>44</sup> led to Thailand regaining its place as a world leader in the production and exportation of poultry products. This period had the effect of accelerating the Thailand poultry sector's efforts to regain its market position in ways which undermined the protection of poultry workers' labour rights as described in the next section.

## **D. Causes of Labour and Migrant Rights Problems in Thailand's Poultry Sector**

The recent rapid expansion of the Thai poultry market has created conditions for a rise in human rights violations of workers on poultry farms, in addition to underlying conditions for violations common within the agricultural sector and involving migrant workers generally. The aftermath of the 2004 Avian Influenza outbreak that devastated Thailand's poultry industry resulted in both an increased scale of production and a decreased number of players, greatly increasing the workload on workers: between 2008 and 2012, the number of commercial broiler producers declined by 32% while the number of chickens raised in commercial broiler farms increased by approximately 55%.<sup>45</sup> As of 2012, there were 6,082

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<sup>38</sup> Sakchai Preechajarn, "Thailand Poultry and Products Annual 2017", USDA Foreign Agriculture Service Global Agricultural Information Network, 1 Sept. 2017, [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Poultry%20and%20Products%20Annual\\_Bangkok\\_Thailand\\_9-1-2017.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Poultry%20and%20Products%20Annual_Bangkok_Thailand_9-1-2017.pdf)

<sup>39</sup> Id.

<sup>40</sup> Id., pp.6-7.

<sup>41</sup> Achilles Costales, "A Review of the Thailand Poultry Sector", Food and Agriculture Organization of the United Nations (FAO), Mar. 2004, p. 1, [http://www.fao.org/ag/againfo/resources/en/publications/sector\\_reports/lsr\\_THA.pdf](http://www.fao.org/ag/againfo/resources/en/publications/sector_reports/lsr_THA.pdf)

<sup>42</sup> Centers for Disease Control and Prevention, "Highly Pathogenic Avian Influenza H5N1, Thailand, 2004", CDC, Nov. 2005, [https://wwwnc.cdc.gov/eid/article/11/11/05-0608\\_article](https://wwwnc.cdc.gov/eid/article/11/11/05-0608_article)

<sup>43</sup> Anni McLeod, Nancy Morgan, Adam Prakash, & Jan Hinrichs, "Economic and Social Impacts of Avian Influenza", FAO, p.2, <http://www.fao.org/avianflu/documents/Economic-and-social-impacts-of-avian-influenza-Geneva.pdf>

<sup>44</sup> Rosie Burgin, "Asian and Europe Continue to Battle HPAI", Poultry World, 28 Dec. 2016, <http://www.poultryworld.net/Health/Articles/2016/12/Asia-and-Europe-continue-to-battle-HPAI-75255E/>

<sup>45</sup> IPSOS, Thailand's Poultry Industry, 2013, p. 6, <https://www.ipsos.com/sites/default/files/ct/publication/documents/2017-08/Ipsos-Research-Note-Thailand-Poultry.pdf>



commercial broiler farms, 35,947 non-commercial farms, and 225,930,564 chickens in Thailand;<sup>46</sup> and as mentioned above, in 2017 the production capacity for chicks increased by 2 million birds. In 2016, 3,996 migrant workers were reported as employed on poultry farms.

At the farm level, workers process great numbers of birds to meet demand. One worker Human Rights Now interviewed said he was responsible for 28,000 to 30,000 birds per cycle, saying it was a typical amount.<sup>47</sup> This situation has the potential to lead some farms to consider labour exploitation to increase production while limiting costs. This includes having workers work overtime above maximum hours and without extra compensation, especially during peak times (both in terms of consecutive days and hours per day worked), paying under the minimum wage, illegally deducting wages for mistakes, restricting workers ability to leave (such as by holding their documents), deceiving new workers about working conditions, and so on. Poultry workers, like agricultural workers generally, are also often migrant workers, facing the problems mentioned above. The farms and workers are physically isolated and workers may be under travel and communication restrictions, which make it easy to hide labour rights abuses, difficult for authorities to inspect and laws to be enforced and difficult for workers to seek help from outside sources.<sup>48</sup>

Poultry farms and production plants also have features conducive to potential health issues, such as the overcrowding of animals, confined spaces, unsanitary treatment, proximity of workers to chickens, the nature of the handling, and the equipment and materials used. Illnesses that have been reported for some poultry farms and plants include skin and eye irritations, burns, musculo-skeletal problems, respiratory problems, exposure to chemicals, zoonotic infections, exposure to anti-biotic resistant bacteria, and long-term exposure to extreme heat or cold.<sup>49</sup>

As the poultry industry continues to rapidly expand, the need to protect workers from these potential exploitative and dangerous conditions has become even more imperative. Aside from the specific conditions in the poultry industry, the ILO Committee has also been critical of forced labour practices generally in Thailand. It recently issued recommendations to the Thai government in response to a representation to the ILO by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation's (ITF) alleging the use of forced labour in the fishing industry, including 20-hour work days, non-payment of wages, debt bondage, and physical abuse.<sup>50</sup> In its Sixth Supplementary Report:

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<sup>46</sup> IPSOS, Thailand's Poultry Industry, 2013, p. 6,

<https://www.ipsos.com/sites/default/files/ct/publication/documents/2017-08/Ipsos-Research-Note-Thailand-Poultry.pdf>

<sup>47</sup> Interview with workers conducted by HRN staff, 10 Sept. 2017. A cycle is roughly 2 months, with 40 days of rearing and 20 days of cleaning for the next period of rearing.

<sup>48</sup> ILO, "Report IV Decent Work in Supply Chains", 2016, p.2,

[http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS\\_468097/lang--de/index.htm](http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang--de/index.htm)

<sup>49</sup> Poultry World, "Health hazards: safety always comes first", 8 Jul. 2010,

<http://www.poultryworld.net/Broilers/Health/2010/7/Health-hazards-Safety-always-comes-first-WP007676W/>

<sup>50</sup> ILO, 'Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by

*Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF) ("Sixth Supplementary Report")*, the ILO Committee concluded that the representation implicated Articles 1(1), 2(1), and 25 of the Forced Labour Convention on Thailand's obligation to suppress forced labour and on the obligation to enforce penalties for engaging in forced labour practices.<sup>51</sup> It recommended that the Thai Government strengthen its efforts to address practices such as non-payment of wages, confiscation of identity documents, physical violence and poor working conditions.<sup>52</sup>

## **E. Government Reporting and Action on Labour Problems in the Poultry Sector**

The government of Thailand has recognized and reported on the widespread presence of labour rights abuses in domestic poultry farms. A 2016 internal report by the Thai government identified widespread labour rights problems among poultry farms, and the government conducted a Good Labour Practices (GLP) programme for the poultry industry in 2016 which explicitly expressed the need to urgently improve working conditions in the poultry sector, particularly for migrant labour, and forbade excess working hours and the confiscation of identity documents.<sup>53</sup> The GLP programme also consisted of guidelines to improve working conditions and avoid forced labour practices, on which the government offers training and to which participating poultry farms have committed to follow through MOUs.<sup>54</sup> Hundreds of contract farmers have since joined the program, committing to meet the guidelines. However, there has not been a public report on the extent of compliance and non-compliance with the programme or labour standards in the sector.

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the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF)', 2017, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

<sup>51</sup> International Justice Resource Centre, 'ILO:Thailand not meeting obligations under Forced Labour Convention', 12 April 2017, <http://www.ijrcenter.org/2017/04/12/ilo-thailand-not-meeting-obligations-under-forced-labour-convention/>

<sup>52</sup> ILO, 'Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF)', 2017, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

<sup>53</sup> Oscar Rousseau, "Thailand: chicken sector to boost standards following abuse claims", Global Meat News, 22 Aug. 2016, <https://www.globalmeatnews.com/Article/2016/08/22/Thai-chicken-sector-agrees-to-end-human-rights-abuse>; The Poultry Site, "Thai Poultry Industry, Government Join to Promote Good Labour Practices", 24 Aug. 2016, <http://www.thepoultrysite.com/poultrynews/37472/thai-poultry-industry-government-join-to-promote-good-labour-practices/>

<sup>54</sup> Oscar Rousseau, "Thai chicken farmers stamp out slavery and abuse", Global Meat News, 30 Sept 2016, <https://www.globalmeatnews.com/Article/2016/09/30/Thailand-farmers-stamp-out-slavery-and-abuse>

### III. Supply Chains and the Connection between the Thai Poultry Industry and Japan

#### A. Supply Chain Connections between Thailand and Japan

Japan is currently the largest foreign investor in Thailand<sup>55</sup> and in 2017 was the largest importer of Thailand's cooked and uncooked chicken products.<sup>56</sup> As mentioned above, from January to July 2017, Thailand exported 216,173 metric tonnes of chicken meat to Japan (out of 420,040 metric tonnes total exported).<sup>57</sup> Imports of fresh poultry from Thailand to Japan resumed in 2014, following a ten-year ban due to an avian flu outbreak in 2004.<sup>58</sup> Since then, a reduction in supplies from China and the Brazilian currency's increased value against the US dollar has assisted the growth of Thailand's chicken meat export market to Japan.

All five Thai poultry companies reported in 2015 and 2016 to have labour violations within their supply chains either export poultry products to Japan, have joint ventures with Japanese companies, or conduct business relations of some kind with Japanese companies. Without due diligence by Japanese companies verifying the conditions under which their imported poultry goods have been produced, Japanese companies cannot know how much has been produced through forced labour in a situation of significant reported violations among these companies. The following sections describe these five companies and their connections to Japanese companies.

- **Charoen Pokphand Group (CP Group)**

CP Group is a Thai food company which reported an export of around 300,000 metric tonnes of fresh chicken to Japan in 2013.<sup>59</sup> In 2014, the company sold 25% of CP Pokphand Co. Ltd (CPP) to Itochu, a Japanese trading house.<sup>60</sup> CPP is a Hong Kong-listed subsidiary of Charoen Pokphand Foods Public Co. Ltd. ("CP Foods"; both are units of CP Group), operating in the animal feed, livestock and food processing business.<sup>61</sup> As part of a cross-shareholding deal, CP Group purchased 4.7% of Itochu's stock in March 2016.<sup>62</sup>

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<sup>55</sup> Ministry of Foreign Affairs of Japan, "Japan-Thailand Relations (Basic Data), 14 Jul. 2016," <http://www.mofa.go.jp/region/asia-paci/thailand/data.html>

<sup>56</sup> Sakchai Preechajarn, "Thailand Poultry and Products Annual 2017", USDA Foreign Agriculture Service Global Agricultural Information Network, 1 Sept. 2016, p.3, [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Poultry%20and%20Products%20Annual\\_Bangkok\\_Thailand\\_9-1-2017.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Poultry%20and%20Products%20Annual_Bangkok_Thailand_9-1-2017.pdf).

<sup>57</sup> Id., p.7.

<sup>58</sup> The Poultry Site, "Thailand to Export Chicken to Japan", 21 Jan. 2014, <http://www.thepoultrysite.com/poultrynews/31227/thailand-to-export-chicken-to-japan/>

<sup>59</sup> CPF, "Monthly Newsletter CPF win Thailand's Top Corporate Brand Values Award 2013", Oct. 2013, <http://www.cpfworldwide.com/contents/investors/download/ir-newsletter/M-news1013.pdf>

<sup>60</sup> Itochu Corporation, "ITOCHU", <https://www.itochu.co.jp/ja/>

<sup>61</sup> Asian Nikkei Review, "Charoen Pokphand Foods Public Co. Ltd.", 21 Nov. 2017, <http://asia.nikkei.com/Company/05HZD3-E>

<sup>62</sup> ITOCHU, "Initiatives Advanced Together with CITIC and the CP Group", <https://www.itochu.co.jp/en/business/alliance/index.html>

- **Laemthong Poultry Co. Ltd.**

Laemthong Poultry Co. Ltd is a major supplier of IBC Corporation, a Tokyo-based small enterprise which imports and exports meats, processed meats and seafood, and operates coffee shops and restaurants. IBC Corporation's major customers are Okinawa Ham Co., Ltd., SE Inc., Slogix Corporation, Shikoku Bussan Corporation, Tokusui Corporation and Hannan Corporation.<sup>63</sup>

- **Saha Farms / Golden Line Business Co., Ltd.**

Saha Farms is a major poultry product supplier to Japan, with 40% of its exports sent to Japan in 2010.<sup>64</sup> The company started exporting processed poultry products to Japan in 1974.<sup>65</sup> Golden Line Business Co. Ltd, part of Saha Farms and located in Bangkok, conducts chicken farming, manufacturing and distributing of frozen and processed chicken meat.<sup>66</sup>

- **Centaco Group of Companies / Sky Food**

According to Centaco Group's website, Central Poultry Processing Co., Ltd., which is part of the Centaco Group, exports frozen chicken products to Japan and uses Japanese technical knowledge and machinery to tailor products in order to suit the market.<sup>67</sup> Sky Food Co., Ltd, under Centago Group, also manufactures frozen cooked chicken products such as yakitori to export to Japan.<sup>68</sup>

- **Betagro PCL**

Betagro PCL is a Thai food company with a head office in Bangkok and other offices and factories in multiple cities throughout Thailand<sup>69</sup> that produces and markets meat products globally. It receives its chickens from contracted farms and processes them in its factories throughout the country. Japan is one of Betagro's major export markets for chicken.<sup>70</sup> In March 2017, it was reported that Betagro Group has a target to increase its exports of raw and cooked chicken meat by 10%, up from 70,000 tonnes the previous year.<sup>71</sup> Betagro has also had joint ventures with Japanese corporations for more than 30 years in various meat products, mainly chicken and pork, as detailed in the following sections.<sup>72</sup>

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<sup>63</sup> IBC Corp, "Corporate Information", <http://www.ibt-corp.jp/english.pdf>

<sup>64</sup> EMIS Store, "Saha Farms Company Limited An EMIS Company Report", 2011, [https://www.emis.com/php/company-profile/TH/Saha\\_Farms\\_Company\\_Limited\\_en\\_2102721.html](https://www.emis.com/php/company-profile/TH/Saha_Farms_Company_Limited_en_2102721.html); Poultry World, "Saha Farms doubles chicken production", 5 Jul. 2010, <http://www.poultryworld.net/Home/General/2010/7/Saha-Farms-doubles-chicken-production-WP007641W/>

<sup>65</sup> Saha Farms, "Company Profile", <http://www.sahafarms.com/main.php?m=Profile>

<sup>66</sup> EMIS Store, "Golden Line Business Co Ltd An EMIS Company Report", 2011, [https://www.emis.com/php/company-profile/TH/Golden\\_Line\\_Business\\_Co\\_Ltd\\_en\\_2108444.html](https://www.emis.com/php/company-profile/TH/Golden_Line_Business_Co_Ltd_en_2108444.html)

<sup>67</sup> Centaco, "Products & Business Food", <http://www.centaco.com/food.asp>

<sup>68</sup> Roundtable on Sustainable Palm Oil, "Sky Food Co., Ltd. Profile", <https://www.rspo.org/members/4767/Sky-Food-Co.-Ltd>

<sup>69</sup> Betagro, "Contact Us", [http://www.betagrofeed.com/en/contact\\_us.php](http://www.betagrofeed.com/en/contact_us.php)

<sup>70</sup> The Nation, "Betagro Group eyeing chicken export boost", 14 Mar. 2017, <http://www.nationmultimedia.com/news/business/corporate/30309017>; Bloomberg, "Betagro PLC", <https://www.bloomberg.com/profiles/companies/3216981Z:TB-betagro-pcl>

<sup>71</sup> The Nation, id.; Bloomberg, id.

<sup>72</sup> The Nation, id.; Bloomberg, id.



## B. Japanese Companies involved in Betagro Poultry operations

- **Ajinomoto Co., Inc.**

Ajinomoto Co., Inc. joined with Betagro Group in 1995 for a joint venture called Ajinomoto Betagro Frozen Goods (Thailand) Co., Ltd, which produces frozen processed chicken exports (Tender Fried Chicken) for Japan.<sup>73</sup> Ajinomoto's products include the brands Ajinomoto, Hondashi, Kunoru, Soup Deli, and Cook Do.

- **Mitsubishi Corporation.**

Mitsubishi joined with Betagro in 1990.<sup>74</sup> Mitsubishi and Betagro Group operates B. Foods Product International Company Limited, a joint venture principally engaged in chicken feed mills, breeder farms and hatcheries, broiler farms, contract farms, fresh and frozen chicken processing, and cooked chicken products for the domestic and export markets, including Japan.<sup>75</sup> On 5 January 2018, it was announced that Mitsubishi intends to open a 6 billion yen poultry processing plant in Thailand for export to Japan and elsewhere in a joint venture with Betagro Group and Itoham Yonekyu Holdings.<sup>76</sup>

- **Boston Trading Inc.**

Boston Trading is a Japanese corporation which imports raw and processed meat products from Thailand. In 2013, Boston Trading joined with Betagro and Four Seeds Corporation to set up Betagro First Collection Co., under which Boston Trading operates the restaurant Miyatake Sanuki Udon in Thailand.

## C. Japanese companies involved with Betagro on other operations

- **Pomme Food Co.**

In 2015, Pomme Food and Betagro formed the Bangkok-based joint venture Betagro-Pomme Food, to establish 'Pomu no ki', and "omu-rice" (rice omlet), a fast food chain in Thailand.<sup>77</sup> In March 2018, Pomme Food decided to end all of its associations with Betagro effective from April, and it currently has no business relationship with Betagro.

- **Four Seeds Corporation**

Four Seeds, in joint operations with Betagro and Boston Trading, set up Betagro First

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<sup>73</sup> Joyce Rainat, "Thailand-Japan agro-based", Poultry World, 2005, [http://www.worldpoultry.net/PageFiles/23191/001\\_boerderij-download-WP6599D01.pdf](http://www.worldpoultry.net/PageFiles/23191/001_boerderij-download-WP6599D01.pdf); Ajinomoto, "Ajinomoto Frozen Food (Thailand) Co., Ltd. to Resume Production in Mid-November 2012", 9 May 2012, [https://www.ajinomoto.com/en/presscenter/press/detail/g2012\\_05\\_09.html](https://www.ajinomoto.com/en/presscenter/press/detail/g2012_05_09.html); Ajinomoto, "Ajinomoto Betagro Frozen Foods (Thailand) Co., Ltd.", [http://www.ajinomoto.co.th/en\\_aji\\_thailand\\_factory.php?nid=26&parent\\_id=4](http://www.ajinomoto.co.th/en_aji_thailand_factory.php?nid=26&parent_id=4)

<sup>74</sup> Rainat, id. Ajinomoto, id.

