



**THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS**

**HUMAN RIGHTS  
IMPACT  
ASSESSMENT –  
DUREX AND ENFA  
VALUE CHAINS IN  
THAILAND**

**RECKITT  
BENCKISER – RB**



## HUMAN RIGHTS IMPACT ASSESSMENT – DUREX AND ENFA VALUE CHAINS IN THAILAND

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Acknowledgements: We would sincerely like to thank our local consultant in Thailand, Kitaporn Sitikornvorakul, for her invaluable assistance. Inga Tauber and Emil Kernell, colleagues at the Danish Institute, also provided crucial research assistance. We would like to further thank Earthworm Foundation, both the regional as well as the Thailand team, for their support in organising meetings and interviews with stakeholders in Surat Thani. Lastly, we would also like to thank members of the RB Thailand team for their assistance before, during and after the field trip, as well as all stakeholders who made themselves available to meet us.

ISBN: 978-87-93893-75-7  
e-ISBN: 978-87-93893-76-4

Photos: Earthworm, RB brand library, assessment team.

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This report does not include an assessment of risks and impacts related to COVID-19 and the impact of the pandemic on RB's activities in Thailand.

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# LIST OF ABBREVIATIONS

|              |   |
|--------------|---|
| <b>AAAQ</b>  | Availability, Accessibility, Acceptability and Quality            |
| <b>ASEAN</b> | Association of Southeast Asian Nations                            |
| <b>BMS</b>   | Breast Milk Substitutes   |
| <b>CESCR</b> | United Nations Committee for Economic, Social and Cultural Rights |
| <b>CSO</b>   | Civil Society Organisation  |
| <b>DIHR</b>  | Danish Institute for Human Rights                                 |
| <b>EBRD</b>  | European Bank for Reconstruction and Development                  |
| <b>EF</b>    | Earthworm Foundation  |
| <b>EHS</b>   | Environment, Health and Safety                                    |
| <b>ET</b>    | Electronic Testing  |
| <b>FAO</b>   | Food and Agriculture Organization of the United Nations           |
| <b>FDA</b>   | Food and Drug Administration                                      |
| <b>FMCG</b>  | Fast Moving Consumer Goods  |
| <b>HA</b>    | Hectare   |
| <b>HQ</b>    | Headquarters  |
| <b>HRIA</b>  | Human Rights Impact Assessment                                    |
| <b>IFCN</b>  | Infant Formula and Child Nutrition                                |

|                |   |
|----------------|---|
| <b>ILO</b>     | International Labour Organization             |
| <b>IOM</b>     | International Organization for Migration      |
| <b>KG</b>      | Kilogram                                      |
| <b>LPA</b>     | Labour Protection Act                         |
| <b>LRA</b>     | Labour Relations Act                          |
| <b>MJN</b>     | Mead Johnson Nutrition                        |
| <b>MNE</b>     | Multinational Enterprise                      |
| <b>NGO</b>     | Non-Governmental Organisation                 |
| <b>OHS</b>     | Occupational Health and Safety                |
| <b>PNMA</b>    | Pediatric Nutrition Manufacturers Association |
| <b>PPAT</b>    | Planned Parenthood Association of Thailand    |
| <b>PPE</b>     | Personal Protective Equipment                 |
| <b>RAOT</b>    | Rubber Authority of Thailand                  |
| <b>RB</b>      | Reckitt Benckiser                             |
| <b>R&amp;D</b> | Research and Development                      |
| <b>TAFTA</b>   | Thailand Australia Free Trade Agreement       |
| <b>THB</b>     | Thai Baht                                     |
| <b>UN</b>      | United Nations                                |
| <b>UNAIDS</b>  | United Nations Programme on HIV and AIDS      |
| <b>UNDP</b>    | United Nations Development Programme          |

**UNESCAP** United Nations Economic and Social Commission for Asia and the Pacific

**UNFPA** United Nations Fund for Population Activities

**USD** US Dollar

**WASH** Water, Sanitation and Hygiene

**WHA** World Health Assembly

**WHO** World Health Organization

**WTO** World Trade Organization



# EXECUTIVE SUMMARY

At the start of 2019 Reckitt Benckiser (RB) for the first time decided to commission a human rights impact assessment (HRIA). The HRIA was a pilot for finding new approaches for the company to assess and address human rights impacts in specific high-risk contexts. The HRIA was conducted by the Danish Institute for Human Rights (DIHR) over a six-month period in the second half of 2019. As a result, the assessment does not factor in COVID-19 and associated risks and impacts.

The HRIA focused on RB's operations in Thailand and took a value chain approach to identifying and assessing potential and actual human rights impacts associated with two of RB's important health brands in Thailand: Durex (condoms) and Enfa (infant formula and child nutrition). As a result, the assessment identified human rights risks and impacts of the two brands in an upstream, midstream and downstream perspective as well as in RB's own operations.

