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Prime Minister Prayuth Chan-o-cha
Office of the Permanent Secretary
Prime Minister's Office
Royal Thai Government
Government House
1 Pitsanulok Road
Dusit
Bangkok 10300
Thailand

14 February 2019

NEW LAWSUITS BROUGHT BY THAMMAKASET COMPANY LIMITED AGAINST HUMAN RIGHTS DEFENDERS

Dear Prime Minister Prayut,

The 89 undersigned organizations write to express our deep concern regarding recent spurious complaints brought by Thammakaset Company Limited against several human rights defenders in Thailand.

We respectfully urge the Thai government to take immediate action to oppose and seek the dismissal of cases filed by Thammakaset that run counter to your government's proclaimed policy to support business and human rights as well as Thailand's interests, legal obligations, and international human rights law commitments.

To date, Thammakaset—a Thai-owned poultry company in Lopburi Province—has filed no fewer than 13 criminal and civil complaints against a number of human rights defenders, including former employees. While Thai authorities and courts have dismissed most of the complaints, some are still pending and, in November 2018, a company representative pledged to bring more complaints.

In December 2018, Thai authorities summoned 14 former employees of Thammakaset, all migrant workers, to acknowledge complaints by the company, alleging that the workers “wrongly filed a false case with officials and caused damage to another [person or entity].” Lopburi Province police also called Suthasinee Kaewleklai, the Thailand Coordinator of the Migrant Workers Rights Network (MWRN)—an advocacy group that supports migrant rights in Thailand—to report to the police on January 28, 2019 to discuss a separate complaint by Thammakaset against her. On the same day, the Lopburi Province police requested information from witnesses as part of an investigation into complaints brought by Thammakaset at the end of 2018 against six individuals relating to activity on social media.

Thammakaset's criminal complaints stem from its former 14 employees' involvement in reporting labor rights abuses to the Department of Labor Protection and Welfare (DLPW) and the National Human Rights Commission of Thailand (NHRCT) in 2016. In separate investigations, both DLPW and the NHRCT found evidence of labor rights abuses, including that Thammakaset failed to pay minimum and overtime wages and failed to provide adequate leave to workers as required by law. On January 15, 2019, the Supreme Court upheld a lower court's

order requiring Thammakaset to pay 1.7 million Thai Baht (US\$51,470) in compensation to the 14 former employees for violations of Thailand's Labor Protection Act.

Thammakaset recently brought additional legal complaints against human rights defenders involved in publicly reporting on labor rights abuses and employer reprisals against the workers. As of October 2018, Nan Win, a former Thammakaset employee, faces new criminal defamation charges for speaking out on the alleged labor abuses and reprisals against the 14 former employees in a film produced by the human rights organization Fortify Rights and during a Facebook-live press conference that Fortify Rights organized. Sutharee Wannasiri, a former human rights specialist with Fortify Rights, also faces criminal and civil defamation charges for sharing Fortify Rights' film on social media. The Bangkok Criminal Court is scheduled to consider the complaints against Nan Win and Sutharee Wannasiri on February 4 and March 11, 2019, respectively, and the Civil Court scheduled hearings in August 2019 to consider the civil complaint against Sutharee Wannasiri.

We are alarmed that Thai authorities are proceeding to investigate and prosecute these complaints by Thammakaset, particularly after the Don Mueang Sub-District Court has already dismissed similar criminal defamation charges in July 2018 brought by the company against the same 14 former employees. These new charges filed by Thammakaset constitute harassment by the company that waste valuable time and resources of police, prosecutors, and judicial officers.

The complaints by Thammakaset appear to be reprisals brought to harass human rights defenders involved in exposing abuses. Such reprisals interfere with the work of human rights defenders and prevent the implementation of labor rights protections. The cases brought by Thammakaset are emblematic of Strategic Litigation against Public Participation (SLAPP) lawsuits. These cases demonstrate the dangers SLAPP suits pose for workers and human rights defenders in Thailand and illustrate the need for your government to adopt clear policies and enact regulations and laws to oppose such cases from proceeding. Thammakaset has a long history of aggressively using the courts to intimidate and silence human rights defenders, who have exposed business-related human rights abuses. In August and October 2017, Thammakaset filed criminal suits against two migrant workers and Suthasinee Kaewleklai for the alleged theft of employment timecards. In fact, the timecards were presented to Thai government labor inspectors as evidence of labor violations, assisting officials to perform their duty as required by law. Although Thai courts eventually dismissed Thammakaset's complaints, the cases should never have proceeded in the first place and resulted in undue stress, unnecessary legal costs, and lost time and wages for those facing charges.

We recognize recent legislative steps by the National Legislative Assembly in December 2018 to amend Section 161/1 of the Thailand Criminal Procedure Code. This amendment allows a court to dismiss and forbid the refiling of a complaint by a private individual if the complaint is filed "in bad faith or with misrepresentation of facts in order to harass or take advantage of a defendant." Section 161/1 should apply to the recent complaints brought by Thammakaset.

This amendment is insufficient to address SLAPP suits generally in Thailand. In addition to relying on the court's application of Section 161/1, we urge your government to clearly demonstrate its opposition to SLAPP lawsuits, such as the ones filed by Thammakaset. Seeking the expeditious dismissal of the recent complaints by Thammakaset would be instructive to both foreign and Thai businesses operating in Thailand and demonstrate your government's commitment to implementing the law and upholding business and human rights principles.