<sup>75</sup> EMIS Store, "B Foods Production International Co Ltd An EMIS Company Report", 2016, [https://www.emis.com/php/company-profile/TH/B\\_Foods\\_Product\\_International\\_Co\\_Ltd\\_en\\_2103622.html](https://www.emis.com/php/company-profile/TH/B_Foods_Product_International_Co_Ltd_en_2103622.html)

<sup>76</sup> "Mitsubishi to launch Thai poultry processing joint venture", Nikkei, 5 Jan. 2018, <https://asia.nikkei.com/Business/ASEAN-Business-File/Mitsubishi-to-launch-Thai-poultry-processing-joint-venture>.

<sup>77</sup> ARK Business Search, "Betagro is partnering with 'pomu no ki'", <http://www.ark.asia/thailand-business1404/20140430b.html>; Bangkok Post, "Betagro banks on tastes of Japan to woo customers", 4 May 2014, <http://www.bangkokpost.com/print/403531/>

Collection Co, under which it operates Miyatake Sanuki Udon restaurant in Thailand.<sup>78</sup>

- **Itoham Foods Inc.**

In 2009, Itoham Foods and Betagro joined together with Thai Ajinomoto to create Itoham Betagro Foods, a company selling pork products.<sup>79</sup>

- **Marudai Food Co. Ltd.**

In 2012, Marudai formed a joint venture with Betagro, Betagro MF Deli Co. Ltd., to run a sausage manufacturing factory in Thailand.<sup>80</sup> It was estimated that 9600 tonnes of ham and sausages would be imported to Japan from the factory.<sup>81</sup>

- **Dainippon Pharmaceutical Co., Ltd.**

Dainippon operates a food business (food materials, extract products, etc.) that manufactures extract products from raw bones of poultry and pigs. In 2002, Dainippon formed a joint venture company with Sumitomo Corporation and Betagro Agro Group in order to maintain a stable source of raw materials from Thailand.

- **Sumitomo Corporation.**

Thai SPF Products, is a joint venture between Sumitomo and Betagro Agro Group formed in 1993 to develop the specific pathogen free (SPF) pork market. From 2002, Sumimoto, Dainippon Pharmaceutical Co., Ltd. and Betagro Agro Group Co., Ltd. formed Betagro-Dainippon Techno-Ex Co., Ltd., a joint company specializing in the production of livestock bone extract in its plant in Lop Buri, Thailand. Sumitomo Corporation and Betagro Agro Group also established Betagro Safety Meat Packing Co., Ltd. in 2002, and in 2004, began an SPF pork slaughter processing business using pork supplied by Thai SPF Products Co., Ltd. and other Betagro Agro Group companies. Sumitomo withdrew its investment in Betagro-Dainippon Techno-Ex Co., Ltd. In 2011 and with Betagro Safety Meat Packing Co., Ltd. in 2015.

At the completion of this report, Human Rights Now gave the Japanese companies an advance copy and invited their response. The responses we received are provided in the Appendix at the end of this report.

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<sup>78</sup> Bangkok Post, "Betagro takes on Japanese partners", 6 Mar. 2013, <http://www.bangkokpost.com/print/353133/>

<sup>79</sup> Itoham, "Itoham Group CSR Report 2016 detailed version", p.20, [http://www.itoham.co.jp/corporate/env/report/pdf/2016\\_web.pdf](http://www.itoham.co.jp/corporate/env/report/pdf/2016_web.pdf)

<sup>80</sup> Marudai, "A notification on a completion of a new joint factory with Betagro", Mar. 2012, <http://www.marudai.jp/corporate/cts/00000015.pdf>; Food Processing Technology, "Betagro MF Deli opens sausage plant in Thailand", 18 Mar. 2012, <http://www.foodprocessing-technology.com/news/newsbetagro-mf-deli-opens-sausage-facility-in-thailand>

<sup>81</sup> Fact Link, "Marudai to produce ham and sausage in Thailand with Betagro", 16 Mar. 2012, [http://www.fact-link.com/news\\_view.php?lang=jp&nwsid=00006426](http://www.fact-link.com/news_view.php?lang=jp&nwsid=00006426).

## IV. Case Studies and Human Rights Now's Investigation

### A. Claims made by Workers at Six Poultry Factories in 2015

A series of investigative reports published in 2015 by NGOs Finnwatch, on migrant rights, and Swedwatch, on poultry factory worker rights, and a high-profile poultry farm worker rights case in 2016 have all brought labour rights violations in Thailand's poultry sector and among migrant workers to the public's attention.

Swedwatch's 2015 report contained an investigation into six poultry factories in Thailand, carried out by Migrants' Workers Rights Network (MWRN).<sup>82</sup> The six factories investigated were owned by four of Thailand's leading poultry companies: CP Foods Public Company Limited (Minburi/"M" and Saraburi/"S" factories), Centaco Group, Laemthong Poultry Co. Ltd (Korat/"K" and Nakhon Pathom/"NP" factories) and Saha Farms Group. The report recounted reports of the following labour rights violations by workers.<sup>83</sup>

- confiscation of ID/personal documents (Centaco, CP Foods, Laemthong, Saha Farms)
- indications of debt bondage (Centaco, CP Foods, Laemthong, Saha Farms)
- unlawful recruitment costs for workers (Centaco, CP Foods, Laemthong, Saha Farms)
- indications of child labour (Centaco, and Laemthong from 14 years old and Saha Farms from 15 years old)
- unlawful salary deductions (Centaco, CP Foods, Laemthong, Saha Farms)
- reports of abusive supervisors, including slapping (Centaco, Laemthong, Saha Farms)
- not being paid overtime compensation (Centaco, Laemthong NP), no statutory double-wage for Sunday work (Laemthong K)
- no social security provided despite salary deductions for it (Centaco, CP Foods for majority of workers, Laemthong K, Laemthong NP for majority of workers, Saha Farms)
- payslips in Thai language only (Centaco, Laemthong, Saha Farms) and absence of employment contracts (Centaco, CP Foods, Laemthong, Saha Farms)
- reports of manipulation during official audits (Centaco, Laemthong, Saha Farms)
- reports of systematic and unjustified dismissals (Centaco, Laemthong, Saha Farms)
- toilet visits monitored (CP Foods), with salary deduction if exceeding 15 minutes (Centaco, Laemthong, Saha Farms)
- no union and welfare committee that was active or representative of migrant workers (Centaco, CP Foods, Laemthong, Saha Farms)
- dangerous and poor working conditions which improved during external audits (Laemthong)

As this list indicates, workers at factories of three of the companies, Centaco, Laemthong, and Saha Farms, reported violations across most categories, while workers at CP Foods also

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<sup>82</sup> Swedwatch, 2015, "Trapped in the kitchen of the world: The situation for migrant workers in Thailand's poultry industry", [http://www.swedwatch.org/wp-content/uploads/2016/11/76\\_thaikyckling\\_151123\\_ab.pdf](http://www.swedwatch.org/wp-content/uploads/2016/11/76_thaikyckling_151123_ab.pdf).

<sup>83</sup> Id., pp. 22-23.

still reported violations in a number of categories. All listed companies were invited to give a response to the claims, which the Swedwatch report added in an appendix.<sup>84</sup>

## **B. Background to the Thammakaset Farm 2 Case**

The case of 14 migrant workers who brought a labour rights claim against their former employer, Thammakaset Farm 2, has been a highly publicized and important case for migrant workers' rights in Thailand. Thammakaset is a private company owning multiple farms in Thailand, with Farm 2 (hereinafter referred to as "Thammakaset") being a poultry farm located about 100 miles north of Bangkok in the central province of Lopburi. At the time of the workers claims, Thammakaset was a poultry supplier to Betagro. Betagro dropped Thammakaset as a supplier after the labour dispute began, and our investigation did not identify which companies or countries any of Thammakaset's farms currently supply with poultry. Since the workers brought their labour claim, Thammakaset began a series of lawsuits, including defamation and theft claims, against the workers as documented below.

## **C. Human Rights Now Interview with the 14 Thammakaset Farm 2 workers**

On 10 September 2017, Human Rights Now (HRN) conducted interviews with the 14 former Thammakaset Farm 2 workers over Skype with the assistance of a staff member of Migrant Workers Rights Network (MWRN) which assembled the workers for the interview and assisted with translation. The 14 workers consisted of 6 females and 8 males, aged between 18 and 52 (in 2016 at the time of the initial dispute). Thirteen were ethnically Burmese and one was Arakan. All spoke Burmese; only two spoke a little Thai.<sup>85</sup>



*Photo: former Thammakaset workers and MWRN staff meeting with UN Working Group on BHR*

<sup>84</sup> Id., pp. 58 ff.

<sup>85</sup> The workers are currently living in Samut Sakorn with jobs working for the Thai Tuna Industry Association (TTIA). Interview conducted by HRN staff on 10 Sept. 2017.



In our interview, we identify speakers by number as follows:

- |   |                           |
|---|---------------------------|
| 1. Male, 28 years old. He speaks a little Thai. | 8. Male, 53 years old.    |
| 2. Male, 29 years old.                          | 9. Female, 38 years old.  |
| 3. Male, 19 years old.                          | 10. Female, 42 years old. |
| 4. Male, 29 years old.                          | 11. Female, 32 years old. |
| 5. Female, 31 years old.                        | 12. Female, 25 years old. |
| 6. Female, 34 years old.                        | 13. Male, 33 years old.   |
| 7. Male, 27 years old. He speaks a little Thai. | 14. Male, 34 years old.   |

Questions were asked by a HRN interviewer in Thai and either answered in Thai by workers or the MWRN representative, or they were translated into Burmese and Burmese responses of workers were translated into Thai. The Thai answers were then translated into English by our Thai interviewer. Questions were asked to the group collectively and to workers individually.

Note that in many cases workers did not indicate their name when giving a response. The text refers to “a worker” or “one worker” in such cases. At other points, when the HRN interviewer asked which specific worker(s) is/are making a claim, the workers or MWRN staff responded that all of the workers faced the problems together, so it would be misleading to suggest only one or a few workers faced the problem. (In such cases, the report uses phrases like “the workers reported...”.) Thus, if a worker is not identified when giving a response, it should be inferred that the worker either did not wish to be identified or the MWRN staff was reporting multiple workers responses intended to apply to all 14 workers collectively.

#### **D. HRN Interview: Workers’ Claims Indicating Forced Labour**

The primary focus of our investigation and interview with workers was on reports of conduct by Thammakaset which indicate forced labour according to the forced labour convention and ILO indicators as discussed in the next section. This includes the following reports.

##### **1. Confiscation of identity documents**

Workers reported that the employer registered and paid for all of the workers’ documents (Myanmar passports, identification or “pink” cards as a foreigner in Thailand, and other documentation), after which the employer kept all workers’ documents with himself at all times and refused to return them to workers when they wanted to leave the farm. According to multiple workers, the major issue with the confiscation of their documents was the inability to travel outside of the farm due to fear of arrest by police because they would not be able to demonstrate their legal status without their documents. The inability for the workers to stop working and leave the farm due to the threat of arrest, despite their desire to leave, is a core feature of forced labour.

## 2. Restriction on movement and inability to safely physically leave the farm/job

During our interview, multiple workers described barriers to movement from the farm which presented them with challenges in going outside and contacting other migrant workers or activists, as described below. The most important restriction repeatedly mentioned was the confiscation of their identity documents, as mentioned above, which made workers fearful of arrest by Thai authorities away from the farm. One worker directly stated that the employers' confiscation of workers' documents prevented their freedom of movement.



*Photo: Thammakaset Farm 2*

One worker explained that there is a fence around the Thammakaset farm which is equipped with a CCTV system, and that there was no transport available for the workers to leave the farm. While the worker reported no security on the fence, he or she also reported workers not being able to leave the premises on their own due to its isolated location, the retention of their identity documents by the employer, and the lack of transport.

A worker also reported that market visits for the workers to buy food were arranged by the employer, and they went in groups, accompanied by either the supervisor or the farm veterinarian for a few hours on a Sunday, which did not provide any realistic opportunity to leave. The worker also reported that they were able to return to Myanmar for periods, but they reported being required by their employer to give at least one month's notice to obtain their identity card and being told that they would not be given a termination letter that would allow them to obtain a job with another employer. One worker also mentioned that while they were technically allowed to attend religious services, they could never practically attend any due to their tight schedules.

The physical isolation of the farm is another reason it was difficult to leave the farm. Thammakaset Farm 2 is in an isolated location, surrounded by long stretches of fields and forests. Although there is reportedly no security on the gate, this would not be necessary for detaining workers as there is reportedly no transport available, and the location makes it very difficult to leave.

### **3. Inability to Quit the Job**

All 14 workers reported that due to the poor working conditions—including being underpaid, overworked, unjustifiably fined by the employer, etc.—they all wanted to quit. However, when the workers expressed their desire to quit at various times, the employer always postponed allowing them to quit to the next month and said they would not receive a salary for that month if they quit before that time, only to repeat the cycle the next month. The workers further reported that they could not report their situation or contact workers in other farms because they could not leave the farm on their own.

One worker (#4) reported eventually obtaining a mobile phone from an unmentioned source, finding the Facebook page of MWRN with reports of their work for migrant workers, and contacting MWRN to ask if their working conditions were illegal and their salary too low. Until that point, the workers did not know that their conditions were illegal and that they could receive legal relief if they quit, another factor which kept them from quitting.

The MWRN staff explained in our interview that, “out of 7 or 8 farms of Thammakaset’s in which all workers were experiencing similar problems, the workers in Farm 2 were the only ones who stood up.” She also explained that, since the labour dispute with the 14 workers began, the managers of the other Thammakaset farms have been trying to keep their workers away from the 14 workers to prevent contact. Furthermore, the staff explained that the 14 workers have not attempted to establish a workers group, association, or union to protect their own and other farm workers’ rights because, under their current situation having already been sued multiple times by Thammakaset, they fear being sued again in retaliation.

These facts, the staff suggested, explain why only the workers of Thammakaset Farm 2 began a labour dispute against the employer, even though workers on the other farms have reportedly experienced the same labour abuses. The fact that other workers facing the same abuses have not been able to complain or quit may be an indication of forced labour conditions keeping them employed in undesirable conditions in silence. It is critical that the workers at the other Thammakaset farms, and indeed at all poultry farms in Thailand, be contacted and interviewed to find out their actual working conditions and desires.

### **4. Restrictions on Outside Communication and Inability to Complain or Seek Help from Employers, Authorities, or Outsiders**

Worker #4, the same worker who above reported calling MWRN, explained that generally workers were not allowed to use phones or Internet. He explained that while there was wifi

on the farm, workers were generally not allowed to use it. More specifically, workers initially had limited use of wifi within the office, but this allowance was revoked after the employees began complaining about their working conditions. After their complaint, the employer also threatened the workers with criminal prosecution for stealing the wifi signal by using it for outside communication. The worker reported that workers had cellphones on the farm that they brought with them from Myanmar to contact their families. He further reported that calls had to be made in secret in order to enable workers to speak with MWRN advocates. He cited this as an example of conduct by Thammakaset indicating their hostility to the workers reaching out to activists for assistance with their labour rights claims.

On the issue of communication restrictions, one worker mentioned—in describing the biggest concern they faced as migrant workers in their experience at Thammakaset farm—that due to the language barrier, if a labour problem happens on the farm, migrant workers do not feel able to contact any manager on the farm to ask for help. Another worker also explained that, as the migrant workers did not have a good command of the Thai language, they did not feel able to complain about their work conditions to members of the Thai-speaking public who they interacted with at the farm. In their interview with HRN, the workers explained that while they were not explicitly forbidden from contacting or associating with others outside the farm, they reported being practically restricted due to their very tight and strict work schedules, which gave them no time or opportunity to leave and contact outsiders.

### ***Preventing Inspectors from learning about abuses***

Related to preventing workers from complaining to outsiders, the workers also reported that the employer took measures to prevent inspectors from learning about labour abuses and the workers' desire to leave their job. Workers reported that the employer took a calculated approach when Thai labour inspectors visited the farm, temporarily returning the identity documents back to the workers, hiding the time cards recording working hours, and telling workers what to say to the inspectors. If the police or the immigration department visited the farm, the workers reported being instructed to hide in the fields.

Aside from these conditions which prevented them from complaining or seeking assistance from outsiders or authorities, workers were deterred from complaining and seeking assistance by retaliation from the employer in the form of constant judicial harassment as described in the next section. Workers' inability to complain, seek help, or receive help from outsiders, including Thai authorities, is relevant to their inability to leave the farm because they cannot be released by the employer or receive what they need to safely leave without such outside assistance under forced labour conditions.

## **5. Judicial Harassment in retaliation against the workers for their labour complaints**

One important factor making it difficult for workers to quit or complain was that the Thammakaset employer initiated and threatened a series of unjustifiable lawsuits against



workers in retaliation for their labour complaints and leaving the farm. For example, the employer brought a criminal defamation claim against all 14 workers for their complaint to the NHRCT (described below). For this reason, the workers described being very careful with the statements they deliver to the media for fear of being harassed with another defamation suit, which also restricts their ability to publicize their complaints and also chills the ability of other farm workers from complaining.

The employer also sued two workers, #1 and #11, for criminal theft for them taking their time cards as evidence to show their over-work in their litigation against the farm (described below). This deters other workers from gathering evidence of forced labour. As mentioned above, the employer also threatened bringing a criminal theft claim against the workers for stealing wifi for contacting outsiders with their labour complaint. As also mentioned above, after the current labour dispute began, the workers did not establish a union or workers association to speak on behalf of the workers for fear of the employer bringing some criminal case against them.

When HRN asked the workers what their current concerns were, multiple workers reported that, since their case began, they have lived in constant fear of being prosecuted for their contact with labour rights activists and pursuit of their legal rights. This type of judicial harassment can be seen as a type of direct retaliation or penalty against the workers to punish them for their labour complaints and to deter other workers from complaining and finding relief which would allow them to feasibly leave the job.

## **6. No knowledge or agreement about nature or conditions of work**

All of the workers entered into Thailand through a broker which bribed immigration officers. The employer then contacted the broker to recruit the workers. None of the employees reported having written employment contracts or an oral agreement. They also reported not discussing the contents of the work before starting; they simply showed up on the first day of work to find out the nature of the work.

