



Finance Behind the Man-Eating Bananas
-Human Rights and Labor Violations in Banana Production in the Philippines

Fair Finance Guide Japan

December 23, 2019



This report has been financed in part by the Swedish International Development Cooperation Agency, Sida. Responsibility for the content rests entirely with the author. Sida does not necessarily share the expressed views and interpretations

*This report is a translated version from its Original Japanese Text.

Philippines as the major banana supplier for Japan

The Japanese people consume various fruits, those produced domestically as well as those produced abroad. For many years, the mandarin orange was the top-ranking fruit. Especially in the winter, many families buy the oranges by a 1-kg box to keep a ready supply at the table. However, in the 2000s, the banana surpassed the mandarin orange in consumption, defeating the top ranker that had historically been unbeatable. Now, the most consumed fruit in Japan is the banana.

The majority of banana consumed in Japan is imported from the Philippines. Back in the mid-20th century post war era, when bananas became available to ordinary Japanese people, the majority of bananas in Japan were Taiwanese; however, currently, the Philippine banana dominates the Japanese market. In fact, the Philippine banana accounts for about 80% of all imported banana, and, because there is essentially no domestically produced banana in the market, it goes that the Philippine banana also accounts for nearly 80% of all bananas consumed in Japan.

Meanwhile, the banana producing regions of Philippines have suffered various human rights violations since the 1970s. The present study reports the local situations that are newly revealed in December 2018, which continues to affect the local people ever since. The present study also investigates the responsibility of financial institutions involved in creating and perpetuating the reported situations.

Although the banana is produced in all of the Philippine islands, in many cases, the banana is produced for domestic consumption. A notable exception is Mindanao, where large landowners have established expansive plantations since the colonial era and majority of banana production is export oriented. Among the companies involved in the export-oriented banana production, "Sumifru" has a close tie with Japan and has its operation spread out in the Province of Compostela Valley, located in the southeastern part of Mindanao. The present study focuses on plantations and packing plants operated by "Sumifru" in this region.

Employment in banana production

Regardless of where the banana is produced, banana production mainly provides employment in two forms: the "growers/harvesters", involved in growing/harvesting of the banana, and the "packers", involved in sorting, cutting,

washing, packing, and so forth at a plant to prepare the harvested banana for export.

The growers/harvesters are further divided into two types. First, those who are hired to grow/harvest banana on a land owned by or leased to a banana company. Second, those who engage in the production as contract farmers on their own lands or a land jointly owned by a cooperative. The two types of growers/harvesters differ from each other in that the former can be seen as "workers", thus involving labor relations, whereas such is not the case with the latter.

In this study, as examples of the second type of growers/harvesters, i.e., contract farmers, two cases were examined, and, in addition, a lawyer from the Fair Finance Guide Philippines coalition provided us with a copy of a certain contract and briefed us before investigating the situation in the region first hand. Here, the results of on-site investigation and preliminary investigation will be reported.

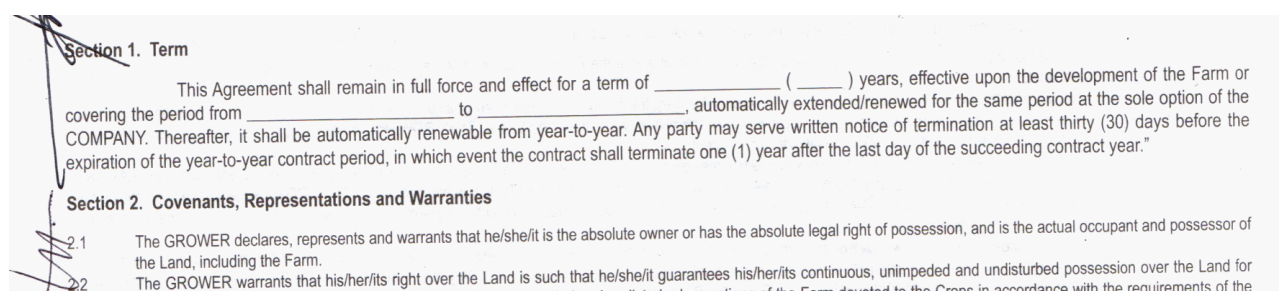
Regarding the packers, they are workers at packing plants of the Sumifru group in principle, and all of the subjects of this study are involved in the packing work as hired workers, not as independent entrepreneurs or the like.

Problems associated with the grower contract

The copy of contract between Sumifru and a farmer we had obtained before the on-site investigation had a few suspicious aspects. For example, the copy was handed to the farmer without filling in the starting date and the effective period of the contract. According to the lawyer who obtained the copy of this contract, farmers are typically told that the contract period would be 5 or 10 years at the time of signing the contract, and the farmer in many cases sign the contract on such a verbal agreement without carefully examining the contract form, thus signing the contract without noticing that the relevant part of the contract is blank. This allows the company to fill in the blank later to meet its needs, for example, setting the contract period to be 25 years. Many local farmers lack English skill to comprehend legal documents, and thus, they end up signing the contract without understanding the details of the contract.