To prevent future SLAPP lawsuits like those filed by Thammakaset, we recommend that Thailand develop comprehensive anti-SLAPP legislation that fully protects workers, human rights defenders, and others from judicial harassment. It is also essential that the public prosecutor and the Attorney General's Office be provided with adequate resources and support to exercise their powers under Section 21 of the 2010 Public Prosecutor Organ and Public Prosecutors Act to screen out unwarranted complaints, including those brought to harass,

intimidate, or retaliate against human rights defenders or others. Thailand should also decriminalize defamation and end imprisonment or fines as penalties for acts of defamation.

We urge the Thai government to follow the recommendation provided by a group of six United Nations human rights experts in May 2018 to “revise its civil and criminal laws as well as prosecution processes to prevent misuse of defamation legislation by companies.” During its official visit to Thailand in April 2018, the U.N. Working Group on Business and Human Rights similarly called on the Thai government to “ensure that defamation cases are not used by businesses as a tool to undermine legitimate rights and freedoms of affected rights holders, civil society organizations and human rights defenders.” The Working Group further recommended “enacting anti-SLAPP legislation to ensure that human rights defenders are not subjected to civil liability for their activities.” We encourage the Thai government to incorporate these recommendations into Thailand’s National Action Plan on Business and Human Rights and also ensure meaningful consultations with Thai civil society on developing and implementing the National Action Plan.

We thank you for your attention to the issues and recommendations raised in this letter. We welcome the opportunity to assist and support the Thai government in meeting its commitments to uphold business and human rights principles as well as to protect the rights of workers, human rights defenders, and basic freedoms in Thailand.

Sincerely,

Aksi! for Gender, Social and Ecological Justice, Indonesia
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Amnesty International
Anti-Slavery International
Article 19
ASEAN Parliamentarians for Human Rights
Asia Pacific Forum on Women, Law and Development
Asia Pacific Mission for Migrants (APMM), Hong Kong
Asia Pacific Refugee Rights Network
Asian Forum for Human Rights and Development (FORUM-ASIA)
Assembly of the Poor, Thailand
Australian Council of Trade Unions
Building and Wood Workers' International (BWI)
Bune United Sisters, Tombil Community, Minj, Jiwaka Province, PNG
Burma Campaign-UK
Business & Human Rights Resource Center
Center for Alliance of Labor and Human Rights (CENTRAL)
Center for Trade Union and Human Rights (CTUHR), Philippines
Chab Dai
CIVICUS
Civil Rights Defenders
Coalition for the Rights of Refugees and Stateless Persons
Community Resource Centre Foundation
Conservation International
Cross Cultural Foundation
Danish Ethical Trading Initiative
Environmental Justice Foundation
Ethical Trading Initiative
Ethical Trading Initiative Denmark
Ethical Trading Initiative Norway
FIDH (International Federation for Human Rights), within the framework of the Observatory for the Protection of Human Rights Defenders
FishWise

Fortify Rights
Foundation for Education and Development
Free the Slaves
Freedom Fund
Freedom United
Frontline Defenders
GABRIELA Alliance of Filipino Women, Philippines
Global Coalition on Migration
Global Legal Action Network
Global Migration Policy Associates
Greenpeace
Highlands Women Human Right Defenders Movement, PNG
Human Rights and Development Foundation
Human Rights Lawyers Association
Human Rights Now
Human Rights Watch
Humanity United Action
IJM Foundation
Indonesian Migrant Workers Union, Indonesia
International Accountability Project
International Labor Rights Forum
Kabar Bumi (Indonesian Migrant Workers Union), Indonesia
Korea Center for United Nations Human Rights Policy (KOCUN), the Republic of Korea
Kugar Farmers Association, Kudjip, BANZ, Jiwaka Province, PNG
LawAid International
Lawyers' Rights Watch Canada
Liberty Shared
Manushya Foundation
MAP Foundation
MARUAH, Singapore
Migrant Workers Rights Network
National Alliance of Women Human Rights Defenders (NAWHRD), Nepal
National Indigenous Women Forum (NIWF), Nepal
NEthing, India
North Whagi Country's Women Association, Jiwaka Province, PNG
Oxfam
RITES Forum, India
Robert F. Kennedy Human Rights
Rural Women Association Alga, Kyrgyzstan
Shan Women's Action Network
Slave Free Seas
Social Accountability International
SRED, India
Stop the Traffik Australian Coalition
Suara Perempuan Desa (Rural Women's Voices), Indonesia
SwedWatch
Tarangini Foundation, Nepal
Thai Lawyers for Human Rights
Trades Union Congress
Uniting Church of Australia (Synod of Victoria and Tasmania)
Verité
Voice
Voice for Change, Jiwaka Province, PNG
Walk Free Foundation
We Women Sri Lanka, Sri Lanka
Women's League of Burma

World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

CC: Minister of Labor
Minister of Justice
Minister of Foreign Affairs
Minister of Commerce
Minister of Industry
Attorney General
Commissioner-General of the Royal Thai Police
Chair of the National Human Rights Commission of Thailand
Ambassador, United States Embassy in Thailand
Ambassador, European Union Mission to Thailand
Regional Representative, Office of the High Commissioner for Human Rights
Regional Representative, International Labour Rights Organization
UN Resident Coordinator, Thailand