A Thai manager had the responsibility of communicating with workers, largely through gestures and non-verbal communication, and teaching them the nature of the work. The workers reported that due to the language barrier they did not fully understand the nature and conditions of the work or Thai laws, and did not understand that they were working under illegal conditions, such as illegal underpayment, fines, lack of breaks and holidays, and overwork. No interpreter was provided to workers during their working period. The employer only provided an interpreter from Thammakaset Farm 1 during negotiations after the workers began their conflict with the employer.

Because their pay slips were in Thai language which they could not understand, the workers also reported being uncertain about what uncompensated overtime and deductions were being made. Worker #7 described feeling exploited because the wages he received seemed small and the days off seemed too little, but the workers did not know for sure. He explained that it was for this reason the workers called MWRN to ask how much wages they

were supposed to be receiving and how many days per week they were supposed to get rest, and only after calling MWRN did the workers learn of the violations they had received.

## **E. HRN Interview: Workers' Claims of Other Labour Rights Violations**

HRN's interview with workers also revealed reports of other labour rights violations beyond forced labour as follows, some of which also intersect with the forced labour issue.

### **1. Underpayment of wages**

Workers reported being paid 220 to 230 Thai baht (THB) a day (less than 800 JPY), less than the Thai minimum wage of 300 THB (1000 JPY) a day.<sup>86</sup> The workers reported not being paid any overtime pay, not being paid for sick leave, and not receiving additional pay for being deprived of holidays as required by law, described in Part 4 below. The pay rate is set by law at not less than 1.5 times the normal rate for overtime work (beyond 8 hours in a day), double rate for work on holidays (at least one day per week and 13 traditional holidays), and triple rate for overtime on holidays.<sup>87</sup>



*Photo: Thammakaset Farm 2 workers*

### **2. Unlawful Wage Deductions, Fees, and Fines**

As mentioned above, the workers reported that the employer made multiple types of deductions from workers' wages. Examples include the employer's deduction of the registration fee for the passports and ID pink cards out of the workers' wages for three

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<sup>86</sup> This report was corroborated by the un-official English translation of NHRCT Report, June 2017 (internal release).

<sup>87</sup> The Labour Protection Act B.E. 2541 (1998), The Department of Labour Protection and Welfare, [https://www.labour.go.th/en/attachments/article/18/Labour\\_Protection\\_Act\\_BE2541.pdf](https://www.labour.go.th/en/attachments/article/18/Labour_Protection_Act_BE2541.pdf), Secs. 61, 23, 26, 62, 28, 63, respectively, and Ministerial Regulation No. 13, B.E.2541 (1998) Issued under the Labour Protection Act B.E.2541 (1998).

months, 500 THB (1700 JPY) from workers' wages if they did not work night shifts during the rearing period, 5 THB (20 JPY) deduction for not picking up dead chickens, and the costs of accommodations, 1600 THB (5400 JPY) a month for each room and a further deduction for water and electricity. Worker #13 added that workers did not feel able to refuse night shift work due to the employer deducting from their salaries if they did not show up. Thus, in addition to being an unlawful fee, it serves as a form of pressure for workers to do non-voluntary work.

Workers were given pay slips in Thai, so they were uncertain about what deductions had been made from their pay. Workers also reported that the employer did not obtain the written consent of the employees for deductions made from their wages, such as for rent, water, electricity, and refusing to work overnight. When a worker was sick, workers reported that a farm mechanic would take the worker to a nearby clinic where the worker would be responsible to pay for all expenses from their wages. Social security (which includes health insurance) was not provided, although it is required by law that the employer provide for it. Unlawful fees, such as the initial registration fees workers paid back over three months, are also relevant to a forced labour claim as they create a situation of debt bondage. Workers must work to pay back their debt to the employer, and the employer holds the workers' documents until the debt is paid so that they cannot leave the job.

### **3. Breach of maximum working hours**

Workers reported lengthy periods of long hours without breaks or a day off. The workers worked on a roughly 2-month cycle consisting of (1) 40 to 45 day period of rearing the chickens with working hours from 7am–5pm and 7pm–5am, (2) a short 3 day holiday, (3) and a 20 day period of cleaning to prepare for the next cycle of rearing with working hours from 7am–5pm. The cycle will then begin again with the rearing period, with multiple cycles occurring per year.

During the 40–45 day rearing period, workers worked both day shifts (from 7am to 5pm) and night shifts (from 7pm to 5am) without a day off (law requires one day a week), without breaks (law requires at least one hour break for every five hours of work), and without overtime pay (1.5 the normal rate for work above 8 hours).<sup>88</sup> According to the workers, if they did not do night shifts their wages would be reduced by 500 THB (around 1700 JPY), although by law employers cannot require workers to work overtime.<sup>89</sup> Following the rearing period, there was a three-week cleaning period where workers did not have to work night shifts, but they were still required to work the day shifts (7am–5pm) without a break.

In our interview, migrants reported to HRN working up to 19 to 22 hours a day for periods of 38 to 43 days in a row during the rearing period in violation of labour regulations which require that total work hours must not exceed 12 hours per day and 48 hours per week, and

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<sup>88</sup> Id., including Sec. 27 for the break requirements.

<sup>89</sup> Id., Sec. 24.

holiday work hours must not exceed 36 hours per week.<sup>90</sup> In the cleaning period they reported working 10-hour days for three weeks without a day off, cleaning the warehouse-sized coops. During this period, the workers reported only being given one day off a week. The workers reported being deprived of holidays and rest days and being made to work excessive working hours and overtime on threat of punishment. For example, they reported being informed that their salaries would be deducted if they refused to work the overtime shift.

*Photos: Thammakaset Farm 2*



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<sup>90</sup> Ministerial Regulation No.3 & No. 13, B.E.2541 (1998) issued under the Labour Protection Act B.E.2541 (1998), Id.

#### **4. Unreasonable and Unsafe Working Conditions**

In their interview with HRN, individual workers discussed unhealthy or unreasonably difficult working conditions, such as the massive numbers of chickens individuals were responsible for, which varied depending on the specific locations workers worked. One worker reported being responsible for 28,000 to 30,000 chickens per cycle, speaking of it as a typical amount. Workers also reported negative health effects, including fever and flu due to lack of sleep during the rearing period and constant itches due to small insects.

The workers reported that they could not get sleep during the rearing period because they had to watch the chickens and ensure the water and electric systems were working. Recall that the working hours in this period were from 7am to 5pm and 7pm to 5am without the legally required breaks and under threat of a pay deduction for refusing the overtime. One worker, in describing the lack of sleep, explained “it was more like taking a nap along the night” and “they cared about the chickens more than us.”

#### **F. Legal Analysis of Labour Rights Abuses in the Thammakaset Case**

Looking at the results of our research and investigation, workers have reported facing major labour rights violations, the most critical of which are indications of forced labour, including factors which restricted workers ability to safely quit the job, leave the farm, or seek outside assistance to enable them to leave the farm and job, as discussed above, in a situation in which the workers have clearly indicated their non-voluntariness to the conditions of the work and intention to quit. The following sections consider the workers’ reports as they relate to the standards of forced labour under Thailand’s Anti-Human Trafficking Act, the Forced Labour Convention 1930 (No. 29), and indicators of forced labour identified by ILO labour experts, respectively.

##### **1. Indications of Forced Labour under the Anti-Human Trafficking Act Standard**

To begin, trafficking is a separate crime from forced labour with further elements. There were not allegations that Thammakaset committed trafficking; the major charge was forced labour. However, in the absence of a specific Thai law prohibiting forced labour, the standard for the forced labour element under the Anti-Human Trafficking Act may be relevant to the question of whether forced labour was practiced in Thailand. In short, forced labour is an element incorporated inside the crime of trafficking that can be established even if the full crime of trafficking is not. That may not be a crime under this Act, but it is still a standard of “forced labour” under Thai law.

As discussed above, the standard for forced labour under Thailand’s Anti-Human Trafficking Act is narrower than Thailand’s duty to prohibit forced labour under the Forced Labour Convention 1930 (No. 29). Thus, Thailand has a duty under the convention cases to prohibit more cases of forced labour than are prohibited by the act. In this regard, it is notable that the reports of the Thammakaset workers, if verified, appear to constitute forced labour even under the Anti-Human Trafficking Act’s insufficient standard.

Note, again, that the act prohibits trafficking, not forced labour by itself. However, its definition of trafficking (Art. 6) includes “receiving” persons “for the purposes of unlawful exploitation” (including “forced labour”) by “deception”.<sup>91</sup> This could cover the Thammakaset employer as he received the 14 workers via brokers and subjected them to forced labour, as discussed below, by deception insofar as the workers reported not being given information about the illegal conditions of the work when they were recruited. (However, as discussed above, Thailand has a duty under the Forced Labour Convention to criminalize forced labour even if an employer has not participated in trafficking.)

The act defines “forced labour or services”, as a form of exploitation, as:

compelling other persons to work or provide services by putting such person in fear of injury to life, body, liberty, reputation or property ... by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.<sup>92</sup>

This definition introduces a number of elements for a forced labour claim discussed in the following paragraphs as they relate to the Thammakaset workers’ reports.

a) Fear of injury

Multiple workers reported occasions when they felt fear of injury—particularly to liberty (fear of arrest) and to property (by lost wages)—as it related to their motivations for continuing to work and not being able to quit, leave, or complain. This includes workers’ fears of arrest if they left the farm without their identity documents, fears of losing a month’s pay if they quit before the employer allowed them (which the employer continually withheld), fears of wage reductions if they refused night shifts, and fears of judicial harassment for taking measures to protect their labour rights and safely quit such as complaining to authorities or outsiders (defamation) or obtaining evidence of illegal labour practices (theft). These measures, threats, and retaliations can be considered “intimidation” or “other means” to prevent workers from being able to resist continuing to work.

b) Means

As the previous paragraph suggests, the employer took preemptive measures to prevent workers from leaving or in direct reaction to workers complaints and desire to quit to prevent them from leaving. These include holding workers’ documents to make them vulnerable to arrest if they left, restricting workers’ ability to communicate with outsiders, threats to not pay workers that quit, deducting pay from workers that did not work night shifts, and prosecuting (or threatening to prosecute) workers that complained to authorities or took evidence of illegal labour practices.

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<sup>91</sup> Anti-Human Trafficking Act B.E. 2551 (2008), [https://en.wikisource.org/wiki/Anti-Human\\_Trafficking\\_Act,\\_BE\\_2551\\_\(2008\)](https://en.wikisource.org/wiki/Anti-Human_Trafficking_Act,_BE_2551_(2008)), Art. 6.

<sup>92</sup> Id., Art. 4.



c) Compelling work and workers' inability to resist

Evidence of workers being compelled to work and their inability to resist (i.e., quit, leave, or complain) given the employers' preventive and retaliatory measures and threats include their reports of continuing to work despite stating their desire to quit to the employer, to which the employer responded with the retaliations and threats mentioned above. The fact that workers at other Thammakaset farms reportedly continued to work (and possibly continue even now), despite reportedly being subjected to the same labour abuses as the 14 complaining workers, may also be evidence of them being subjected to the same retaliations and threats, creating a compulsion for them to work. These other workers should be interviewed to verify whether they are working under compulsion or not.

d) Section Conclusion

As mentioned above, it can be interpreted that the Thammakaset workers were subjected to "forced labor" even under the insufficient standard set by the Anti-Human Trafficking Act. Note, again, while the actions appear to constitute forced labour under this standard by this analysis, this does not constitute a crime under the Anti-Human Trafficking Act as the act prohibits trafficking, not forced labour. For this reason, trafficking was not alleged in this case. However, it is fair to say that the Act provides a legal standard for finding "forced labour" under Thai law, even if it is not criminalized.

## **2. Indications of Forced Labour under the Forced Labour Convention 1930 (No. 29)**

As mentioned above, Thailand is a member of the 1930 Forced Labour Convention, giving it a duty to prohibit forced labour according to its definition. Its definition of forced labour is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>93</sup>

Rearranging the clauses for ease of analysis, the two basic elements from this standard are (1) work for which the worker did not offer him or herself voluntarily that (2) the worker did under a "menace of any penalty".

a) Non-Voluntariness

According to the International Labour Organization (ILO) Expert Committee in its report "ILO Standards on Forced Labour" (hereafter "ILO Standards Report"), the term "offered voluntarily" refers to the free and informed consent of a worker to enter into an employment relationship and to leave the employment at any time.<sup>94</sup> An ILO casebook adds that a "worker must always be free to choose to leave his or her work."<sup>95</sup>

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<sup>93</sup> Forced Labour Convention, C29, 28 June 1930, <http://www.refworld.org/docid/3ddb621f2a.html>, Art. 2.

<sup>94</sup> ILO, "ILO Standards on Forced Labour: the new protocol and recommendation at a glance", 2016, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_508317.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_508317.pdf), p. 5.

<sup>95</sup> ILO, "Forced labour and trafficking: a casebook of court decisions: a training manual for judges, prosecutors and legal

The element of non-voluntariness is straightforward to establish for the 14 Thammakaset workers. All 14 workers asked the employer multiple times over a long period to allow them to quit the job because of the illegal conditions that they had been working under, which they learned from MWRN, but they reported not being free to leave the work without severe reprisal from the employer. This is an explicit indication of their non-voluntariness to the past illegal work and to any future continuing working there. The non-voluntariness to the past illegal work was grounded in the fact that workers were not made aware of the illegal nature of their work, so could not give their free and informed consent to the work. On this point, an ILO casebook has noted that where deceit and fraud are involved in the original work offer, the worker's acceptance cannot be considered knowing and voluntary.<sup>96</sup> The workers' non-voluntariness to their continuing work, after they discovered the illegal nature, was grounded in the fact that the employer responded to the workers' requests to quit by threatening to withhold a month's salary if they quit without his allowance, which allowance did not come month after month as the workers continued to work in order to not lose their salary. This took away workers' freedom to choose to leave the work.

Other factors establishing the workers' non-voluntariness were the facts that workers were not given information about the job when recruited; managers could not explain the work or understand workers' complaints due to the language barrier; workers did not understand their Thai-language pay slips to understand if any violations had occurred to them; and workers had to call MWRN in secret to discover that they were working under illegal conditions to which they did not consent.

#### b) "Menace of any penalty"

In interpreting the definition of forced labour under the 1930 Forced Labour Convention, the ILO Standards Report explains that "[w]hen adopting the Convention, ILO constituents opted for a broad definition of the term 'forced labour' ... rather than enumerating a list of prohibited practices."<sup>97</sup> With specific regards to the phrase "menace of any penalty", the ILO Standards Report states it should be construed broadly and refer to a wide range of penalties used to compel someone to perform work or service, including penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological threats, or non-payment of wages.<sup>98</sup> The "penalty" may also consist of a loss of rights or privileges, such as a promotion, transfer, or access to new employment or housing.<sup>99</sup>

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practitioners, Geneva", 2009, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_106143.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106143.pdf), p. 13.

<sup>96</sup> ILO, "Forced labour and trafficking: a casebook", 2009, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_106143.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106143.pdf), p. 13.

<sup>97</sup> ILO, "ILO Standards on Forced Labour", 2016, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_508317.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_508317.pdf), p. 5, citing ILO, "General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization", Committee of Experts, 2012, ILC.101/III/1B, para. 272.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

Numerous factors reported by workers in their interview with HRN appear to meet the standards articulated by the ILO Standards reports. Most importantly, the confiscation of workers' documents under the conditions of this case placed workers under the threat of arrest if they left the farm, a clear menace of penalty and coercive under a broad interpretation. The employer threatened to withhold wages if workers left, continually pushing back the date workers were allowed to leave. Workers also faced deductions from their wages if they did not work nights. The employer also began a series of unjustifiable criminal lawsuits after workers left to harass and punish them for leaving the job, which as suggested by the MWRN staff, has deterred workers at Thammakaset's other farms from leaving or bringing labour complaints under the menace of similar harassment.

### 3. Indications of Forced Labour According to the ILO

The ILO report, "ILO Indicators of Forced Labour" (hereafter "ILO Indicators Report") also lists general indications of forced labour, which the report describes as "the most common signs or 'clues'" that forced labour exists.<sup>100</sup> According to the report, the indicators are "derived from theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL)" and "based upon the definition of forced labour specified in the ILO Forced Labour Convention, 1930 (No. 29)."

The indicators include (with application to the Thammakaset case described for each indicator):

<b>ILO Indicators of Forced Labour</b>	<b>Application to the Thammakaset case</b>
Failures to pay wages	The Thammakaset employer threatened to not pay wages when workers began their complaint.
Threats against workers such as denunciation to authorities	This might arguably include the unjustified criminal charges the Thammakaset employer brought against workers.
Loss of wages	The Thammakaset employer reduced wages from workers in the form of fines for not working nightshifts, among other losses.
Intimidation and threats	This may apply to Thammakaset supervisors' verbal threats and the employer intimidation by judicial harassment.
Situations of debt bondage which may be created by withholding identity documents until fees are paid (including imposing new fees)	This applies to the Thammakaset case.
Isolation of the workplace	This applies to the Thammakaset case.
Deception about the employment situation or failure to deliver what was promised	This applies to the Thammakaset case.

<sup>100</sup> "ILO Indicators of Forced Labour", 2016, <https://www.immigration.gov.tw/public/Data/6319464571.pdf>, p. 2.

As the above table demonstrates, the indicators are consistent with the testimony of Thammakaset workers regarding conditions at the farm.

The ILO Indicators Report goes into further detail for these indicators. Regarding restrictions on worker movement as an indication of forced labour, it notes that if workers are not free to enter and exit the work premises (except for certain reasonable reasons such as protecting worker safety), this represents a strong indicator of forced labour.<sup>101</sup> The inability of the Thammakaset workers to leave due to not having documents, as well as the physical isolation of the farm, language barrier, lack of transportation, restrictions during market visits, and restrictions on outside communication all contribute to preventing workers from freely leaving the farm.

Similarly the ILO Indicators Report, in discussing isolation of the worksite is an indication of forced labour, specifically refers to the site being far from habitation and workers having their phone use and communications restricted to prevent outside contact, both of which were the case in the Thammakaset case.<sup>102</sup>

While the determination of whether overtime constitutes a forced labour offence can be complex, the ILO Indicators Report provides that, as a “rule of thumb”, if workers are made to “work more overtime than is allowed under national law”, under some form of threat (which may arguably include deduction of wages), “this amounts to forced labour.”<sup>103</sup> This is the situation Thammakaset workers faced during the roughly 40-day rearing periods, as well as by not having legally required breaks and holidays.

#### a) Section Summary

As mentioned above, it is highly likely that the Thammakaset's workers have been subjected to forced labor as defined by the ILO Forced Labour Convention, 1930 (No. 29).