In fact, there is no evidence whatsoever that a contract has ever been provided in Visayan or Tagalog, the languages that the local residents are familiar with, which suggests that there are many potential growers who would sign the contract without adequately understanding the details.

The contents of the grower contract include provisions about further details that protects only the company's interests. For example, only the company has the right to cancel/terminate the contract, and the contract can be automatically renewed so long as the company so desires. With these provisions, there are cases in which farmers were initially led to believe that the contract was for 5 years, but they were later told that the contract was actually for 25 years, and, in reality, the contract binds them for 50 years with the automatic renewal controlled by the company.



The contract obtained by the researchers is signed and effective but has the term of the contract blank.

The contract is also fully written in English while the farmers are not completely fluent in the language.

Excessive intervention

The provision 13 of the grower contract describes the right of the company to intervene when bananas delivered by a farmer do not meet prescribed conditions. Specifically, the provision explicitly indicates that, in such a case, the company can take over the farm for 10 years simply with a 72-hour notice and no other procedure. In addition, this provision does not include any description about a grievance mechanism through which a farmer can complain upon receiving the notice from the company, thus leaving no room for the farmer to take a remedial action.

Furthermore, all expenses for banana production during intervention are charged to the farmer. Although the farmer is entitled to file complaints, in writing, within 30 days when settling the account, it is extremely difficult for a farmer to prepare the necessary document in English. Once again, with the limited language skill of the farmers, the contract essentially forces them to accept a statement that is prepared by the company and that contains whatever values the company wants.

Regarding overseas contracts in general, there are many cases in which a controlling company is given an authority to conduct on-site investigations/audits of

production facilities. However, when drawing up a contract, it is normally inconceivable to go so far as to give a controlling company the right to "take over" the management when a problem occurs in the production facility. Thus, in the Sumifru's grower contract, the company and the farmers are clearly not on equal footings, and, by the nature of the contract, the farmers are forced to accept the provisions with extreme enforceability. This is akin to a manager holding the right to fire an employee under a labor contract. On the other hand, the farmers are not given any right that would normally be guaranteed in the case of labor relations, that is, workers' rights including paid leave, social security, etc. are not guaranteed: the provisions of the Sumifru's grower contract are nothing short of malicious.

Section 13. Intervention

- 13.1 If the situation so warrants, as when a violation of any provision of this Agreement has been committed, or there is a need to protect the COMPANY's volume commitment to the international market, or when the GROWER fails, refuses or is unable to follow the COMPANY's prescribed practices and/or manage the Project to such an extent that the success of the Crop production or compliance of the Crops with international standards is endangered, or when the condition of the Crops or the GROWER's operations are such that losses are imminent, or other similar situations, without need of court proceedings or further authorization, but with prior notice of at least seventy two (72) hours to the GROWER, the COMPANY may intervene by entering the Land/Farm, and --
- a. Take over the management of the operations at the Farm, Land, Project, or portions thereof;
 - b. Appoint an interim manager or administrator; or
 - c. Assign said operations and management to a third party
- without prejudice to final accounting and liquidation of all accounts payable, advances and reimbursements that may be due to the GROWER or the COMPANY
- It is hereby understood that the GROWER shall maintain ownership of the operations at the Farm and all expenses and costs of production shall be for his/her/its account, including the cost of labor.

Section 13 of the contract stipulates the intervention agreement. Rights awarded to the company include the right to enter and "Take over" the land with only a 72 hour notice to the farmer.

No representative allowed

The contract provisions even include restrictions on representation, as if the aforementioned contractual burdens on the farmers are not enough, and, due to such provisions, a third party is prohibited to represent the farmers in all matters related to the contract. This means that the company does not allow lawyers, family members, etc. to be present at negotiation, and that the individual farmers must negotiate the contract conditions themselves. Because lawyers cannot be directly involved in contract negotiation, so far, their farmer-support activity has been limited to providing opportunities for the farmers themselves to gain as much legal knowledge as possible.

Regarding transfer of the contract, the company can transfer all rights associated with the contract to a third party, whereas the farmers are not allowed to

transfer the contract. In all parts of Philippine, educational development has created a situation in which younger people tend to have received a certain level of English education; however, because of the no-transfer provision, it is not possible, for example, to transfer the contract from a mother to a son, so that the son can negotiate changes in the contract.