### **4. Claims of other Labour Rights Violations under the Labour Protection Act**

Aside from the alleged violations of the Forced Labour Convention, multiple allegations may implicate or be violations of various Labour Protection Act provisions.<sup>104</sup> It is beyond the scope of this report to examine these claims in detail; however, interested readers may follow the references to relevant provisions in the following list. These provisions include those relevant to working more hours than permitted (Chapter 2, Secs. 23, 24, 27, 28, 31); working on holidays (Chapter 2, Sec. 25); failure to pay wages for holidays (Chapter 5, Secs. 56, 62), sick leave (Chapter 5, Sec. 57), and overtime (Chapter 5, Secs. 60, 63); wage reductions, such as for recruitment, documentation, and other fees (Chapter 5, Sec. 76); a lack of employment contract (implicates Chapter 1, Sec. 14/1) and lack of employment

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<sup>101</sup> Id., p. 9.

<sup>102</sup> Id., p. 11.

<sup>103</sup> Id., p. 25.

<sup>104</sup> The Labour Protection Act B.E. 2541 (1998), The Department of Labour Protection and Welfare, <http://www.mol.go.th/sites/default/files/images/jpg/01.pdf>.

documentation prior to the commencement of employment (implicates Chapter 9, Secs. 108, 112, 113, 114); and restrictions on movement (Chapter 2, Secs. 34, 36). As mentioned above, since the Thammakaset case began, the confiscation of passports has also been made punishable by the 2017 Royal Decree on Managing the Work of Aliens.<sup>105</sup>

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<sup>105</sup> Royal Decree on Managing the Work of Aliens B.E. 2560 (2017) (Foreign Workers Decree), 22 Jun. 2017, <http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/065/1.PDF> (in Thai).

## V. Thammakaset Litigation and Related Legal Actions



*Photo: 13 of the former Thammakaset Farm 2 workers*

### A. Litigation brought by 14 Migrant Farm Workers of Thammakaset Farm 2

After a worker at Thammakaset read a Facebook post by Migrant Workers Rights Network (MWRN) with a news story about overworked and underpaid migrant tuna factory workers in Thailand receiving compensation, he secretly contacted MWRN to ask about their similar work situation.<sup>106</sup> Under MWRN's direction, the workers negotiated with Thammakaset and local authorities, which failed; and on 15 June 2016 the 14 workers resigned. On 25 June, Thammakaset offered compensation which the workers refused as insufficient. The Thammakaset owner accepted the underpayment and illegal deduction claims, but, along with Betagro, denied the workers claims on forced labour and other abuses.<sup>107</sup>

With MWRN's assistance, the 14 former workers then filed a complaint with the Lopburi Province Department of Labour Protection and Welfare (DLPW) in June 2016. The initial complaint concerned the conditions of work that allegedly constituted a violation of their rights under the Labour Protection Act 1998,<sup>108</sup> the relevant legislation governing labour rights in Thailand. The workers were interviewed by the department. The workers then filed another complaint to the DLPW regarding the offences of limited freedom of movement and personal document confiscation in July 2016.

The DLPW only looked into the first complaint concerning labour offences under the Labour Protection Act 1998. The DLPW issued an official Order on 1 August 2016, mandating Thammakaset to pay the workers approximately 1.7 million THB (5.8 million JPY). The Order

<sup>106</sup> Reuters, 'Facebook post inspires landmark case for migrant workers in Thailand', 15 Sept 2016, <http://www.reuters.com/article/us-thailand-labour-rights/facebook-post-inspires-landmark-case-for-migrant-workers-in-thailand-idUSKCN11L00F>

<sup>107</sup> Id.

<sup>108</sup> Thai Labour Protection Act, B.E. 2541 (1998), <http://www.ilo.org/dyn/travail/docs/1012/Labor%20Protection%20Act%201998%20with%202008%20amendments.pdf>



outlined violations of the Labour Protection Act 1998 concerning the failure of Thammakaset to ensure payment of minimum wage, payment of daily wages, wages on working holidays, overtime pay, and holiday leave pay and traditional holiday leave pay.

The workers and MWRN considered the Order insufficient as it did not award them full compensation for their claim of up to five years of abusive working conditions.<sup>109</sup> Moreover, it ordered the employer to pay only 2 to 4 hours of overtime per day to the workers when the allegations were of much longer hours.

On 1 September 2016, the 14 workers appealed the DLPW Order to the Region 1 Labour Court in Saraburi Province of Thailand, seeking approximately 44 million THB (150.5 million JPY) in compensation for alleged violations of the Labour Protection Act 1998 and damages for forced labour. Thammakaset and Betagro were joint defendants in this case. The trial took place on 21 and 22 February 2017. The Court dismissed the workers claim on 17 March 2017, accepting the evidence and arguments from the National Human Rights Commission of Thailand (NHRCT) report against the claim (described in the next section) and reasoning that the DLPW Order was correct and lawful.

Parts of this decision were appealed multiple times. Thammakaset appealed the 1.7 million THB decision attempting to dismiss it, leading to the Appeals Court upholding the 1.7 million THB compensation on 14 September 2017. Thammakaset attempted to appeal this for a second time to the Supreme Court on 10 October 2017. On 15 January 2019 the Supreme Court denied this appeal and ordered immediate payment to the workers of 1.7 million THB compensation order after more than 2.5 years of waiting.<sup>110</sup> The workers also appealed the Labour Court's decision calling for the 44 million THB compensation for forced labour violations, and their claim was rejected by the Appeals Court on 15 December 2017. The workers did not appeal this decision as it is considered an issue of fact and not law, and thus not considered justiciable.

## **B. National Human Rights Commission of Thailand (NHRCT) Decision**

Following their original claim to the DLPW, the 14 former Thammakaset workers filed an additional complaint to the National Human Rights Commission of Thailand (NHRCT) on 6 July 2016. The NHRCT only has the power to investigate complaints and to propose remedial measures to relevant parties, but it does not have enforcement powers to compel remedies.<sup>111</sup> It is largely useful just for generating public attention on the workers' case. The workers made several claims of labour abuses under Thai labour law and relevant treaty

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<sup>109</sup> The Nation, 'Myanmar workers file Bt46m claim against Betagro over Lop Buri supplier', 3 Sept. 2016, <http://www.nationmultimedia.com/news/national/30294419>

<sup>110</sup> Rina Chandran, "Thai top court orders compensation for Myanmar workers in landmark case", Reuters, 5 Jan. 2019, <https://www.reuters.com/article/us-thailand-myanmar-workers/thai-top-court-orders-compensation-for-myanmar-workers-in-landmark-case-idUSKCN1P9114>.

<sup>111</sup> Ken Bhattacharjee, "The New National Human Rights Commission Act in Thailand", <https://www.hurights.or.jp/archives/focus/section2/1999/12/the-new-national-human-rights-commission-act-in-thailand.html>

law: forced labour, illegal overtime, no weekend breaks or annual leave, underpaid wages, restricted freedom of movement, and confiscation of worker passports.<sup>112</sup>

In its Examination Report, dated 31 August 2016, the NHRCT concluded that the workers had been underpaid, deprived of holidays and rest days, required to perform some overtime, and unlawfully had their salaries deducted, and it offered recommendations to the Labour Department and Thammakaset to solve the problems, as well as a resolution to the Labour Department to “take action on measures to solve the problems” within 90 days.<sup>113</sup> The NHRCT has followed up with further facilitation of reconciliation between Thammakaset and the workers based on its findings. However, the NHRCT did not consider the workers to have been subjected to forced labour or to have had their movement restricted for only the reasons given in the next few paragraphs.<sup>114</sup>

Regarding its rejection of the forced labour and movement restriction claims, the NHRCT referred to the Anti-Human Trafficking Act B.E. 2551 (2008),<sup>115</sup> suggesting it was a relevant standard, which as mentioned above defines “forced labour or services” as:

compelling other persons to work or provide services by putting such person in fear of injury to life, body, liberty, reputation or property of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.

However, without referring to this definition or the underlying claim, the NHRCT understood the workers’ “forced labour” and “restrictions on movement” claims to be that Thammakaset had behavior to “to detain or obstruct” the employees and “limit [their] freedom of movement”, despite their inconsistency of these standards with the definition of forced labour under both the Forced Labour Convention and Anti-Human Trafficking Act. In cursory text (only 131 words in the English translation) the NHRCT then quickly dismissed the claims based on three findings without any further explanation or analysis:

- (a) One of the complainants had immigration stamps on his passport showing he had previously left Thailand freely during the time at the farm;
- (b) There was evidence of a book showing purchases on credit at a store outside the farm;
- (c) The fence at the farm was not high and could not detain anyone.<sup>116</sup>

The major issue with the NHRCT’s conclusion is it interprets the forced labour standard much more narrowly than the relevant legal standards, the Forced Labour Convention and the Anti-Human Trafficking Act. As discussed in the previous section, the Forced Labour Convention finds forced labour when workers work non-voluntarily under a menace of penalty. The Act refers to intimidation or any other means to compel workers to work out of

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<sup>112</sup> National Human Rights Commission of Thailand, Examination Report no. 114/EB 2259 (2016), 31 Aug. 2016 (informal English translation), pp. 1-2.

<sup>113</sup> Id.

<sup>114</sup> Id., pp. 5-6.

<sup>115</sup> Anti-Human Trafficking Act, BE 2551, [https://en.wikisource.org/wiki/Anti-Human\\_Trafficking\\_Act,\\_BE\\_2551\\_\(2008\)](https://en.wikisource.org/wiki/Anti-Human_Trafficking_Act,_BE_2551_(2008))

<sup>116</sup> NHRCT Examination Report, pp. 5-6.

fear without ability to resist. In contrast to both of these standards, the NHRCT understood by “forced labour” only that a company detains, obstructs, or limits the movement of workers, as can be understood by the findings they considered relevant.

However, the NHRCT standard unjustifiably leaves out indications of forced labour available by the Convention’s and Act’s standards. For example, the NHRCT completely ignored facts supporting a finding of “menace of penalty” (the Convention’s standard) and intimidation or causing fear in workers which they could not resist (the Act’s standard), such as the employer’s confiscation of documents, threats of non-payment, wage deductions, forced indebtedness, punitive judicial harassment, as discussed above, as well as conditions which made workers leaving the farm prohibitive, such as the farm’s physical isolation, language barrier, lack of transportation, lack of documents, and restrictions on outside communication. These factors indicate forced labour under the standards of the Convention and Act by creating a menace of fear among workers in leaving the farm, but they are not regarded under the NHRCT’s unjustifiably narrow standard.

Despite using the wrong standard for forced labour and its decision being non-binding, the NHRCT Report has had a significant influence on later legal decisions regarding the workers. It served as support for the Appeals Court’s first dismissal of the workers’ claim for 44 million THB, and it has served as the basis for Thammakaset’s criminal defamation case against the workers.

In March 2017, the 14 workers requested the Lawyers Council of Thailand (LCT), which serves as Thailand’s national bar association, for an independent investigation over whether the NHRCT had acted improperly in concluding that forced labour had not occurred after insufficient investigation. At the time of this writing, the LCT’s final report on this issue is pending. The NHRCT has also been criticized by International Coordination Committee on National Institutions for the Promotion and Protection of Human Rights for concerns over its independence.<sup>117</sup> In April 2018, the UN Working Group on BHR commended the 2017 National Human Rights Commission Law for taking some measures to increase the NHRCT’s independence and effectiveness, but recommended further that the NHRCT be given power to mediate disputes and make enforceable remedial orders, including of compensation.<sup>118</sup>

In November 2017 the NHRCT agreed to begin a process seeking reconciliation involving the activist Andy Hall, Betagro, and Thammakaset to prevent the criminal prosecutions against the 14 workers and MWRN staff, as well as to seek swift payment of the court-ordered compensation to the workers. The NHRCT-hosted negotiations led to several meetings

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<sup>117</sup> In October 2014, the International Coordination Committee on National Institutions for the Promotion and Protection of Human Rights (ICC) downgraded the status of the NCHRT from an “A” to a “B classification amid concerns over its functioning. See OHCHR Regional Office for South-East Asia, ‘Technical Note on the National Human Rights Commission of Thailand in the draft 2015 constitution’, 31 Mar 2015, <http://bangkok.ohchr.org/files/OHCHR%20on%20NHRI%20150327.pdf>.

<sup>118</sup> UNWG on Business and Human Rights, “Statement at the end of visit to Thailand by the United Nations Working Group on Business and Human Rights”, 4 April 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E>

between Betagro, Thammakaset, and the NHRCT from that time until early 2018, when Andy Hall withdrew from the process due to a lack of progress and it ended without resolution.<sup>119</sup>

### **C. Legal claims and threats made against the 14 former Thammakaset workers**

Since bringing their claim against Thammakaset, the former workers have been subjected to alleged judicial harassment as described in the following paragraphs.<sup>120</sup> Note that unlike Western countries, Thai law allows private parties to initiate criminal prosecutions of alleged crimes of which they claim to be victims, which has allowed the Thammakaset employers to harass workers with a series of criminal charges and threats of more. This includes charges of theft and defamation as described below. The workers have also alleged misconduct by the Lopburi police in the context of their labour dispute.

#### **1. Theft**

Thammakaset has charged two of the 14 workers and one MWRN staff member at the Don Muang Court with multiple criminal charges related to theft for removing their worker time cards from the employment premises and handing them over to the Lopburi DLPW Office as evidence of excessive working hours. The charge was first brought in Lopburi Court as a public prosecution, but the Lopburi prosecutor decided not to prosecute the case in August 2017, stating that there was no evidence of an intention to commit theft. Thammakaset then launched private prosecutions in October 2017 against the two workers and MWRN staff member on multiple criminal counts related to the incident. Each charge carries a maximum penalty of up to 5 years in prison or a 10,000 THB fine (34,000 JPY) if found guilty. The Lopburi Court held a hearing for the case in late February 2018 and commenced a trial from 9 April. On 3 September 2018, it was reported that the Lopburi Court decided not to proceed with the prosecution of the theft charges against the workers and MWRN staff. The case is being appealed by Thammakaset to the Appeals Court. On 1 August 2018, the farm lodged a new set of criminal charges against the two workers under section 335 (11) of Thailand's Criminal Code for their removal of the time cards, which carry a penalty of five years in prison and/or a 100,000 THB fine (340,000 JPY). The new charges further emphasize the relentlessness with which Thammakaset has been harassing the workers with an endless barrage of spurious private criminal charges.

#### **2. Defamation**

Following media and public reports of their complaint to the NHRCT on 7 July 2016, Thammakaset brought a private complaint for criminal defamation and giving false information to public officials to Don Muang Court on 6 October 2016 against the 14

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<sup>119</sup> "Statement by Andy Hall on resumption of trial against 14 workers", 6 Feb. 2018, archived at Business and Human Rights Resource Centre, "Betagro & Thammakaset lawsuits (re labour exploitation in Thailand)", <https://www.business-humanrights.org/en/betagro-thammakaset-lawsuit-re-labour-exploitation-in-thailand>.

<sup>120</sup> The facts for all cases are taken or confirmed from the summary and articles archived at Business and Human Rights Resource Centre, "Betagro & Thammakaset lawsuits (re labour exploitation in Thailand)", id.

workers based on their NHRCT complaint letter. The prosecution was facilitated by the problematic NHRCT decision as mentioned above. After several procedural delays, on 4 October 2017, the court indicted the workers, and they pled not guilty through an interpreter and denied the charges against them.<sup>121</sup> Although several European and Thai poultry import/export companies agreed to pay the workers' bail, the court did not set bail and released the workers, only barring them from leaving the country without court permission (which it has granted in at least one case for a temporary visit).<sup>122</sup> The trial took place over five days between February and May 2018. On 11 July 2018, in a landmark ruling, the court found the workers were not guilty of defamation, finding that the workers' allegations of human and labour rights abuses at Thammakaset were likely true. Thammakaset then requested to appeal the verdict, and on 30 May 2019, the Appeals Court denied Thammakaset's request, concluding the case in the workers' favor.

On 12 October 2018, Thammakaset again filed defamation charges at the Bangkok Criminal Court against Ms. Sutharee Wannasiri for Twitter posts in support of the former Thammakaset workers in October 2017, including a video with worker interviews made by Fortify Rights where she worked at the time.<sup>123</sup> She faces up to six years in prison and/or a fine of up to 600,000 THB (2 million JPY). One of the workers in the video, Mr. Nan Win, was also charged with defamation for his statements in the video and at a press conference in October 2017. He faces up to four years' imprisonment and/or a fine of up to 400,000 THB (1.4 million JPY). Preliminary hearings for the cases of Sutharee Wannasiri and Nan Win began on 3 December 2018.

#### **D. The cases of Andy Hall**

Andy Hall is a labour rights activist that has worked to research and document labour abuses in Thailand, to advocate for workers using social media, and to seek adequate remedies and justice for them, including the 14 former Thammakaset migrant workers. Hall has faced judicial harassment in Thailand from Thai companies over several years for his work on behalf of complaining workers.



*Photo: Andy Hall*

The Thai food company Natural Fruit (NF) lodged multiple criminal and civil claims against Hall related to his work for a 2013 report on human rights violations against migrant

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<sup>121</sup> Khaosod English, 'Migrant Worker Whistleblowers Plead Not Guilty To Defaming Chicken Farm', 4 Oct 2017, <http://www.khaosodenglish.com/news/business/2017/10/04/migrant-worker-whistleblowers-plead-not-guilty-defaming-chicken-farm/>

<sup>122</sup> Andrew Drummond, 'Humiliated Thai Company Now Seeks to Jail it's Migrant Workers', 4 Oct. 2017, <http://www.andrew-drummond.com/2017/10/humiliated-thai-company-now-seeks-to.html>. The OHCHR report specifically criticized the NHRCT for not having local offices. Technical Note on the National Human Rights Commission of Thailand in the draft 2015 constitution.

<sup>123</sup> FIDH, "Thailand: Judicial harassment of Ms. Sutharee Wannasiri and Mr. Nan Win", 28 November 2018, <https://www.fidh.org/en/issues/human-rights-defenders/thailand-judicial-harassment-of-ms-sutharee-wannasiri-and-mr-nan-win>.

workers, including those of NF.<sup>124</sup> He was convicted in September 2016 of criminal defamation and offenses under the Computer Crime Act (CCA) against NF which included a prison sentence and fine.<sup>125</sup> On 30 May 2018, Thailand's Appeals Court acquitted Hall of these convictions; however, as of September 2018 NF indicated its intention to appeal this decision.<sup>126</sup> On 26 March 2018, Hall was also ordered to pay 10 million THB (34 million JPY) in damages to NF as well as legal fees in a separate civil defamation case. This decision was appealed in September 2018, and the Appeals Court again ruled against Hall in May 2019.