Low purchasing price

An average-sized banana weighs about 150 g, and one box of bananas packed in a packing plant (described later) contains about 90 such bananas, weighing about 13.5 kg. The farmers are normally paid 200 Philippine pesos (PHP) or about US\$ 4 for each box of bananas. This price is a result of an increased purchasing price set in 2017; however, prior to this change, the purchasing price for some farmers had stayed at 150 PHP since 2005.

In addition, the contract does not include any explicit provision about reconsideration of the purchasing price, and it is noteworthy that the purchasing price was not changed over 12 years between 2005 and 2017 while inflation in the Philippine economy as a whole kept driving up the cost of living.

Packers: working environment and problems associated with the contract

What is a packing plant?

Harvested bananas are transported to packing plants (or PP) that are spread apart by certain distances within a plantation, and are selected, sorted, washed, and packed to be shipped out. The size of the packing plants is variable, ranging from small ones where at least 30 workers are stationed to large ones where over one hundred workers are stationed. "Lines" in which multiple steps are performed in series are established in these plants, and in many cases, about 28 workers work at each line.

The individual plants are coded by number such as PP90, PP220, PP340, and so on. Plants technically do have plant names, but are typically referred to by their numbers. In addition, these code numbers are also frequently changed. According to the eye-witness account of the workers, the code number is changed when a managerial problem such as a quality issue or the like occurs, and thus, the packed products are shipped out as if they are from a different packing plant.

In fact, the code number of PP90 has been changed once to PP220 without any change in the work force at the packing plant. According to testimony, it was because of some violation that has been pointed out naming PP90.

Low wage

Since August 16, 2018, the minimum wage in the Province of Compostela Valley has been 365 PHP/day for agricultural workers and 370 PHP/day at non-agricultural work sites involving 10 or more employees. According to the workers we interviewed in this study, 52 PHP/hour is paid for overtime on weekdays in addition to the basic wage of 365 PHP/day. The overtime wage corresponds to 1.25 times the hourly wage assuming that the daily wage of 365PHP is for 8 hours of work. Thus, at a glance, it appears that the banana workers are paid in compliance with the labor standard law.

However, according to the National Economic Development Authority (NEDA), the estimated national standard living wage as of June 2018 for a household of 5 people including parents and three children is 42,000 PHP/month. Assuming that standard monthly workdays are 21 days for both parents, and that they don't work on holidays or days off, each parent needs to earn 1000 PHP/day to achieve the national standard living wage. Achieving this daily income requires more than 12 hours of overtime in addition to the 8-hour standard work per day. This is clearly not possible, and increasing the number of workdays would be the only way to realize such an income level.

In this way, the company is certainly paying a legal wage according to the local minimum wage; however, there is a serious disparity with respect to the living wage, and it is extremely difficult for make a living without working a long overtime. In fact, the workers told us, without exception, that they frequently work over 15 hours a day.

It should also be noted that interpretation of the law needs to be questioned with regard to defining the workers as “agricultural workers”. The workers who engage in sorting and washing at the packing plants conduct similar tasks as those in a production line this configuration needs to be re-examined.

"Compressed Work Week (CWW)" system

According to the workers at the packing plants, in addition to the need to work a long overtime to earn living wage, the "Compressed Work Week" system contributes to the inevitable increase in the daily work hours. The CWW system is popular in some countries, including certain Western countries, as a way to change the work pattern to provide flexibility to work 10 hours a day, 4 days a week or about 13.3 hours a day, 3 days a week instead of following the normal pattern of "8 hours a day, 5 days a week". However, the CWW system is normally considered to be suitable for employees with a superior performance record or a profession requiring high creativity, such as a designer, and not necessarily for a production site where the same type of work is repeatedly performed.

The CWW system may appear attractive to workers who are not dependent on overtime pay. However, for workers who must work 12 hours or more in overtime 5 Days a week in order to earn living wage, a decrease in the number of workday means that they must work even longer overtime within the reduced number of workdays. If a worker is to earn living wage by working only 16 days a month, it is necessary for the worker to work 18 hours or more in overtime in addition to the normal hours of 12 hours in CWW. This is physically impossible because at least 30 hours are needed in one day. Thus, introducing the CWW system effectively makes it impossible for the packing plant workers to earn a living wage.

Also, in consideration of a later night work, holiday work etc., an extra pay at a higher rate should be paid; however, the actual pay slip has no space for the late-night allowance, etc., and the workers also attest that there is no such a form of payment. This means that the late-night allowance is not included in the above estimate. Even if there was a late-night allowance, the work hours will obviously be extremely long, and doing so will not resolve the problem associated with introducing the CWW system in this kind of work environment.