In November 2016, Thammakaset filed criminal defamation and computer crimes charges against Hall over his dissemination and advocacy efforts towards the case online using social media to seek adequate remedies and justice for the 14 migrant workers. If found guilty, Hall could be subject to a fine of up to 200,000 THB (680,000 JPY) and a maximum total of 20 years imprisonment. The case remains pending legal delivery of summons as Hall has been outside Thailand since 2016 for the following reasons.

The charges by Thammakaset and the convictions in the NF case at the time forced Hall, a British national, to leave Thailand after 11 years of working for migrant workers' rights there.<sup>127</sup> This pattern of harassment further highlights the problem of private criminal and civil claims being used to intimidate and silence labour rights activists and workers in Thailand. On 17 May 2018, the Working Group on BHR and five UN Special Rapporteurs specifically criticized the use of defamation laws in Thailand to silence Andy Hall for his advocacy related to workers' rights, including work related to the Thammakaset case.<sup>128</sup>

The recent overturning of Hall's NF conviction is a hopeful sign that Thai courts will not allow private criminal defamation and other harassing legal claims and charges to silence workers and activists addressing labour and human rights problems in the future. Despite this welcome precedence set by Hall and the workers' cases, however, as a matter of law the ability of courts to apply such harassing claims and charges against workers and labour rights activists still remains, and the acquittals are still vulnerable to being overturned on appeal.

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<sup>124</sup> Finnwatch, "Cheap has a High Price" (English Executive Summary), Jan. 2013, [https://www.finnwatch.org/images/cheap%20has%20a%20high%20price\\_exec%20summary\\_final.pdf](https://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf). The numerous claims and cases and their complex procedural history are summarized and updated by Finnwatch. The summary updated as of May 2018, is available at [http://finnwatch.org/images/pdf/NaturalFruitvsAndyHallQA\\_May312018.pdf](http://finnwatch.org/images/pdf/NaturalFruitvsAndyHallQA_May312018.pdf).

<sup>125</sup> The prison sentence was ultimately reduced to one year, two years suspended, and a fine of 150,000 THB (516,000 JPY).

<sup>126</sup> Undercurrent News, "Thai appeals court overturns migrant rights activist's prosecution", 31 May 2018, <https://www.undercurrentnews.com/2018/05/31/thai-appeals-court-overturns-migrant-rights-activists-prosecution/>.

<sup>127</sup> Business and Human Rights Centre, "Interview with Andy Hall, Feb 2017", <https://business-humanrights.org/en/andy-hall-2>, February 2017; Undercurrent News, Id.

<sup>128</sup> "Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall", 17 May 2018, <https://www.protecting-defenders.org/en/news/thailand-un-experts-condemn-use-defamation-laws-silence-human-rights-defender-andy-hall>.



## E. Responses to the Thammakaset case from the UN and Civil Society

### 1. UN Responses

Following the theft charges being alleged against two workers and defamation charges against Mr. Hall, the UN Working Group on BHR and five UN Human Rights Council Special Rapporteurs submitted a joint letter dated 16 November 2016 to the Thai government.<sup>129</sup> The letter called on the government to, among other things, take measures to ensure the rights of the former Thammakaset workers (and all workers) and activists helping them are respected, to prevent forced labour in the poultry industry, and to ratify or implement relevant international agreements on labour rights.<sup>130</sup>

On 15 September 2017, the Southeast Asia Regional Office for the UN Office of the High Commissioner for Human Rights in Bangkok welcomed the Appeal Court's decision to uphold the 1.7 million THB for the workers, and it called on the government to drop all criminal charges against the workers and Mr. Hall, on the NHRCT to investigate cases impartially, and on the government to ratify the International Convention on the Rights of Migrant Workers.<sup>131</sup>

The UN Working Group on BHR visited the 14 workers on 1 April 2018 during their mission to Thailand. In a statement following its visit, the working group made a number of requests to the government of Thailand relevant to protecting the labour rights of migrant workers in the poultry sector generally and the former Thammakaset workers specifically, including:<sup>132</sup>

- To use the public prosecutors' and the Attorney General office's discretion to prevent criminal defamation cases intended to harass complaining workers and labour activists;
- To apply measures created for the fisheries sector to improve labour oversight and require businesses to report on human rights due diligence also for agriculture sectors with high numbers of migrant workers at risk of forced labour and trafficking;
- To support a policy of "no recruitment fees" for migrants to avoid corruption and exploitation;
- To provide all migrant workers with information about their rights and the complaint hotlines on their arrival in Thailand in their native languages;
- To address barriers in accessing judicial and other remedies. The Group listed the following obstacles: low awareness about rights, linguistic barriers, high cost of

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<sup>129</sup> Working group on business and human rights and Special Rapporteurs on freedom of expression, human rights defenders, migrants, slavery, and trafficking, "Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises", 16 Nov 2016, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22831>.

<sup>130</sup> Id.

<sup>131</sup> OHCHR, 'UN Human Rights Office welcomes payout to migrant workers in Thailand, says criminal charges should be dropped', 15 Sept. 2017, <http://bangkok.ohchr.org/news/press/Thaimigrantes.aspx>.

<sup>132</sup> UNWG on Business and Human Rights, "Statement at the end of visit to Thailand by the United Nations Working Group on Business and Human Rights", 4 April 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E>.

litigation, inability of the NHRCT to issue enforceable orders, and the fear of intimidation.

And as mentioned above in the context of Andy Hall's work, the 17 May 2018 statement by six UN experts specifically referenced the Thammakaset workers' case in the context of protecting advocacy for workers' labour and human rights.<sup>133</sup>

## 2. Civil Society Responses

Civil society has also been active in support of the 14 former Thammakaset workers. The anti-slavery NGO Walk Free held a campaign and submitted a petition with 45,285 signatures from international activists to the Thai Broiler Processing Exporters Association. It called on the poultry association to encourage its member company, Betagro, to ensure the 14 Myanmar workers are paid compensation and on Betagro to investigate working conditions throughout its supply chain, ensure effective grievance mechanisms, and ensure slavery is not practiced.<sup>134</sup> At the time the 14 workers were indicted for defamation in October 2017, the Thai Prime Minister was in Washington DC, where a complaint submission was made at the Thai embassy in Washington, and a joint civil society statement was released.<sup>135</sup>

Numerous major civil society organizations have issued statements in support of the workers.<sup>136</sup> The EU's Foreign Trade Association (FTA), whose members include European retailers and poultry importers, also sent an unprecedented open letter calling for an out of court settlement in the case.<sup>137</sup> Thai officials and the international business, investor and diplomatic community have expressed engagement in the case. Multiple industry parties, including European retailer associations linked to Betagro, have also attempted to negotiate settlements, which have so far been unsuccessful.

## F. Betagro's Responses and Corporate Social Responsibility (CSR)

In response to the start of the Thammakaset case, Betagro suspended its contract with

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<sup>133</sup> "Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall", 17 May 2018, <https://www.protecting-defenders.org/en/news/thailand-un-experts-condemn-use-defamation-laws-silence-human-rights-defender-andy-hall>.

<sup>134</sup> Libby Hogan, "Exporter cuts ties with Thai chicken farm after abuse allegations", DVB, 30 Jun 2016, <http://www.dvb.no/news/exporter-cuts-ties-with-thai-chicken-farm-after-abuse-allegations/67749>.

<sup>135</sup> International Labour Rights Forum, "Migrant workers indicted as Thai Prime Minister visits United States", 3 Oct 2017, <https://www.ilrf.org/releases/migrant-workers-indicted-thai-prime-minister-visits-united-states>.

<sup>136</sup> Migrant Worker Rights Network, "Support abused migrant chicken workers legal cases", <https://www.generosity.com/fundraising/support-abused-migrant-chicken-workers-legal-cases>; Fortify Rights, "Thailand: drop criminal defamation complaints against Myanmar workers", 12 Jul 2017, <http://www.fortifyrights.org/publication-20170712.html>; Human Rights Watch, "Thailand: Drop Defamation Charges Against Burmese Workers", 6 Jun 2017, <https://www.hrw.org/news/2017/06/06/thailand-drop-defamation-charges-against-burmese-workers>.

<sup>137</sup> Foreign Trade Association, "Increased partnership in sustainability call for out-of-court settlement of the Thammakaset case", 11 Jul 2017, <http://www.fta-intl.org/sites/default/files/letter%20to%20Thai%20Embassy%20July%202017.pdf>.

Thammakaset in June 2016 and insisted it had adhered to international labour standards.<sup>138</sup> However, MWRN international representative Andy Hall responded that “we never asked the company [Betagro] to suspend ties. We never asked people to stop buying—we asked them to find a solution and develop a better situation for the future.”<sup>139</sup> In August 2016, Betagro joined a joint Memorandum of Understanding agreement among poultry-related Thai companies committing to standards including prohibitions on forced labour practices and human trafficking among supplier poultry farms.<sup>140</sup> Nevertheless, following the conclusion of the DWLP and NHRCT investigations, Betagro released a statement on 2 September 2016:

The investigations by the Lop Buri office of the Labour Protection and Welfare Office and the Office of the Human Rights Commission showed no signs of illegal detention of workers were found, nor were there any seizures of passports as alleged... no violations of the human rights or the anti-human trafficking law were found in these investigations either.

After pressure from MWRN and members of the public, Betagro deposited 50,000 THB (170,000 JPY) on 2 September 2016, via MWRN's bank account in humanitarian support for the 14 workers, without any prior notice.<sup>141</sup> Since this date, Betagro has not made further statements on the case that we have identified, although it has taken some corporate social responsibility measures as described in the next section.

Betagro currently lacks a comprehensive human rights policy that prevents occurrences of forced labour and human trafficking within its supply chain, but it has initiated several policies as described below. The company claims that its internal quality management system comprises “the principles of food safety, food quality, animal welfare, service excellence, and corporate social responsibility.”<sup>142</sup> Its website contains a brief reference to corporate social responsibility, but it makes no mention of its responsibility to respect human rights, such as the rights of workers within its supply chain, claiming instead that “building good relationship with customers is an integral part of business strategy.” It further states that

the relationship between Betagro Group and its customers is seen as a partnership in which the best possible products and services are offered in order to better the quality of life of all involved... Betagro Group also conducts business in accordance with ethical standards and practices internally.<sup>143</sup>

However, there is no publicly available information on what those “ethical standards and

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<sup>138</sup> ABC News, “Chicken farm slavery complaints highlights labour challenges for Thailand”, 2 Jul 2016, <http://www.abc.net.au/news/2016-07-01/case-of-chicken-farm-slaves-highlights-thai-labour-problems/7561714>

<sup>139</sup> Libby Hogan, “Exporter cuts ties with Thai chicken farm after abuse allegations”, DVB, 30 Jun 2016, <http://www.dvb.no/news/exporter-cuts-ties-with-thai-chicken-farm-after-abuse-allegations/67749>.

<sup>140</sup> Oscar Rousseau, “Thailand: chicken sector to boost standards following abuse claims”, 22 Aug. 2016, <https://www.globalmeatnews.com/Article/2016/08/22/Thai-chicken-sector-agrees-to-end-human-rights-abuse>.

<sup>141</sup> Business and Human Rights Centre, “In-Depth Interview with Andy Hall”, Feb 2017, <https://business-humanrights.org/en/andy-hall-2>.

<sup>142</sup> Betagro, “Betagro Quality Management”, <http://www.betagro.com/corporate/en/quality-and-food-safety>

<sup>143</sup> Id.

practices” entail.<sup>144</sup> On Betagro's website, the CEO, Vanus Taepaisitphongs, comments that “Betagro Group is committed to equipping our people with ‘ethical and moral values’ before ‘intelligence’” and “In 2014, Betagro Group appointed a committee responsible for controlling and managing the Group’s sustainability policy.”<sup>145</sup>

In July 2017, Betagro joined the “Your Voice, We Care” program with Issara Institute of Thailand, which receives workers opinions and complaints through a 24/7 migrant worker smartphone helpline app, “Golden Dreams”.<sup>146</sup> Betagro claims the program allows workers to ask questions and report labour issues to help the company improve its labour standards. One issue indicated by the former Thammakaset workers in Human Rights Now’s interview with them is that use of phones and social media was restricted on the farm and contact with MWRN had to be done in secret. This may also be an issue for the “Your Voice, We Care” program.

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<sup>144</sup> HRN sent a request to Betagro Group for further information on its labour standards and sustainable development policy on 28 June 2017, but by this release has not received a response.

<sup>145</sup> Betagro, “Message from CEO”, [http://www.betagro.com/corporate/en/sustainable\\_message\\_ceo](http://www.betagro.com/corporate/en/sustainable_message_ceo).

<sup>146</sup> Matichon, “Your Voice, We care”, 31 Jul 2017, <https://www.matichon.co.th/news/614998>; The Nation, “Betagro joins anti-trafficking group in pilot project”, 1 Aug 2017, <http://www.nationmultimedia.com/detail/Corporate/30322388>; CBNT Channel, “Betagro Group and the Issara Institute Team up to strengthen Worker Voice and Betagro’s Sustainable Labour Management Initiative ‘Your Voice, we Care’”, 2 Aug 2017, <http://cbntchannel.com/other/7635>.

## VI. Addressing Labour Rights Violations in Supply Chains in Japan—Duties and Best Practices for Japanese Companies

### A. Human rights due diligence based on the UN Guiding Principles on Business and Human Rights

Establishing strong Corporate Social Responsibility (CSR) and due diligence policies are the first way Japanese companies can identify and combat labour violations within their supply chains. Although Japanese companies began implementing CSR policies over 10 years ago, it is still not widely understood or considered to be a key objective of effective corporate management.<sup>147</sup> The only field given significant attention is the environment, and initiatives are focused on the local level. Other wider social issues are not often viewed as integral to business operations, and the global level initiatives are neglected.<sup>148</sup> Thus, the response to mitigating against supply chain violations has been slow, and Japanese companies should focus their CSR and due diligence policies on the human rights situation of workers in their supply chains.

The UN Guiding Principles on Business and Human Rights (BHR) play a central role in this regard.<sup>149</sup> The principles state that governments have a duty to protect workers found throughout the operations of business within their jurisdiction from human rights abuses (Principles 1 and 2), through law enforcement and proper guidance, and companies have a duty to respect human rights and address impacts with which they are involved (Principle 11), and they should seek to prevent or mitigate them even for impacts among their business relationships to which they do not directly contributed (Principle 13(b)). Among other duties, the Guiding Principles state that companies must:<sup>150</sup>

- 1) Publicly express a policy commitment regarding human rights (Principles 16).
- 2) Conduct on-going human rights due diligence to identify actual and potential adverse human rights impacts (Principle 17).
- 3) Establish mechanisms to enable remediation of any adverse human rights impacts which they are causing and/or contributing to (Principle 22). Companies should also provide public information sufficient to evaluate the adequacy of its responses to human rights impacts (Principle 21).

The importance of the UN Guiding Principles has been increasingly recognized in Japan. For example, the Japan Federation of Bar Associations published Guidance on Human Rights Due Diligence based on the UN Guiding Principles.<sup>151</sup>

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<sup>147</sup> Tokyo Foundation, “Japanese Corporate Management and CSR”, 14 Jan 2016, <http://www.tokyofoundation.org/en/articles/2016/corporate-management-and-csr>.

<sup>148</sup> Id.

<sup>149</sup> “Guiding Principles on Business and Human Rights”, HR/PUB/11/04, 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>150</sup> Id.

<sup>151</sup> Japan Federation of Bar Associations, “Guidance on Human Rights Due Diligence”, Jan 2015, [http://www.nichibenren.or.jp/library/en/document/data/150107\\_guidance.pdf](http://www.nichibenren.or.jp/library/en/document/data/150107_guidance.pdf).

In order for the UN Guiding Principles to be effective and made enforceable, the UN Working Group has placed strong emphasis on the importance of all states developing a National Action Plan (NAP) on BHR. The Group suggests that governments incorporate the UN Guiding Principles into the NAP.<sup>152</sup> At the November 2016 UN Forum on BHR in Geneva, the Japanese government announced for the first time that it would formulate a NAP on BHR “in the coming years.”<sup>153</sup> At the time, Japan was one out of the two G7 countries that had not yet started the process of formulating a NAP.<sup>154</sup> On 8 March 2018, Japan held the first discussion meeting to discuss a baseline study towards the NAP. Human Rights Now has previously called for the Japanese government to make a strong commitment to developing a substantive NAP to implement the UN Guiding Principles, through consultations with all stakeholders, including NGOs, trade unions, labour rights groups, and organisations representing persons affected by business activities.<sup>155</sup> Japan should ensure a strong NAP is developed as soon as possible, and should publicly update its progress towards this goal.

In order to improve the transparency of the supply chain of Japanese companies, the Japanese government should pass and implement legislation for:

1. corporate responsibility reporting,
2. mandatory due diligence of human rights impacts in supply chains and publicly reporting the results,
3. a customs code to provide publicly available tracking information of imported products, and
4. restrictions on imports of products made through forced labour.

## B. Best Practices

Aside from the UN Guiding Principles duties, there are also best practices Japanese companies should follow to respect their duties. To this end, the OECD released two guidelines offering standards and best practices for companies to meet due diligence duties towards suppliers, the “OECD Guidelines for Multinational Enterprises” and the “OECD-FAO Guidance for Responsible Agricultural Supply Chains”.<sup>156</sup> The latter offers a five-step framework for risk-based due diligence along agricultural supply chains briefly summarized in Box 1 below which we recommend Japanese companies follow.

<sup>152</sup> OHCHR, ‘State National Action Plans’, <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

<sup>153</sup> Id.

<sup>154</sup> Business & Human Rights Resource Centre, “Japan: Japan announces it will formulate National Action Plan, commits to involving NGOs”, <https://business-humanrights.org/en/japan-japan-announces-it-will-formulate-national-action-plan-commits-to-involving-ngos-0>.

<sup>155</sup> HRN, “The Japanese Government should make a strong commitment to business and human rights through developing substantive national action plans on business and human rights”, May 2016, A/HRC/32/NGO/X, [http://hrn.or.jp/eng/wp-content/uploads/2016/05/1897\\_A\\_HRC\\_32\\_NGO\\_Sub\\_En.pdf](http://hrn.or.jp/eng/wp-content/uploads/2016/05/1897_A_HRC_32_NGO_Sub_En.pdf).