DATE	DAY	NUMBER OF HOURS				BASIC	OT
		FIRST	OT	NP	TTL HRS		
06/26/16	SUN	-	-	-	-	-	-
06/27/16	MON	8.0	3.0	-	11.0	302.00	141.56
06/28/16	TUE	8.0	4.0	-	12.0	302.00	188.75
06/29/16	WED	8.0	3.5	-	11.5	302.00	165.16
06/30/16	THU	-	-	-	-	-	-
07/01/16	FRI	8.0	4.0	-	12.0	302.00	188.75
07/02/16	SAT	-	-	-	-	-	-
07/03/16	SUN	-	-	-	-	-	-
07/04/16	MON	8.0	4.0	-	12.0	302.00	188.75
07/05/16	TUE	8.0	5.0	-	13.0	302.00	235.94
07/06/16	WED	8.0	4.0	-	12.0	604.00	377.50
07/07/16	THU	8.0	5.0	-	13.0	302.00	235.94
07/08/16	FRI	-	-	-	-	-	-
07/09/16	SAT	-	-	-	-	-	-

Copy of a packing worker's pay slip. The worker works roughly 4 days a week and is recorded to have worked 8 regular hours. This does not match the explanation of a compressed work week system.

Is payroll handled appropriately?

According to the workers, they work about 15 hours on a typical workday, and, as a result of introduction of the CWW system, they work for 12 normal work hours and they are paid for overtime only for the hours exceeding 12 hours. However, according to the pay slip, the normal work hours are recorded as 8 hours and extra payment is made for 1 to 3 hours of overtime: the recorded hours are inconsistent with the worker's experiences.

There are two possible explanations for this inconsistency. First, the workers reported their experiences with some exaggeration, and it is possible that they reported their work hours as about 15 hours in the sense of the total hours at work, including time spent for non-work activities such as commuting and resting. The second possibility is that, assuming that the workers accounts are accurate, the work hours are recorded as 8 hours even though the workers are working for 12 hours as standard work hours. Also, if the workers are actually paid for overtime only for the hours exceeding 12 hours, the standard 12-hour work and a few hours of overtime a day, in fact, add up to the 15-hour workday reported by the workers. In this case, the workers are not being paid for the 4-hour gap between the 8-hour workday on the paper and the 12-hour workday in reality.

Note that, despite the fact that the CWW system has been introduced, the standard work hours are calculated as though the workers are working less than 40 hours a week to begin with. With the introduction of the CWW system, the standard work hours should be about 10 hours a day for a worker who is working 4 days a week on average; however, the 3-day/week shift and those on the 4-day/week shift both are reported to be on the 8-hour/day standard work hours.

Therefore, there is something suspicious about the current payroll management; however, we refrain from analyzing the situation any farther in this report, because additional interviews are required and supporting documents also need to be checked thoroughly to do so.

"Disguised subcontracting"

Although the workers working under such conditions claim that they are Sumifru employees, that is not how the company sees them. All of the packing plants are managed by Service Providers, and, according to the company, the workers are their employees. In Philippines, so-called "labor only contracting" has been a social issue, which corresponds to the problem of "disguised subcontracting" in Japan, and the packing plant workers are typical examples of such a problem. In fact, the "Sumifru" logo appears everywhere in the packing plants: the signboards safety posters, equipment such as aprons, hairnets, etc. And, of course, the workers work to deliver Sumifru bananas. Moreover, Sumifru employees give instructions to the workers, and the pay slips are the only thing issued in the names of the Service Providers. The relationship between the company and the workers is clearly that of labor relations. Nonetheless, Sumifru treat the workers are employees of the Service Providers, and, by doing so, Sumifru prevents the workers from unionizing or avoids hiring the workers under conditions equivalent to those of the regular Sumifru employees. Sumifru's strategy is nothing more than malicious disguised subcontracting.

As mentioned above, labor-only contracting has also been recognized as a problem in Philippines, and Sumifru was among the twenty companies suspected of malicious disguised subcontracting when the Philippines' Department of Labor and Employment (DOLE) published the list in 2018.

Companies Engaged and Suspected to be Engaged in Labor-Only Contracting

Labor-only contracting (LOC) exists when the contractor merely recruits, supplies or places workers to perform a job or work for a principal under any of the following circumstances: the contractor does not have substantial capital, investments in the form of tools, equipment, machineries, supervision, work premises, among others, and the contractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal; OR the contractor does not exercise the right to control over the performance of the work of the employee. In LOC, the employees of the labor-only contracting are considered employees of the principal.

Total no. of establishments inspected from June 2016 to April 2018: **99,526 out of the more than 900,000 establishments nationwide.**

Total no. of establishments found to be engaged and suspected to be engaged in labor-only contracting: **3,377 companies (2,610 companies suspected to be engaged in labor-only contracting and 767 companies found to be engaged in labor-only contracting).**

Total no. of affected workers: **224,852 workers.** The top 20 companies with the most number of affected workers are as follows:

	Name of Company	No. of Affected Workers
1.	Jollibee Food Corporation, F. Ortigas Jr., Ortigas Center, Pasig	14,960
2.	Dole Philippines, Inc., Cannery, Polomolok, South Cotabato	10,521
3.	Phil. Long Distance Telephone Co., Legaspi Village, Makati	8,310
4.	Philsaga Mining Corporation, Rosario City, Agusan del Sur	6,524
5.	General Tuna Corporation, Brgy. Tambler, General Santos City	5,216
6.	Sumi Phils. Wiring Systems Corporation, Hermosa Bataan	4,305
7.	Franklin Baker Inc., Darong, Sta. Cruz, Davao Del Sur	3,400
8.	Pilipinas Kyohritsu, Inc., Inosluban, Lipa City, Batangas	3,161
9.	Furukawa Automotive Systems Phil., Inc., Lipa City, Batangas	2,863
10.	Magnolia Inc., Bgy. San Francisco, Gen. Trias, Cavite	2,248
11.	KCC Property Holdings, Inc., Lagao, General Santos City	1,802
12.	Sumifru Philippines, Corp., Poblacion, T'boli, South Cotabato	1,687
13.	Hinatuan Mining Corporation, Tagana-an, Surigao del Norte	1,673
14.	KCC Mall De Zamboanga, Zamboanga, Zamboanga del Sur	1,598
15.	Brother Industries (Philippines) Inc., Tanauan City, Batangas	1,582
16.	Philippine Airlines & PAL Express, Pasay and Ermita, Manila	1,483
17.	Nidec Precision Philippines Corporation, Binan City, Laguna	1,400
18.	Peter Paul Phil. Corporation, Burabod, Sorsogon City	1,362
19.	Dolefil Upper Valley Operations, Surallah, South Cotabato	1,183
20.	DOLE-Stanfilco, Crossing Rubber, Tupi, South Cotabato	1,131

Through the intensified labor enforcement system, about **176,286 workers** have been regularized as of 11 May 2018.

List of companies engaged and suspected to be engaged in Labor-only contracting released by Filipino authorities in May, 2018. The list only sites Sumifru's violation in South Cotabato affecting 1687 workers. If numbers from Compostella Valley are added, this becomes over 2600 affected workers, and will bring Sumifru into the worst ten companies.

Worker resistance

In response to such circumstances, the workers have unionized in 2008, and they have demanded that Sumifru treat them as regular employees and accept collective bargaining. The workers at the PP90 decided to vote on March 14, 2008 to establish "Nagkahiusang Mamumuo Sa Suyapa Farm/NAMASUFA", and filed necessary

documents with DOLE regarding this process. However, the company claimed that these workers are subcontractor's employees, and rejected union establishment as well as collective bargaining with the workers.

However, the packing plant is decorated as though the plant is effectively owned and managed by Sumifru; the company logo is also on the equipment distributed to the workers; and there is actually a direct line of communication through which Sumifru gives work instructions to the workers. The DOLE took these circumstances as indications that Sumifru's subcontracting is a case of labor only contracting, that is, disguised subcontracting.

Although the company filed a complaint against this decision, the Minister of Labor and Employment subsequently supported the decision in 2010, followed by the Philippine's Court of Appeals in 2012, and, finally, the Supreme Court in 2017. Thus, for all practical purposes, the Philippine authority has come to recognize the labor relations between Sumifru and the workers at the packing plants.

The Sumifru logo was immediately removed from all of the Sumifru's packing plants in the Province of Compostela Valley after the Supreme Court decision. The removal was so complete that equipment with company logo, including hairnets and aprons, is no longer distributed to the workers in any of the packing plants.



Workers were supplied hair nets with the Sumifru logo up until the Supreme Court decision.

What has the Supreme Court decision changed?

Meanwhile, more than one whole year passed without any progress in terms of labor-management negotiation even after the Supreme Court decision. During this

time, NAMASUFA became an official labor union recognized by the DOLE, and the Supreme Court confirmed its legal standing. Nevertheless, Sumifru rejected the collective bargaining demand sent to the company from the union dated on August 13, 2018. In response to this company's refusal to respect the Supreme Court decision and to recognize NAMASUFA as a union representing the workers, 749 workers representing NAMASUFA declared that they will go on strike on September 4, 2018.

Assassins' bullets threaten resisting workers

On September 4, 2018, the very same day the workers declared strike, Mr. Victor Ageas, one of the NAMASUFA directors and also a worker at the PP340, was shot at six times by men of unknown affiliation. Fortunately, he was not injured, and the NAMASUFA members were not crushed by such a threat: they officially went on strike on October 1 and started picketing.

However, after ten days, the strike control unit organized by the Armed Forces of the Philippine and the local police incorporated workers who had crossed the picket line and violently destroyed the strike base. More than 17 workers were injured as a result of the violence by the strike control unit. A woman who was four month into her pregnancy was reportedly violently kicked in her lower abdomen.