<sup>156</sup> OECD, “OECD Guidelines for Multinational Enterprises”, 2011, <http://mneguidelines.oecd.org/guidelines/>; OECD & FAO, “OECD-FAO Guidance for Responsible Agricultural Supply Chains”, 14 Oct 2016, [https://www.oecd-ilibrary.org/agriculture-and-food/oecd-fao-guidance-for-responsible-agricultural-supply-chains\\_9789264251052-en](https://www.oecd-ilibrary.org/agriculture-and-food/oecd-fao-guidance-for-responsible-agricultural-supply-chains_9789264251052-en).



**Box 2. OECD-FAO Guidance for Responsible Agricultural Supply Chains: Five-step Framework for risk-based due diligence along agricultural supply chains<sup>157</sup>**

**(1) Establish strong management systems for responsible agricultural supply chains.**

This includes a system of transparency in supply chains and controlling them with regular, independent, and transparent reviews of suppliers and channels for stakeholders to communicate information, such as a grievance mechanism.

**(2) Identify, assess, and prioritise risks of labour / human rights violations in supply chains.**

Assessments should be prioritized and enhanced for suppliers in high risk areas such as Thailand's poultry sector, which as mentioned before has been reported to have widespread labour and human rights abuses. This may include undertaking stakeholder consultations, monitoring by a third party, such as civil society organisations, and organising visits of the farms and processing facilities.

**(3) Design and implement a response strategy to identified labour and human rights risks.**

This consists of a risk management plan to mitigate and prevent abuses. Even for negative impacts among suppliers which the company is not directly causing or contributing to, the company should use its leverage to mitigate or prevent the abuses. The management plan should be implemented in consultation with affected workers and their representatives and business partners.

**(4) Verify the effectiveness of supply chain due diligence.**

Enterprises should take measures to verify their due diligence practices are effective, that they actually identify risks and prevent abuses. This can include audits, on-site investigations, and consultations with government officials, civil society, and workers' organisations. Auditors should be independent, competent, and accountable. It is advisable to make audits part of an independent mechanism responsible for accrediting auditors, verifying audits, building suppliers capacity to conduct due diligence, and following up on complaints. It is efficient for companies to verify due diligence based on common standards and/or by recognizing the conclusions of audits by accredited independent third parties.

**(5) Publically report on supply chain due diligence.**

Companies should publicly report on their supply chain due diligence policies and practices and provide affected stakeholders and suppliers with information on actual and potential adverse impacts and how to mitigate and prevent them.

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<sup>157</sup> The following principles are taken from OECD & FAO, id., pp. 31 ff.

The following best practices complement these guidelines. In order to ensure effective due diligence, companies should consult with and support the work of local civil society, workers and their representatives, and labour rights researchers and activists, as these groups have the best information about local working conditions and can help Japanese companies identify labour and human rights abuses among their suppliers to implement their due diligence duties as well as their risk assessment and risk management plans. To better facilitate such collaboration, it is also critical that companies make their supply chains transparent and publicly release the identity of their suppliers. Companies can also support local workers groups and activists working on labour rights issues by, for example, consulting with them to address workers' labour problems, supporting their research and communication of workers' labour problems, and supporting their defense against harassment for their activities, such as arbitrary prosecution.

Regarding the best practice in the OECD-FAO Guidelines that companies use their leverage to resolve labour and human rights impacts in their supply chains, the recommended best practice is for the company not to divest or drop its business with the supplier as this does not address the labour or human rights conditions for workers per companies' duty under Principle 13(b) of the Guiding Principles to prevent and mitigate human rights impacts to workers in their supply chains. Rather this duty call on companies to engage with the supplier, for example, to identify the causes of the violations and address them by taking measures to help ensure the violations end and will not repeat and to assist victim workers in receiving redress, only ending the business relationship if the problem cannot be resolved after appropriate effort. Even if a company does end its association with a supplier, this does not relieve a company of its duty under Principle 13(b) to address the human right impacts in their supply chains among past business relationships, for example, by using its leverage to resolve past impacts. For example, in the Thammakaset case, the workers have still not seen compensation from a case more than two years ago for violations over the last several years. Companies connected to Betagro or Thammakaset from that period thus still have a duty to these workers as the human rights impacts have not been resolved.

This best practice was recognized specifically in the context of Thai poultry by several European companies with Thai poultry suppliers. Following reports of labour violations in the Thai poultry sector, major companies from the UK and Netherland importing Thai poultry affirmed their understanding of the problem and intention to collaborate with suppliers to solve them.<sup>158</sup> This was in contrast to some German and Japanese poultry importers which ended their business relationship with the Thai poultry companies. Civil society has consistently advocated for the strategy of the UK and Netherlands companies

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<sup>158</sup> Letter from Thai Ministry of Foreign Affairs of Thailand to Thai Broiler Processing Exporters Association, "Subject: Migrant worker issue in Thai chicken industry", 29 Nov. 2016 (on file with Human Rights Now).

over the strategy of the German and Japanese companies dropping their Thai suppliers, again because the latter practice does not fulfill companies' duty to address the harms of past human rights impacts to workers in their supply chains at the time of their business relationship.

The industry in Japan buying from poultry and other agricultural suppliers should also assist the effort to monitor and prevent negative human rights impacts among foreign poultry suppliers by developing an industry-wide sustainability initiative, as European industry has done, consisting of public criteria for monitoring labour rights in supply chains and mechanisms for monitoring them.

### **C. Efforts of Japanese Companies**

Based on the above, how is the response of Japanese companies related to this case?

#### ***Analysis of Japanese Company Responses to HRN's Survey***

HRN conducted a survey on the due diligence policies of Japanese companies mentioned in this report. The survey asked companies about their due diligence policies and auditing mechanisms for human rights impacts along their supply chain and the practice of those policies and mechanisms. We then measured them against best practices and international standards, such as the UN Guiding Principles on BHR (UNGPs) and OECD/FAO due diligence standards for agricultural supply chains, to identify potential shortcomings and areas for improvement. Our summary analysis, based on the written answers and information publicly available on the company's website, are below.

#### **1. Companies that did not Respond**

Boston Trading, Marunouchi Food Co., Ltd., Dainippon Sumitomo Pharmaceutical Co., Ltd. did not respond at all to inquiries from HRN regarding this matter. It is regrettable that the attitude towards human rights issues by these companies is in question.

#### **2. Companies that Responded**

Ajinomoto Co., Mitsubishi Corporation, Pomme Food Co., Four Seeds Inc., Itoham Yonhu Holdings, and Sumitomo Corporation gave a full response to inquiries from HRN regarding this matter. Among these, Ajinomoto Co., Mitsubishi Corporation, and Sumitomo Corporation also responded to additional questions, and the former two also showed a positive attitude towards further dialogue.

#### **3. Human rights Due Diligence Policy.**

HRN welcomes the responses from companies that showed a positive attitude towards improving the problems pointed out in this report. However, concerning human rights due

diligence, it turns out that there are companies that have either not implemented a due diligence policy in the ways indicated above, or have just begun to undertake such efforts. If the policy enforcement is ineffective or there is no policy, the same problems mentioned in this report may be repeated.

## **(1) Companies which do not conduct or did not answer regarding due diligence**

### **(a) Pommefood**

Pommefood notified HRN that it has dropped associations with Beragro in the following month of its decision in a board meeting in March 2018. It is unfortunate that the company only discussed its response to the Betagro case, but not its steps to discover and address labour rights violations within the Thai poultry sector or among other poultry suppliers generally. The Thai government itself acknowledges that there's a high risk of serious labour rights violations in the entire poultry sector in Thailand. Focusing on only one case in light of serious issues within the entire sector is not sufficient for a company to respond to this situation. Since HRN did not receive answers from the company for the survey on its due diligence policy, it remains unanswered whether the company engages in addressing human rights issues along supply chain.

Regarding its response to Betagro, as this report indicates above, the recommended best practice is to engage in the identified problem in order to fulfil the duty expressed by Principle 13(b) before divesting or dropping its business with the suppliers. We did not receive information whether Pommefood attempted to engage with Betagro or use its leverage to address the human rights impacts before ending its business relationship.

Looking at the company's website, we were not able to find a human rights policy per the company's duty to publicly express a policy commitment regarding human rights as expressed by UNGP Principle 16. Nor were we able to find information about whether the company conducts due diligence for human rights impacts per its duty as expressed by UNGP Principle 17.

### **(b) Four Seeds Corporation**

The company told HRN that it has regularly conducted investigations and audits from a quality control perspective. The language suggests by omission that the company does not conduct audits for social and human rights impacts at all. This is inconsistent with the company's duty to conduct due diligence for human rights impacts as expressed by UNGP Principle 17. The company also does not have a public human rights policy that we could find per its duty as expressed by UNGP Principle 16.

However, the company said it would "work even harder regarding many facets to avoid contributing to causing human rights issues", showing a positive attitude towards the future.

HRN requests Four Seeds to make a commitment to creating and disclosing a human rights policy and implementing concrete initiatives.

### **(c) Itoham Foods Inc.**

The company told HRN that it has arranged a framework in its corporate philosophy to respect human rights and environment along its supply chain, although the framework is not publicly released that we could find.<sup>159</sup> This is inconsistent with the company's duty to publicly express a policy commitment regarding human rights as expressed by Principle 16.

The company also reported that it conducts visits to supply chain partners in order to control the quality of its products and to manage safety and health along its supply chain, but not with respect to social and human rights impacts. This is inconsistent with the company's duty to conduct due diligence for human rights impacts per its duty as expressed by UNGP Principle 17. Based on this problem, HRN requests the company to disclose a human rights policy and implement concrete initiatives.

## **(2) Companies which answered questions on and conduct due diligence**

The three following companies follow established guidelines for supply chains and have begun due diligence, and while these points can be noted, challenges for due diligence remain.

### **(a) Ajinomoto**

Regarding human rights matters, Ajinomoto stated that it acts in accordance with the 'Ajinomoto Group Action Guidelines' and the 'Supplier CSR Guidelines' and has established a 'Group Shared Policy on Human Rights', which is publicly available, based on the UNGP.<sup>160</sup>

The company said it is aware of its suppliers, including agricultural and marine products, down to the level of processors of the raw and packaging materials; and that regarding paper (FSC), palm oil (RSPO), and coffee beans (4C), it is worth noting that the company is progressing with the procurement of certified products. The company said that it is undertaking human rights due diligence with the human rights risk data of a third party organization (Verisk Maplecroft) (in its first response to us) and will implement regular human rights due diligence from this fiscal year (in its second response to us). It also published its 2018 Sustainability Data Book on its website in September 2018, which includes basic information on its approach towards human rights issues including among suppliers.<sup>161</sup> This release is welcomed.

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<sup>159</sup> Itoham, "Governance" (in Japanese), [http://www.itoham.jp/corporate/env/governance/governance\\_02.html](http://www.itoham.jp/corporate/env/governance/governance_02.html).

<sup>160</sup> Ajinomoto, "Group Shared Policy on Human Rights", [https://www.ajinomoto.com/en/activity/policy/human\\_rights\\_policy.html](https://www.ajinomoto.com/en/activity/policy/human_rights_policy.html).

<sup>161</sup> Ajinomoto, "Sustainability Data Book 2018", <https://www.ajinomoto.com/en/activity/csr/report/>, "Human Rights", [https://www.ajinomoto.com/en/activity/csr/pdf/2018/SDB2018e\\_P128-132.pdf](https://www.ajinomoto.com/en/activity/csr/pdf/2018/SDB2018e_P128-132.pdf).

Ajinomoto's response and an examination of the company's website did not provide public information that we were able to find on the specific details of criteria and procedures by which its due diligence process is conducted, human rights impacts are identified and ranked, and a response plan is created. HRN requests the company to publish the full information for these as a best practice. It is not enough if the processes are evaluated by a third party which the company selects. By publishing the processes, they can be publicly evaluated for effectiveness.

This is consistent with the UNGP Principle 21 (a company should provide information sufficient to evaluate effectiveness of companies responses to human rights impacts which does not pose risks to stakeholders, personnel, or legitimate confidentiality concerns) and the OECD-FAO's Five Step Framework Step (5) to publicly report on its due diligence policies and practices.

### **(b) Mitsubishi Corporation**

Mitsubishi Corporation shows a positive attitude towards solutions for this matter, and it has made efforts to improve the situation with Betagro. Also from this year it has implemented a periodic survey of its poultry suppliers.

Mitsubishi Corporation has established 'Mitsubishi Corporation Policy for Sustainable Supply Chain Management' as a guideline for addressing human rights, labour, and environmental issues along its supply chain.<sup>162</sup> The company conducts regular questionnaire surveys of suppliers to monitor their compliance with the guideline, and based on the advice third parties the company visits suppliers when it is necessary. If non-compliance with the guideline is detected, the company takes corrective action, provides supervision, and renders assistance.

It is not known what the investigations, questionnaire surveys, or the system or standards used to accurately identify social and human rights impacts, for example, if measures are taken to minimize the risks of inaccuracies.

Some summaries of investigations are made available to public on its website, although these only provide very short summary levels of detail.<sup>163</sup> However, the specific implementation details for them could not be found from disclosed information.

HRN requests Mitsubishi Corporation to disclose its processes based on Principle 21 of the UN Guiding Principles and the OECD-FAO's Five Step Framework Step (5) to publicly report on its due diligence policies and practices.

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<sup>162</sup> Mitsubishi Corporation, 'Supply Chain Management',  
<https://www.mitsubishicorp.com/jp/en/csr/management/supplychain.html>.

<sup>163</sup> Mitsubishi Corporation, Archive, <https://www.mitsubishicorp.com/jp/en/csr/management/archives.html>.

### **(c) Sumitomo Corporation**

The company has established the 'Sumitomo Corporation Group CSR Action Guidelines for Supply Chain Management', which is publicly available.<sup>164</sup> The company told HRN that it encourages its suppliers and business partners to agree with, understand, and implement the guidelines. When it is necessary, it verifies the situations through on-site visits by cooperating with local staff members and group companies.

The details and standards for the verification processes, including on-site visits, have not been made public. It is not known what system the company uses to investigate companies during visits to accurately identify human rights impacts. HRN requests that such details be disclosed.

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<sup>164</sup> Sumitomo Corporation, Corporate Social Responsibility, <https://www.sumitomocorp.com/en/jp/sustainability/csr>.



## VII. Conclusion

Human Rights Now (HRN) is gravely concerned with the prevalence of migrant worker abuse and exploitation within the Thai poultry industry, the products of which continue to enter Japan. The interviews that HRN conducted with the migrant workers who brought a labour rights claim against Thammakaset Farm 2 highlighted their allegations that they had their work permits and identity documents confiscated, had their free movement practically restricted, were subjected to debt-bondage situations, and were being forced to work illegally long overtime hours and on holidays. Thailand's own report of the poultry sector and other cases involving the factories of Charoen Pokphand Foods Public Company Limited ("CP Foods"), Laemthong Corporation Group, Centaco Group and Saha Farms Group indicate how widespread such allegations of labour rights violations are.

All stakeholders need to be aware of the situation and act on their duties to prevent labour rights violations, including not only the farms where alleged violations occur, but also the Japanese companies receiving their products and doing business with them, as well as the states allowing them to do so by insufficient regulations.

As Japan is the biggest market for poultry products exported from Thailand, Japanese companies play a major role in contributing to any labour rights violations identified in the sector in Thailand, but they also have significant influence and leverage to positively bring its suppliers into compliance with relevant labour standards. This gives Japanese companies the power and responsibility to identify and prevent violations by conducting effective monitoring, risk assessments, and due diligence research into their suppliers' labour practices; by implementing effective risk management in order to address any violations identified; and by using their significant leverage to redress and prevent violations within their supply chains. Similarly, through insufficient regulation, the Japanese government has created an environment in which Japanese companies conduct their operations without sufficient scrutiny into the labour rights abuses in their supply chains. The government can begin to address this situation by creating a strong National Action Plan on BHR in accordance with the UN Guiding Principles on BHR as soon as possible, consistent with its pledge to do so. It should also pass legislation to require Japanese companies to implement effective due diligence and assessments to identify negative labour and human rights impacts among their suppliers, to require they be transparent and publicly report the results of such assessments, and to prohibit the importation of products of forced labour.

The government of Thailand is also failing to adequately protect migrant workers, leaving them to rely on a flawed legal system which has not protected their labour rights as indicated by the cases discussed above. Furthermore, as it currently stands, the content of the recent 2017 Royal Decree Concerning the Management of Foreign Workers may have the perverse result of placing them at greater risk of exploitation without sufficient worker protections. Further, Thai authorities and poultry companies continue to use defamation lawsuits to retaliate against those who report human rights violations, which seriously hinders the ability of civil society to help the Thai government effectively identify and prevent labour rights violations. While the recent dismissals of defamation claims are

encouraging, they are still at risk of being reversed on appeal and as a matter of law such harassing private defamation claims are still possible. The government of Thailand must address all of these obstacles in order to prevent labour rights abuses against migrant workers and to adequately compensate workers and protect their rights when violations occur.

In spite of these obstacles, HRN reaffirms the importance of civil society-led action to promote the compliance of businesses with international human and labour rights standards. Our previous statements and reports concerning human rights violations occurring in the supply chain of Japanese and European companies, including those on supplier factories in China and Cambodia for Uniqlo and H&M, coal mines employing child labour in Northeast India, Malaysian companies exporting illegally cut timber to Japan, and others have all brought attention to supply chain issues in Japan,<sup>165</sup> and have already led to positive responses from relevant stakeholders including Japanese companies and the foreign companies that supply them.

The principal conclusion of this report is that all relevant stakeholders involved in labour rights violations within the Thai poultry sector—including Thailand and Japanese companies, governments, and civil society—have a duty to take measures to end, redress, and prevent these violations consistent with international standards, including ILO's Forced Labour Convention of 1930, the ICCPR, and the UN Guiding Principles on BHR.

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<sup>165</sup> Updates are available on HRN's website. For example, see, <http://hrn.or.jp/eng/news/2017/08/28/media-uniqlo-discloses-suppliers/>

## VIII. Recommendations

(a) To Japanese and other companies with links to Thai poultry companies:

1. Publicly affirm a commitment to the UN Guiding Principles on Business and Human Rights.
2. Develop and implement strong monitoring and due diligence measures to identify the human rights impacts occurring in Thai poultry suppliers, make their criteria and procedures publicly available, and take measures to address any human rights impacts identified.
3. Establish human rights and CSR policies to protect human rights within supply chains, in accordance with the UN Guiding Principles.
4. Implement the best practices described in the “OECD-FAO Guidance for Responsible Agricultural Supply Chains” five-step framework due diligence along agricultural supply chains.
5. Make publicly available the names of the Thai poultry suppliers within their respective supply chains. Engage in dialogue with all relevant stakeholders, including workers, local NGOs and migrant associations.
6. Develop an industry-wide sustainability initiative like European industry consisting of public criteria for monitoring labour rights in supply chains and mechanisms for monitoring them.
7. Use the company’s leverage to promote Thai legal reform to raise its labour standards, Thailand’s adoption of core ILO and related conventions, and independent organising and genuine empowerment of workers and worker groups in Thailand as a long term solution to workers’ rights issues.

(b) To Thai poultry companies:

1. Take immediate steps to comply with all national labour laws.
2. Do not allow recruitment fees to be imposed on migrant workers placing them in debt.
3. Ensure that migrant workers have free and unfettered possession of all their personal and identity documents.
4. Ensure that migrant workers are informed of their rights in a language they understand, and provide an effective mechanism so they can report abuses.
5. Ensure that working conditions at supplier farms meet with international labour standards.
6. Conduct regular training of supervisors to ensure awareness of and respect for labour rights of migrant workers.
7. Cease and prevent harassment or wrongful punishment of migrant workers.
8. Conducting human rights due diligence and regular audits of supplier farms to investigate the working conditions of employees.
9. Engage in multi-stakeholder dialogue with workers, NGOs, the Thai government, and poultry farm owners and poultry sector workers.

(c) To the government of Thailand:

1. Uphold the public commitment made by Thai Prime Minister Gen Prayut Chan-o-cha in May 2017 to the UN Guiding Principles on Business and Human Rights by developing a comprehensive National Action Plan on business and human rights.
2. Enact legislation consistent with the Forced Labour Convention 1930 (No 29) and other core ILO and related conventions.
3. Hold business enterprises and other perpetrators of human rights violations accountable and ensure effective remedies for victims.
4. Require businesses in the agriculture sector with high numbers of migrant workers to report on human rights due diligence.
5. Create a policy of “no recruitment fees” for migrant workers.
6. Provide all migrant workers with information about their rights and the complaint hotline on their arrival in Thailand in their native languages.
7. Instruct public prosecutors and the Attorney General’s office to use their discretion to prevent unjustified criminal defamation claims, and end the practice of private criminal claims which harass and silence complaining workers and labour activists.
8. Ensure that the NHRCT is able to carry out its mandate effectively and independently, including empowering it to mediate disputes and making its remedial orders enforceable, including of compensation.

(d) To the Japanese government:

1. Develop and implement a National Action Plan on business and human rights based on the UN Guiding Principles, as per the commitment made in November 2016 and in dialogue with all relevant stakeholders.
2. In order to improve the transparency of the supply chain of Japanese companies, the Japanese government should pass and implement legislation for:
  - a) corporate responsibility reporting,
  - b) mandatory due diligence of human rights impacts in supply chains and publicly reporting the results,
  - c) a customs code to provide publicly available tracking information of imported products, and
  - d) restrictions on imports of products made through forced labour.

## Appendix: Responses from Japanese Companies

Email sent to the Japanese companies mentioned in the report:

**Subject line: “Request for Japanese Companies to Check Draft Report (Human Rights Now)”**

I am Nishikata of NPO Human Rights Now.

We are an international human rights NGO that works primarily in Japan.

Our organization is in the process of preparing a report, “Labour Rights Violations in the Thai Poultry Industry within the Supply Chains of Japanese Companies”, the final draft of which we have attached to this email. We are contacting you because it has come to our attention during the process of writing our report that a Thai company in your supply chain is accountable for human rights violations.

We are planning to publish our report in early June, so we are asking you to contact us if there are any points which differ from the truth in the report or any differences regarding your company’s knowledge of the situation.

We are also considering attaching a list of your company’s revisions, comments, and any actions you are planning to take in response to the human rights situation you were informed about in a “Response” section in our report. So it would be extremely helpful if you are able to send a response within ten days.

(A provisional version of report is attached.)

### A. Companies that did not receive or were not willing to receive the report

#### 1. Marudai Food

A representative of Marudai Food was contacted by HRN over the phone (via the company website’s details) on 10 May 2018. HRN asked the representative for an email or address to an authorized representative to send the report and inviting to give corrections and comments, after notifying the representative that the company is mentioned in the report and it will be published soon. The representative declined to receive the report, did not give contact information to send it, and acknowledged that HRN will publish the report without Marudai Food having read or responded to it after receiving and declining the opportunity to respond. On 5 June 2018, we sent a copy of our report via postage, but we did not receive a response from the company.

#### 2. Dainippon Sumitomo Pharmaceutical Co., Ltd..

A representative of Dainippon Sumitomo Pharmaceutical was contacted by HRN over the phone on 10 May 2018. The representative did not give information to receive the report over the phone but requested HRN send the report by an online form to which it may reply later. HRN then submitted the report and request by the form, and it did not receive a reply from the company. On 1 June 2018, we sent the company the report via postage, but we did not receive a response, and on 1 August 2018, we sent a follow-up message through their contact form to request a response, but we did not receive one.

## **B. Companies that received the report and invitation for a response but did not reply**

### **1. Boston Trading.**

Our report was sent to the contact information on Boston Trading's website with an invitation for its response on 14 May 2018. On 5 June 2018, the company sent the report to the company via postage, and we sent a follow-up email on 1 August 2018 to request a response, but we did not receive one.

## **C. Companies that received the report and invitation for a response and sent a reply**

An advance copy of our report and an invitation to give a response was sent to and received by the following companies through their system for public communication, and the companies sent a reply. The full reply is printed below. Note that company notices about mistakes and requests for corrections refer to text that has since been corrected in the current version.

### **1. Ajinomoto**

HRN sent our report to the contact information on Ajinomoto's website for CSR info with an invitation for their corrections and comments on 14 May 2018, and HRN received a reply from the company on 25 May 2018. The full reply is written below.

Certified NPO organization Human Rights Now  
Dear Ms. Ito,

#### Report by NPO Human Rights Now 2018

#### The Comments on forced labor among Thailand chicken meat industry: Violating laborers' human rights of supply chains held by Japanese enterprise

Ajinomoto group has interviewed with a business partner in Thailand, Betagro, an enterprise of frozen food industry. We have come to a recognition about the report that you made. Please refer to point 1 below. Also, please refer to the 2<sup>nd</sup> point to get to know the efforts of the Ajinomoto group, promoting the activities to Japanese enterprises in their supply chains.

#### Comment on Human Rights Now 2018 Report "Forced Labor in the Thai Poultry Industry: Violation of Rights of Laborers in Supply Chains of Japanese Companies"

In 1., we explain our understanding of the situation based on our communication with Betagro, our business partner in Thai for the frozen food industry. In 2., we explain how we have dealt with the supply chains of Japanese companies.

1. About the accuracy of the report:

- 1) P53: In 2015, Betagro publicly announced that its supply chains all comply with Thai's labor laws, and also officially published the Betagro Labor Standard (BLS), which follows basic international human rights and labor laws. Betagro has invited all of their suppliers to an information session, as well as handed out the BLS manual.
  - 2) P48: Betagro is not related to the lawsuit against Thammakaset, regarding Thammakaset's theft from their laborers and defamation.
  - 3) P52: Betagro recognizes this issue as one of the whole poultry industry, and deemed that it should support the victims of the human rights violations. Thus, it is providing financial support through the Thai Broiler Processing Exporters Association.
  - 4) P45: The Thai Royal Police has implemented a committee to investigate this dispute. According to the report by this committee, this case does not count as human trafficking, and has concluded that this is a labor law violation, although this has not been mentioned in the report.
2. Ajinomoto proceeds to act in accordance with the UN Guiding principles for Business and Human Rights.
- 1) Ajinomoto has always worked on matters regarding human rights in accordance with the "The code of conduct at Ajinomoto group" and "Supplier CSR Guidelines". It has also created the "Group Policy about Respecting Human Rights" to further carry out activities abiding by the UN Guiding principles for Business and Human Rights.
  - 2) Under the Group Policy for Human Rights Respect, we have devised a plan to assess human rights risks and analyze and rate such risks through data on human rights risks among the regions and enterprises provided by Versk Maplecroft. This is to be carried out under due diligence on human rights.
  - 3) We will strengthen Ajinomoto Group's human rights respect system through setting up a system of due diligence for human rights and by providing a reporting system for outside organizations, such as our suppliers.
- Ajinomoto Foods  
Managing Executive Director  
Human Rights Specialized Committee Leader  
Yuma Komiya

On 12 July 2018, we requested a response to an additional set of questions. On 23 July 2018, we received the following response.

### **Thai Poultry Industry Forced Labor Report Response to 2nd Set of Questions**

We have written the answers to your questions in blue. Please contact our company when translating our comments into English to avoid any misunderstandings.

2. You have stated that your company "...[has] devised a plan to assess human rights risks and analyze and rate such risks through data regarding human rights risks provided by Versk Maplecroft[, which] is to be carried out under due diligence on human rights." Regarding this:

1) Do you periodically carry out human rights due diligence processes or human rights risk assessments?

*We have applied a process of human rights due diligence starting this year. We plan to carry out the processes periodically from now on.*

2) Have you released/published any of your past investigation reports for your human rights due diligence process? If you have, please paste the link below (if there are multiple, just link one of them to represent



the rest). If not, please tell us your reasons for doing so.

We are currently planning to publish our 2018 Sustainability Data-book in September on our website.

3) To what level are you aware of your suppliers (primary, secondary, tertiary, and thereafter)? If you have a published list of your suppliers, please include the link below.

In terms of products including agricultural and marine products, we are aware of our suppliers down to the suppliers of the raw material/ingredients, and in terms of packaging material, we are aware of our suppliers down to the processing companies.

Also, regarding paper (FSC), palm oil (RSPO), and coffee beans (4C), we make sure to procure only certified products.

4) Were you aware of the human/labour rights violations in the Thai poultry industry that we pointed out in our report regarding your human rights due diligence process? If not, please tell us your reason for this.

Two years ago, we were informed of the violations that occurred at Thammakaset through a governmental organization and through information obtained from the Internet. In response to this, we contacted Betagro and broke off our contract with Thammakaset.

5) Have you carried out any investigations or monitoring on Thai poultry supply chains other than Thammakaset? If you have, please tell us about your investigations/monitoring in detail.

As your report refers to an issue that took place two years ago, we have not carried out any additional investigations, considering that Betagro has taken action on its partner farms since then. Betagro has taken measures to implement the BLS (Betagro Labor Standard) on farms that they have contracts with, and carries out monitoring at a frequency of at least once per year. At the same time, they have implemented a program called "Your Voice We Care" in partnership with the NGO Issara. This program is a reporting system for labourers to voice their opinions so that such issues can be solved.

6) As a company, for what reason do you think Thammakaset, a farm allegedly guilty of forced labor, was included as one of your suppliers?

There are more than 3 million foreign immigrant labourers in Thailand making up more than 10% of Thailand's economy. As such situations gradually become the norm, we are confident that society will become more aware of the issues of human rights/labor rights violations of immigrant laborers in small/medium sized enterprises and will become conscious of abiding by labour laws.

7) What kind of action plans do you have as a company to avoid contributing to similar human rights issues in the future? If you publish any company plans on your website regarding your investigation results or reform measures, we will comment on it during our press conference.

We will carry out human rights due diligence measures in accordance with the UN Business and Human Rights Principles. We will also clarify our human rights tasks and rank them according to priority in accordance with the Human Rights Impact Assessment. Through this, we will devise a plan that defines how exactly we will deal with these issues.

3. Have you carried out any investigations to confirm the facts of the issues we have stated in our report? If there is any information you are willing to share regarding the investigation results or the investigation progress, please tell us the method you have carried this out by. If you publish the results on your website, we will comment on this during our press conference.

We have confirmed the facts through our communications with Betagro.

Since the contract with Thammakaset was broken off two years ago, Betagro has bolstered its actions (regarding labour/human rights issues) towards its suppliers, mainly on the contract farms. In 2017, Betagro established a pilot project called "Your Voice, We Care" with the American NGO The Issara Institute, and it plans to implement the project on all of its partner farms.

Refer to the following link: <http://en.postupnews.com/2017/07/betagro-your-voice-we-care.html#!/2017/07/betagro-your-voice-we-care.html>

4. Although we have used Thammakaset Farm II as the primary example of labor issues in our report, this is simply one example out of many others and is meant to present this human rights/labour rights issue as a common issue that is seen throughout Thailand. If you have any comments regarding such issues in the entire Thai poultry industry, please include them below. Also, please tell us any company plans to solve this issue present throughout the entire Thai poultry industry.

Since the incident from two years ago, companies and Thai society in general are moving to improve the labour/human rights situation. Betagro and the NGO Issara's project to improve the labour environment acts as a model for the rest of the industry. As a company, we will continue to support their project.

5. As a leading company, HRN would like to ask you to encourage your business partners (including suppliers) to also work to respect human rights by applying human rights due diligence processes in compliance with international standards such as the UN Business and Human Rights Principles and by publishing monitoring information as well as supply lists in response to the human rights issues seen in supply chains. Also, please tell us your thoughts on continuing engagement (including the exchange of opinions/information) with HRN.

Although we continue to work to carry out human rights due diligence processes, we will act to exchange information as appropriately with HRN and other NGOs that have information of the scene in case we detect a human rights violation.

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## 2. Four Seeds

HRN sent our report to the contact information on Four Seed's website with an invitation for their corrections and comments on 14 May 2018, and HRN received a reply from the company on 23 May 2018. The full reply is written below.

HRN

Dear Nishikata-sama,

This is Onda, and I am in charge of public relations in Fourseeds.

I have checked your report. Our company was not aware of what you wrote about, and we will immediately start investigating it. If there are any problems we encounter, we will strictly deal with them.

Also, there were some incorrect points we found in your report, so please correct the following.

- P.20  
(incorrect) *Miyatake Sanuki* Noodle Place  
(correct) *Miyatake Sanuki Udon*

- P.21

(incorrect) Operates the Pizza Restaurant “Pizza-La Express”  
(correct) Operates the Udon Shop “Miyatake Sanuki Udon”  
Pizza-la express is not operated, and we will not operate it in the future.

On 12 July 2018, we sent the company an additional set of questions. We received a response on 23 July 2018.

Q1: How did you investigate the human rights/labour violation that we pointed out, and what were the results? We will comment on your investigation results during the press conference if you release the information on your website.

A: We investigated the issue through Boston Trading, Inc. Although there is evidence of a legal dispute regarding Betagro and Thammakaset Farm, a client of Betagro, the trial came to a close a few years ago. Though Betagro has moral responsibilities towards the issue, we are under the impression that they were not found to be legally responsible for the situation. However, they have received this information seriously, and have therefore suspended all transactions with the client in question. We have been told that they will remain cautious of such issues in the future.

Q2. Do you have a system of periodic due diligence (supplier monitorings/investigations) for your supply chains for detecting violations of basic human rights and the Labor Standards Act? If you do, what kind of standards or procedures do you carry the system out by?

Q3. What kind of action plans do you have as a company to avoid similar human rights issues in the future? If you release (on your website) any plans or planned policies to improve the situation we pointed out in the report, we will comment on them during our press conference.

(Response to both 2 & 3)

A: Although we have been careful to judge the credibility/trustworthiness of our clients/suppliers through various factors, and we have also carried out periodic monitoring and investigations until now, we will work even harder regarding many facets to avoid contributing to causing human rights issues.

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### 3. Itoham Yonekyu Holdings

HRN sent our report to the contact information on Ito-Ham’s website with an invitation for their corrections and comments on 14 May 2018, and HRN received a reply from the company on 23 May 2018. The full reply is written below.

Dear HRN

We appreciate you reaching out to us with your report about the poultry industry in Thailand.

There is nothing for us to comment on regarding the details of our company in your report.

We recognize that labor rights issues, including forced labor, are global issues that need to be addressed. We prioritize compliance to aim to become the ideal company, and will continue to conduct our business

based on not only the philosophy and principles that our company has, but we will also make sure to comply with social norms and laws when conducting any of our business.

We hope that your organization will be prosperous.

Itoham Yonekyu Holdings

On 12 July 2018, we sent the following set of questions for the company to respond to.

Contact  
2018/7/12

Dear Ito Ham Holdings

110-0005  
7F Creative One Akihabara Bldg., 5-3-4 Ueno, Taito-ku, Tokyo 110-0005 JAPAN  
Telephone number : +81-3-3835-2110  
Email: [info@hrn.or.jp](mailto:info@hrn.or.jp)  
Human Rights Now

We would like to thank you for your responses to our questions regarding the forced labor report of the Thai chicken industry that you published. We will state how we feel about the context of your answers at the end of this report. As for the things you pointed out that we should correct, we will go over right away.

Below are several questions we have regarding your answers to our questions. We would like for you to answer them. We plan on having a press conference about this issue at the end of July, so we ask that you respond to our inquiries by Monday, July 23rd.

1. In one of your answers, you said “we cannot express our opinion,” but as a company, what measures have you gone to fact checking the human rights/labor violations that you have pointed out? If you could share your fact checking results as well as how progress is being made, please also include how exactly you went about checking these facts in your response to us. If you publish the results to your investigation on your website, we will comment on it at our press conference.
2. At your company, in order to check the labour standards law/existence (or non-existence) of the infringement of basic human rights on supply chains, do you have a system of periodic due diligence (investigations or auditing of suppliers)? If yes, please tell us the standards and procedures you use to implement these practices.
3. From now on, to not be complicit in similar human rights violations and such, what action plan have you come up with as a company? On your website, if you put up possible solutions/ways we can improve upon our tasks you pointed out in the report, we will comment on it at the press conference.

Thank you.

We received the following response on July 23, 2018.

Thank you for contacting us regarding our response to your report on the Thai poultry industry.

1. There are no errors in the truth of the facts (the plans we released in January to create a merged company handling the sales of pork products) you have presented about our company in your report. Through our merging partner, Mitsubishi Corporation, we have checked that regarding the labor issue of the Thammakaset poultry farm, Betagro has already cut off all transactions with Thammakaset and has carried out investigations on its other partner poultry farms to probe how well their labor regulations are followed.
2. We carry out periodic investigations to check the product management and hygiene/safety measures of our suppliers but currently do not have investigations focused on the labor/human rights situation of our suppliers.
3. We prioritize compliance in our company activities, and through our ethical code, we are planning actions towards our suppliers in terms of environmental protection and the respect of human rights. All of our workers and employees have a copy of our ethical code, and we enforce the code through the education/training of our employees.