Against the workers continuing the strike in the face of violence, the company issued disciplinary dismissal notifications for the reasons of participating in the strike and picketing.

Note that, while the NAMASUFA continued the strike, Mr. Danny Boy Bautista, a union member and a worker at the PP340, was shot to death by two men of unknown affiliation on October 31 in the later afternoon. On November 11, Mr. Jerry Alicante, a worker at the PP220, was also shot by two men of unknown affiliation and was injured by taking two bullets. On November 30, the residence of Mr. Paul John who is the NAMASUFA's chairman, the NAMASUFA's office, and the residence of Mr. Vincente Barrios who is a NAMASUFA member, and two other residences adjacent to the office were set on fire before dawn. The fire partially burned down these buildings, and, additionally, two men of unknown affiliation fired six times at the site after the fire was put out. The remaining structures were set on fire once again before dawn on December 15, resulting in a complete destruction of the housing

complex.

Although there were other workers who were similarly assaulted, they would not identify themselves to report such incidences out of fear of retaliation.



NAMASUFA President Paul John Dizon's house was burned down along with the union head quarters adjacent to his house.

When all these incidences were occurring one after another targeting union members, are we to believe these incidences have nothing to do with the strike? There were many other cases in which armed men confronted the workers at the doorstep threatening them to quit the union activities or their family members including children were threatened in their absence. These incidences are obviously nothing but violence and extortion against the union members.

Mindanao under martial law

In Mindanao, after President Duterte declared martial law, there have been a number of confirmed cases of illegitimate violence by the military and police or unidentified assailants of unknown affiliation against people who raised voices as the PP workers have done. The President Duterte has publicly stated that "I have ordered

the police to shoot at resistant peasants without hesitation", and, in 2018, several tens of people were, in fact, killed just in Mindanao as a result of "Extrajudicial Killing" in which the military and police executed citizens right at the site if there was something to blame them for however slightly. Even if there was nothing to be blamed, many farmers and union members have been executed, frequently as a result of accumulation of enough suspicions to falsify an accusation that they are supporting guerillas of the New Peoples Army (NPA) of the Communist Party of the Philippines (CPP).

So far, the incidences reported in this study in which the workers were assaulted do not include such extrajudicial killings. However, there is no difference in that the workers must take life-threatening risk to raise their voices, because some hoodlums will be hired and sent after them even if it is not possible to come up with a false accusation to justify extrajudicial killing.

Taking the fight to Manila

Because the workers must take extremely high risk to continue raising their voices in the local situation described above, and also because the headquarter of Sumifru Philippines and the DOLE are both located in Manila, 327 NAMASUFA workers who had been on strike took their fight to Manila. Until March 12, they camped in a park in Manila, and expressed their grievances day after day in front of the Presidential residence, the DOLE, and the Sumifru headquarter. Even after that, some workers who could afford to stay managed to find places to stay in Manila and continued on with their protest.

Despite the workers' protest, the company did not show any sign of negotiating with the workers. On the contrary, the company sent dismissal notices to the workers again, effectively firing the workers altogether.

The workers continued to protest more than 8 months taking shelter on the street in a city so far away from their home.



Workers continuing their protest in Manila, away from their families who are left in Mindanao

Arbitration by the Philippines' Department of Labor and Employment

During this labor dispute, the National Labor Relations Commission (NLRC), which is a section of the Philippines' Department of Labor and Employment (DOLE) that handles arbitration of labor relations, appointed an inspector to conduct an investigation including on-site interviews. The results of this investigation were published on January 30, 2019, and, in this report, the inspector concluded that the simultaneous dismissal by Sumifru in October 2018 was an illegitimate dismissal.

However, the company refused to reinstate the workers and to negotiate with them even after the report was published. Furthermore, although the NLRC set up an arbitration consultation, the company did not attend it without any explanation.

While the company continued to ignore the call for negotiation, the NLRC solemnly received the inspector's report, and, as the commission, the NLRC officially accepted the report on March 25, 2019. An opportunity for both the company and the workers to express objections was subsequently provided, and then, the DOLE concluded that there was no substantial argument for reconsidering the contents of the report, and the decision of the NLRC was accepted as the final opinion of the DOLE on

May 25, 2019.

During this period, although the company's action was continuously criticized as illegitimate dismissal, the company continued to ignore the report arguing that it does not serve as a concrete reinstatement order, and thus, the company did not take any action toward reinstating the workers. However, in response to the final opinion of the DOLE, the workers officially appealed to the DOLE about the fact that there were workers who have not yet been reinstated after being simultaneously dismissed.

In response to the appeal, the DOLE issued an administrative guidance on July 22 requiring the company "to immediately reinstate the workers in their workplaces within 10 business days"; however, the company refused to do so. On July 30, the company filed a lawsuit against the workers and the DOLE at the Court of Appeal.

As of December 2019, a decision has not been made on the case, and, for this reason, the workers who were illegitimately dismissed continued to be unemployed.

Sumitomo evading responsibility

Sumitomo Corporation owned 49% of Sumifru's share when the aforementioned series of labor disputes occurred, and the brand name also included "Sumi" derived from "Sumitomo" indicating the close tie between the two. In fact, Sumifru was actually formerly called "Sumitomo Fruits". Strictly speaking, Sumitomo is a minority shareholder; however, it is obvious to anyone that Sumifru is a business that constitutes part of "Sumitomo" brand.

On June 18, 2019, Sumitomo suddenly announced that the company will sell the Sumifru shares. It appears that Sumitomo completely sold the shares by the end of July.

The issue here is the buyer of the shares. The majority shareholder of Sumifru is "Thornton Venture Ltd.", but the true owner of this company is unknown. This company is registered in the Republic of Mauritius, which is an infamous tax-heaven country. In this country, there is no legal obligation to make contact information of cooperate officers and so forth publicly available. For this reason, nothing is known about Thornton Venture Ltd. other than its name and address.

Sumitomo sold the shares to such an obscure business operator. Meanwhile, Sumifru continues to utilize the "Sumitomo" brand. Even though Sumifru is not even

following DOLE's administrative guidance, the subject to be held socially responsible for its conduct is hidden behind the veil of a tax haven

World financial institutions contribute to responsibility evasion through tax haven

By definition, a tax heaven, also known as "tax avoidance area", is a country or a municipality that acts as a receptacle for international asset management for the purpose of avoiding corporate tax/income tax. In such a tax avoidance area, there is a mechanism for protecting interests of corporate owners, for example, by excluding information about officers and shareholders from publicly accessible registry information. The existence of such a mechanism explains why no information is publicly available about the president and officers of "Thornton Venture Ltd." which is a Mauritius-based corporation. In the past, this sort of secrecy about shareholders was generally taken as a method for avoiding income tax by hiding assets of individual shareholders. However, this interpretation is not sufficient for the case at hand: IN this case, tax-heaven secrecy is being used to hide the true responsibility of the corporation for its unacceptable conduct, including human rights violations.

Such tax heavens persist because there are "tax-saving consultants" who are thoroughly familiar with the mechanism of tax avoidance as well as financial institutions that support this global asset management. The name "Thornton" reminds us of Grant Thornton, a tax consulting company. Although it is not clear whether the true managerial members of Sumifru are actually clients of Grant Thornton, the presence of a shell company having the same name as the tax consultant in a tax heaven is reason enough to suspect some relationship between them.

The other relevant entities involved in hiding the tax and responsibility are financial institutions. Unlike the Age of Discovery/Exploration, the rich do not go to tropical islands to physically hide cash, works of art, or treasures. In the modern society, the same thing can be done via a simple telecommunication through global asset management services provided by financial institutions.

Elusive presence of ING group

In fact, at the time of its establishment in Mauritius, Thornton Venture Ltd. registered its address inside the Mauritius branch of the ING group, which is a financial

institution based in The Netherlands. This name lending for the registration purpose gives us a reason to suspect a connection between the ING group and Thornton Venture Ltd. If there is actually a connection between the two, the ING group is not just a third party transferring funds between accounts, but an involved player actively providing services to its clients so that they could use Mauritius as a tax haven. Thus, ING may have ended up aiding the true owner of Sumifru to evade corporate responsibility.

Furthermore, the suspicion about the involvement of the ING group deepened when we learned that Sumitomo sold the shares to Thornton Venture Ltd. via Amsterdam. Netherlands has collaborative tax-related treaties with various tax avoidance areas, and Sumitomo has many subsidiaries in Netherlands.

These subsidiaries are given names merely for the purpose of financial filings, because they are not actual business entities. For example, Sumitomo reports, in its own asset securities report, that the company holds 49% of shares of "Sumifru Singapore" which is the global headquarter of Sumifru. However, the registry in Singapore indicates that those 49% belong not to Sumitomo in Japan but to "Summit Global Management II B.V.", a company in Netherlands. It is likely that "Summit Global Management II B.V." is a paper company established for the purpose of hiding Sumitomo's assets and tax saving, and, although the branch "II (2)" is involved in this case, we have confirmed that at least branches "I (1)" to "XV (15)" are registered at the same address in Amsterdam, Netherlands with the same exact employee as the sole employee of the companies.

This is the reason why we suspect that the Netherlands' financial sector is involved in this global responsibility evasion. In addition, because Sumitomo has many such paper companies, we speculate that Sumitomo has imilar schemes set up for its other businesses dealings.