Itoham Yonekyu Holdings

#### **4. Mitsubishi Corporation**

HRN sent our report to the contact information on Mitsubishi Shoji's website with an invitation for their corrections and comments on 14 May 2018, and again on 22 May 2018 to another representative after not receiving a reply from the first representative. HRN finally received a reply from the second representative on 25 May 2018. The full reply is written below.

Focusing on the company's philosophy, The Three Corporate Principles, Mitsubishi Shoji plans to contribute to the sustainable development of society through promoting global business activity. As we spread our business globally, we think that it is very essential to consider human rights. Additionally, we respect and support international norms regarding human rights, such as the Guiding Principles on Business and Human Rights, Universal Declaration of Human Rights, ILO International Labour Standards, Voluntary Principles on Security and Human Rights, and more.

The CSR (Corporate Social Responsibility) on supply chains is one of the most important policies that are followed, not only for our company, but also for all those companies which have expanded business abroad. We have established the Mitsubishi Corporation Policy for Sustainable Supply Chain Management, a principle that places an emphasis on human rights, labor issues, and environmental issues in supply chains. This principle includes the prohibition of forced labor and providing a safe and clean working environment for employees. We have been instructing all of our suppliers to follow this principle.

We persistently conduct investigations on a regular basis and have on-site inspections in order to make sure that they are following our principles and CSR. In the case that they are breached, we would ask suppliers to take corrective actions, and we would also support them if necessary. We put our efforts into building strong relationships with our suppliers.

We included poultry suppliers in Thailand into our investigation lists upon detecting the situation with supply chains in Thailand. We are considering solving this issue in Thailand in cooperation with other companies.

We have had a good relationship with Betagro for a long time. With regards to the labor dispute that has taken place in Thammakaset, a contractor of Betagro, we confirmed it with Betagro, and Betagro solved the labor dispute according to Betagro's labor standards. Also, we understood that if Thammakaset continues to not follow Betagro's labor standards, they will drop the contract with Thammakaset. Furthermore, we were informed that Betagro investigated not only Thammakaset but also all the contractors that work with Betagro to check whether or not they are following Thailand's law and Betagro's labor standards.

If you want to check our consideration toward human rights or how we work on supply chains, please check our webpage.

<https://www.mitsubishicorp.com/jp/ja/csr/management/policy/human-right.html>

<https://www.mitsubishicorp.com/jp/ja/csr/management/supplychain.html>

On 12 July 2018, we sent an additional set of questions and requested a response from the company. We received the following response on 23 July 2018.

"Forced Labor in the Thai Poultry Industry" Report Questions and Response

This is our response to the report we received on 2018/7/12.

1. You have referred to Betagro's statement that its labor dispute regarding Thammakaset was solved in accordance to Betagro's labor regulations. However, although Betagro broke off its contract with Thammakaset Farm II, the poultry farm where the forced labor was happening, the dispute itself has not been solved, as pointed out by the laborers. Laborers seek compensation in a lawsuit regarding the labor law violations and the trial is still in progress. Please keep in mind that as long as no fair compensation has been issued, the incident cannot be said to have been solved.
  - Thank you for pointing this out. As a company, we are currently aware that the labor dispute has not been completely solved yet. This may have been obscure, but according to a response received from Betagro on 5/25/2018, Betagro will "suspend all transactions with Thammakaset until the labor dispute is resolved and Thammakaset begins to adhere

to Betagro's labor regulations."

2. In our report, we present Thammakaset Farm II as a specific example for the labor issue, but it is simply an example that represents the widespread human rights/labor rights issue present throughout the entire Thai poultry industry. In that sense, we appreciate your statement that you are working on solving the problem in all of your supply chains related to the Thai poultry industry. As a company, what do you think there is to work on regarding human rights/labor rights violations in the supply chains related to the Thai poultry industry (other than Betagro and Thammakaset)?
  - Generally, labor-centered business types are mainly composed of foreign workers, meaning it is not difficult to produce inadequate working environments for laborers.
3. Your company has stated that you have implemented a CSR Action Guidelines to guide your action plan regarding human rights, labor issues, and environmental issues for your supply chains to prohibit forced labor and to enforce a healthy labor environment. You also mentioned publishing your company's principles to suppliers all over the world. Regarding this point, you have written in the second part of your section on monitoring in your CSR guideline that you will carry out periodic investigations on your suppliers and increase communication with them to understand how much the guidelines have been implemented in their environment. Also, depending on their location and their work content, if you deem it necessary, you will go to the site of the supplier and carry out checks on their situation. Please tell us in detail about these periodic investigations and checks on your supplier's situation on the below points.
  1. What are your investigations methods and review standards? Do you include a third party in your monitoring process?
    - For suppliers that handle products that require the consideration of society, such as agricultural products or apparel items, we periodically carry out survey investigations based on how well they work in accordance to our Supply Chain CSR Guideline. If we deem it necessary, our employees also carry out on-site inspections based on advice from third parties. If the investigation results demonstrate a violation of our guidelines, we will require the supplier in question to carry out corrective actions. We will also supervise/guide them and provide financial support if necessary.
  2. In the past periodic investigations you have carried out, have you detected any of the labor rights/human rights violation issues regarding the Thai poultry industry that we have pointed out in our report? If not, please let us know the reasons.
    - We have been watching the Thai chicken industry for human/labour rights violations issues as a common belief throughout the industry. We have recently added our Thai poultry suppliers as targets of our survey investigations.
  3. Have you carried out any investigations/monitoring on Thai poultry supply chains other than Thammakaset on receiving our report? If you have, please tell us the details.
    - This year, we have added all of the Thai poultry suppliers that our company or our subsidiaries have direct transactions with to our list of survey targets (mentioned in the above answer), but this was not because of your report.
  4. As a company, why do you think Thammakaset, a company that carried out forced labor as stated in our report, was included as a part of your supply chains?
    - We consider it important to deal with human rights/ labour issues detected in our supply chains in cooperation with our direct clients, so in that sense, we will make sure to understand the situations of our supply chains through periodic investigations.
  5. What kind of action plans do you have as a company to avoid contributing to a similar human rights issue in the future (and to promote the respect of human rights)? If you release/publish on your website any reform measures or investigations results regarding the issues/tasks we pointed out in our report, we will comment on it in the press conference.
    - We will strengthen our relations with our suppliers by continuing the periodic survey investigations we have implemented this year, and will carry out on-site



inspections of our suppliers if necessary. We have published on our website our plans and actions.

<https://www.mitsubishicorp.com/jp/ja/csr/management/supplychain.html>

4. You have stated that you are currently considering working in partnership with organizations related to the industry, but specifically, what kind of organizations do you have in mind, and how do you plan to work with them? HRN considers it an important step to cooperate with corporations that have the same issues to solve such issues. We would also like you to actively aid the efforts.

- We will first grasp the situation and tasks of the Thai poultry industry through our periodic survey investigations on our poultry suppliers and then consider working with other people related to the industry to solve the issues.

5. As a leading company, HRN would like to ask you to encourage your business partners (including suppliers) to also work to respect human rights by applying human rights due diligence processes in compliance with international standards such as the UN Business and Human Rights Principles and by publishing monitoring information as well as supply lists in response to the human rights issues seen in supply chains. Also, please tell us your thoughts on continuing engagement (including the exchange of opinions/information) with HRN.

- “The Three Corporate Principles” being our management philosophy, we will continue to be open to the opinions of all of our stakeholders including HRN, and we are willing to carry out the exchange of information with our stakeholders to establish a sustainable method of business development.

## 5. Pommefood

HRN sent our report to the contact information on Pomme Food’s website with an invitation for their corrections and comments on 17 May 2018. On 18 May 2018, HRN received the following reply by email.

At a meeting with our stockholders held in March of 2018, we have decided to discontinue our partnership with Betagro by next April.

Thus, our company has no relations with Betagro, so we would like you to delete our company’s name from your report.

Consistent with our recommendations that companies respect their duties to address labor rights violations among even past business connections (when the connections were present at the time of the violations) and to consider engagement with suppliers before dropping a supplier, HRN decided to keep the reference to Pomme Food, but HRN changed the relevant text to reflect the accurate and current situation that Pomme Food and Betagro do not currently have any business relationship.

On June 4, we sent the below set of questions, but did not receive any response.

Sugimoto,

Thank you for your email.

Although you requested that your company be deleted from our report, please let us know the reason of your discontinuation of partnership with Betagro. Is it due to the things we have mentioned (human rights/labor rights violations in poultry farms) in our report? Also, although you have discontinued your

partnership with Betagro, have you checked if there aren't any Thai poultry farms/companies within your supply chains?

Even if you have currently broken off your partnership with Betagro, since you were involved with them while the rights-violating situation was in progress, we believe you have a social responsibility as a corporation to do things such as compensate the workers who were affected, according to the Guiding Principles on Business and Human Rights.\* If you have already fulfilled your social responsibilities as stated in the UN Guiding Principles on Business and Human Rights, we would like to know what exactly you have done to do so.

Also, as you may know, immigrant laborers that are forced to work in poor working environments are not something that happens just at Thammakaset Farm, but is rather something that happens across poultry farms in Thailand (and many other developing countries). Thus, the breaking off of your partnership with Betagro does not equate the solving of the problem.

We have received many helpful, constructive responses from the other companies that we have sent our reports to. As a company with management philosophies such as "Working for people through food products" and "We would like to become a company who will be able to contribute socially", we are confident you will send us a helpful response.

Like the other companies, we will attach your response to the end of our report. The content of the report will be published and announced at a press conference, so please let us know of any points of concern in our report.

Thank you.

\* Note: Guidance for responsible actions to address human rights violations of supplier workers to which the company did not contribute is provided by UN Guiding Principles on Business and Human Rights Principle 19(b). An example would be for the company to use its leverage to engage with the local company and the Thai government to push for a positive resolution of the negative rights impacts in Thailand and to prevent future adverse labour and human rights impacts there.

## 6. Sumitomo Corporation

HRN sent our report to the contact information for CSR matters on Sumitomo's website with an invitation for their corrections and comments on 14 May 2018, and HRN received a reply from the company on 28 May 2018. The full reply is written below.

As we have mentioned below, we've withdrawn our investments from Betagro-Dainippon Tecno-Ex Co., Ltd in 2011 and Betagro Safety Meat Packing, Ltd in 2015, and have no plans to invest in them in the future. Your report draft lists our company as having investments in these two companies, so we ask you to revise the parts we've pointed out.

Thank you.

As a socially contributing, global company, Sumitomo Corporation holds the phrase "Human respect is a basic principle to assert trustworthiness." as a management principle of our company. We define our company group's sustainability by growing sustainably with society through the undertaking of social responsibilities as a company. We fulfill the social responsibilities as a company (under regulatory compliance) not only through our business operations, but also through co-existence with the regional community, close consideration of human rights, and preservation of the environment.

Under such a mindset, in accordance with the Universal Declaration of Human Rights, our company group has signed the UN Global Compact (10 Principles) in 2009. And as stated on our website, we have publicly declared our respect of the Principles of Business and Human Rights adopted by the UN in 2009, as well as affirmed our role in encouraging social awareness on such issues.

In addition, we also request all of our clients and business partners including our suppliers to support as well

as practice The Sumitomo Corporation Group CSR Action Guidelines for Supply Chain Management, which we have disclosed on our website. Also, regarding clients for which our Marketing Department has deemed it necessary, we have visited the site of the companies, and such, in joint cooperation with their staff members to check the situation of the sites accordingly.

As a company group, we will continue to follow and respect international guidelines, act in accordance to each country's laws, and respect human rights with our business partners and clients as a global business member.

We have withdrawn our investments in Betagro-Dainippon Techno-Ex Co., Ltd in 2011, and Betagro Safety Meat Packing., Ltd in 2015 regarding the pork industry companies you have mentioned as related to us in your report. And at the moment, we have no plans to invest in them in the future. Although we take part in the pork industry through pork farms we have established under Thai SPF Products Co., Ltd., a company created through the merging of our company and Betagro Agro Group, we pay strict attention to the human rights of our workers.

Sumitomo Corporation  
Sustainability Department

On 12 July 2018, we sent the following set of questions to the company.

2018/7/12

To the Sustainability Department of Sumitomo Corporation

Thank you for your response to our Thai poultry industry report. We will attach the content of your response to the end of the report. We will also make sure to revise the points that you have pointed out. We have a few questions regarding your previous response. We will attach the response to these questions to the end of the report. Please respond by 7/23 (Monday), as we plan to hold a press conference around the end of July.

1. In your response, you have stated that you encourage the compliance and support of your Supply Chain CSR Action Guidelines among your clients and business partners, but specifically, what kind of procedure to you follow to ensure that your suppliers and business partners comply with these guidelines? Similarly, regarding the statement you have published about the UK Modern Slavery Act, how do you ensure this is carried out?
2. In your response, you have stated that you carry out on-site investigations with related companies and the local staff if the marketing department deems it necessary. Please answer the following questions regarding this point.
  1. As a company, do you have a system of periodic due diligence (investigations and monitoring of suppliers)? If so, how do you carry out these investigations, and what are the evaluation standards? Also, if you carry out monitoring by a third party, please provide details on that as well.
  2. Did you detect the human rights issues/labor rights issues in the Thai poultry industry that we pointed out in the report through the on-site investigations you have conducted in the past? If you have not detected such issues, please tell us why you believe you were unable to detect them.
  3. Did you carry out any monitoring or investigations of supply chains other than Thammakaset upon receiving our report? If you have, please tell us the details of the investigations or monitoring.
  4. As a company, why do you think Thammakaset, a company that was found to be using forced labor, was included as one of your supply chains?

5. What kind of action plan do you have as a company to respect human rights and avoid contributing to a similar human rights issue? If you publish any plans for improvements or your investigation results on your website, we will comment on that in the press conference.
3. As a company, did you carry out any investigations to check the truth of the human rights/labor issue (in the Thai poultry industry) that we pointed out in the report? If you have any investigation results or progress reports that you can share, please tell us how you carried out these investigations. If you publish the investigation results on your website, we will comment on them during our press conference.

Thank you.

We received the following response on 23 July 2018.

1. We are continuing our dialogue with our business partners and suppliers to encourage understanding of our mindset and principles. Corporate profiles (available in seven languages), unified debriefing reports, and our website are our dialogue tools to boost understanding of our CSR Action Guidelines for Supply Chain Management.  
In terms of the levels of understanding, the environment and situation differs with each business, so we recognize that there is a need to view each business through multiple factors, including the site of the business, the sales institution it is in charge of, the regional headquarters, partners, etc. We believe that through sending officials of various levels from our group to visit our partners and suppliers for the purpose of collecting and exchanging information, we will be able to detect issues and address them appropriately, therefore progressively strengthening their understanding of our principles. The same goes for the UK Modern Slavery Act.
2. 1) Since our business is spread widely across many regions and business types, it is difficult for us to carry out periodic investigations on all of our businesses at the same time, but we carry out necessary checks under the supervision of each business, and work to deepen understanding of staff in related businesses on basic principles through company seminars and such.  
2) Although we have responded to this already (5/28), if the human/labour rights violations in the Thai poultry industry that you have pointed out is equivalent to business transactions with Betagro, we would like to emphasize that our group and Betagro carries out trade only in the pork industry, therefore making your question unrelated.  
3) Although we have not carried out any new investigations regarding supply chains related to the Thai poultry industry on receiving your report, we understand that there are no current human rights violations going on as of now.  
4) Please refer to our response on 2). We have no relations whatsoever with Betagro's poultry supply chain.  
5) As we have explained in 1), we will continue to communicate our principles to our partners and suppliers, as well as continue to strengthen the understanding and mindset of the employees who will carry out the investigations of our partners'/suppliers' business sites through in-company seminars. And we will also continue to be conscious of the importance of communication through various aspects and facets regarding other business developments and communication at the site of the businesses of partners and suppliers.
3. As we have routinely worked to create a safe labor environment through routine communication with our business partners, we have not carried out any special investigations upon the issues taken up in your report. However, we will continue to have periodic conferences and on-site investigations with our business partners.

On 30 July 2018, we requested that they verify the revisions that we'd made based on their suggestions. Human Rights Now's proposed revision follows.

Thai SPF Products, is a joint venture between Sumitomo and Betagro Agro Group formed in 1993 to develop the specific pathogen free (SPF) pork market. In 2002, Sumitomo entered a joint venture partnership with Betagro Agro Group for SPF pork meat packing business, and in 2004, entered into SPF pig production joint venture with Betagro Agro Group. In the past, Sumitomo Corp. was involved in two other joint ventures related to Betagro that have since ended. From 2004 to 2011, Sumitomo, Dainippon Pharmaceutical Co., Ltd. and Betagro Agro Group Co., Ltd. formed Betagro-Dainippon Techno-Ex Co., Ltd., a joint venture company specializing in the production of livestock bone extract in its plant in Lop Buri, Thailand. In 2011, Sumitomo withdrew its investment in Betagro-Dainippon Techno-Ex Co. and there has been no business relationship between the two companies since then. Until 2015, Betagro Safety Meat Packing Co., Ltd. was another joint venture company between Sumitomo and Betagro Agro Group for a pork products plant, and it mass produced pork supplied by Thai SPF Products Co., Ltd. and other Betagro Agro Group companies. In 2015, Sumitomo withdrew its investment in Betagro Safety Meat Packing Co., Ltd., and there has been no business relationship between the two companies since then.

The following is Sumitomo Corporation's Proposed Revision (used in the final draft of report)

Thai SPF Products, is a joint venture between Sumitomo and Betagro Agro Group formed in 1993 to develop the specific pathogen free (SPF) pork market. From 2002, Sumitomo, Dainippon Pharmaceutical Co., Ltd. and Betagro Agro Group Co., Ltd. formed Betagro-Dainippon Techno-Ex Co., Ltd., a joint company specializing in the production of livestock bone extract in its plant in Lop Buri, Thailand. Sumitomo Corporation and Betagro Agro Group also established Betagro Safety Meat Packing Co., Ltd. in 2002, and in 2004, began an SPF pork slaughter processing business using pork supplied by Thai SPF Products Co., Ltd. and other Betagro Agro Group companies. Sumitomo withdrew its investment in Betagro-Dainippon Techno-Ex Co., Ltd. In 2011 and with Betagro Safety Meat Packing Co., Ltd. in 2015.