Financial institutions and tax havens beyond the ING group

Although the present case is an example in which the ING group's involvement is strongly suggested, other domestic as well as foreign financial institutions that are internationally operating are equally suspect. Naturally, the respective financial institutions are serving as contacts for investment, lending, and asset transfer, and play central roles for ensuring transparency of these transactions.

Since 2014, eradication of secrecy in financial sector has also been among the goals of the Base Erosion and Profit Shifting (BEPS) project promoted by the OECD and G20.

Achieving transparency in financial sector pursued in such a project continues to be discussed, as seen in the 2019 G20 summit chaired by Japan as well as the Minister of Finance meeting that preceded the summit. Specifically, the participating countries discussed the need for ensuring transparency in tax systems in order to achieve fair tax systems as well as the need for promoting practices for exchanging information in the international community.

The Capital Requirements Directive (CRD) IV, which was adopted as part of efforts in the EU to prevent recurrence of financial crises and to increase the risk tolerance of the international financial system, also addresses the need for increasing transparency in financial institutions operating across borders (i.e., judicial jurisdictions) in addition to providing guidance related to the fiscal soundness, such as increasing the capital adequacy ratio of the financial institutions.

The discussion about the transparency of financial institutions for the purpose of controlling the international capital flows including tax havens is no longer focused on "to do or not to do" but is focused on "how to realize it".

In the past, such efforts were made by individual countries in order to legitimately collect due taxes; however, the findings of the present study suggest that ensuring transparency of capital flow would also be effective to tackle the corporate evasion of responsibility such as the case of Sumitomo revealed in this report. In this sense, financial institutions of individual countries should address the issue of transparency not only to realize fair tax systems but also to prevent multinational corporations engaged in business activities across borders from obscuring their social responsibility.

Recommendations of Fair Finance Guide

In response to the aforementioned international discussions/efforts, Fair Finance Guide (FFG) have been demanding that legitimate tax be collected from multinational corporations in municipalities in which their headquarters are located, and thus, the following "tax" related elements are included in our scoring criteria. In

addition, in recognition of the severity of situations in which corporations causing human rights violation and environmental impacts evade their responsibility through the secrecy of tax heavens, these scoring criteria also relates to prevention of such a scheme.

<Assessment elements in the “Tax” theme from the Fair Finance Guide with relations to this report>

4. The financial institution does not advise clients to set up international structures with the main purpose to avoid or evade taxes.
5. The financial institution does not participate in transactions with international structures of which the main purpose is to avoid or evade taxes.
7. The financial institution does not own subsidiaries nor associates in tax havens, unless the subsidiary or associate has substance and undertakes local economic activities.
8. The financial institution does not provide financial services to companies in tax havens, unless the company has substance and undertakes local economic activities.
9. The financial institution demands a company receiving its investment/financial services to publish their full group structure, including indirectly and jointly-owned entities.
10. The financial institution demands a company receiving its investment/financial services to publish an explanation of the activities, functions and ultimate shareholder of every subsidiary, branch, joint venture or related party located in a low-tax jurisdiction.
12. The financial institution demands a company receiving its investment/financial services to focus their international enterprise structure and their international transactions in a way that reflects the economic substance of the activities and transactions undertaken, without any steps made primarily to secure a tax advantage.

Regarding these criteria, policies of scoring subjects of the Fair Finance Guide Japan have been evaluated as follows:

- MUFG Bank, Ltd.

On the basis of its human rights policy, points are given only for element 12.

- Mizuho Bank, Ltd.

No point is given for the aforementioned scoring criteria.

- Sumitomo Mitsui Banking Corporation

No point is given for the aforementioned scoring criteria.

- Resona Bank, Ltd.

No point is given for the aforementioned scoring criteria.

- Sumitomo Mitsui Trust Bank, Ltd.

On the basis of its stewardship code, points are given only for element 12.

- Norinchukin Bank

On the basis of its human rights policy, points are given only for element 12.

- Japan Post Bank:

Points are given only for element 7.

It is obvious that the Japanese financial institutions have not taken adequate measures to prevent the use of tax heavens that contribute to the problems revealed in this study and that make it difficult to pursue the responsible parties.

In order to effectively respond to future social situations in which multinational corporations are expected to further increase their influences, we demand that the financial institutions deal with the tax systems in a fair manner and ensure transparency required to do so.

(EOD)

This report was: edited by Pacific Asia Resource Center (PARC), in cooperation with NAMASUFA, FoE Japan, Ethical Banana Campaign Committee; and printed by Pacific Asia Resource Center (PARC), Japan Center for a Sustainable Environment and Society (JACSES) and Action of Solidarity, Equality, and Environment and Development (A SEED) Japan.

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