In addition to desktop data collection and meetings held remotely, the HRIA included a two-week data-collection mission to Thailand in November 2019. During this mission, the assessment team met and interviewed a variety of stakeholders including RB Thailand staff, local and international non-governmental organisations as well as United Nations agencies and government representatives. A significant part of the mission was dedicated to direct engagement with rightsholders (male and female factory workers of different positions and functions at RB and non-RB sites, rubber plantation workers and rubber collection centre staff).

A non-exhaustive overview of the main observations and recommendations for the two brands across the value chain can be found in the two tables below. A full overview of all recommendations is included in chapter 5. Some recommendations aim to tackle the short-term specific granular findings observed through the field visit.

Others address underlying root causes and systemic issues, with an aim to ensure durable long-term impacts. In addition to the observations and recommendations contained in this report, DIHR has developed dedicated factory feedback sheets for the factories visited to enable precise and detailed feedback to individual sites.

RB is encouraged to develop one or more action plans to respond to these recommendations, as well as consult relevant external parties when devising them. In addition, RB is encouraged to report transparently on progress made in acting on the findings, as well as challenges faced during implementation.

**Table 1. Durex non-exhaustive summary table**

|          | KEY RISKS AND IMPACTS   | KEY RECOMMENDATIONS  |
|----------|---|--|
| UPSTREAM | Livelihoods of smallholder farmers and tappers; migrant worker vulnerabilities; health and safety concerns; increased vulnerability of landless farmers | <p>Explore different models for improving living conditions, including income levels, for rubber farmers and tappers including when the global market price is low. This could, for example, include a) looking holistically at the factors RB can impact which would jointly improve the situation for farmers, using leverage with the existing rubber supplier for them to ensure sustainable conditions for farmers, including around income aspects, b) establishing a more direct relationship and collaboration (along the value chain) with rubber dealers, c) looking into partnerships and initiatives that enable living incomes for smallholders. Convene relevant internal decision makers to decide on way forward to ensure RB transitions to a socially sustainable business model as soon as possible.</p> <p>When adjusting the business model of rubber supply to safeguard farmers and tappers, use price and other commercial tools as an incentive to ensure the environmental and social sustainability of rubber farming and set social and environmental criteria for farmers wanting to do business with RB.</p> |

**Table 1. Durex non-exhaustive summary table** continued

|                           | KEY RISKS AND IMPACTS  | KEY RECOMMENDATIONS   |
|---------------------------|--|---|
| <b>MIDSTREAM SUPPLIER</b> | Vulnerable conditions for migrant workers; health and safety impacts; inadequate housing for workers; freedom of association restrictions; rights of the child, right to protection of mothers before and after childbirth, right to privacy and right to a family life. | <p>If RB continues to work with its current midstream rubber supplier, it should embed social compliance requirements in the commercial negotiations and transactions with the supplier, even if this requires RB to pay a corresponding price premium.</p> <p>Use leverage to ensure that corrective actions are taken to address the risks and impacts included in the dedicated factory feedback sheet, including:</p> <ul style="list-style-type: none"> <li>• Occupational Health and Safety (OHS) impacts through an OHS assessment and OHS audit programmes, including a heightened focus on issues associated with ammonia and lacking usage of protective measures</li> <li>• Aligning workers' accommodation with International Labor Organization (ILO) standard on housing as well as improving conditions for families and children</li> <li>• Assessing and addressing issues in the supplier's recruitment and management of migrant workers, including in relation to fees and contracts</li> </ul> |

**Table 1. Durex non-exhaustive summary table** continued

|                       | KEY RISKS AND IMPACTS   | KEY RECOMMENDATIONS  |
|-----------------------|---|--|
| <b>OWN OPERATIONS</b> | <p>Systematic overtime; living wage issues; unequal conditions for direct workers and contracted workers; repetitive movement and other health and safety concerns; ineffective grievance mechanism options</p> | <p>Embed social performance targets in the incentive structure for factory management.</p> <p>Make use of the dedicated factory feedback sheet to devise a corrective action plan between RB HQ, RB Thailand and RB factory management. Focus on the following areas:</p> <ul style="list-style-type: none"> <li>• Reduce the use of systematic overtime in consultation with workers</li> <li>• Conduct a living wage analysis for workers in greater Bangkok area and implement a living wage</li> <li>• Identify which current contracted-out job functions should be made permanent as they are not temporary in nature and implement this transition</li> <li>• Ensure that remaining contracted workers are treated equally to RB's own workers through proactive engagement with and monitoring of contractors</li> <li>• Engage with union and workers in general to improve effectiveness of grievance mechanism/ Speak Up function</li> <li>• Respond to workers' OHS symptoms and complaints</li> </ul> |

**Table 1. Durex non-exhaustive summary table** continued

|                   | KEY RISKS AND IMPACTS  | KEY RECOMMENDATIONS  |
|-------------------|--|--|
| <b>DOWNSTREAM</b> | Potential accessibility risks associated with price points; potential acceptability risks due to cultural context, stigma barriers, etc. | <p>Address consumer acceptability barriers associated with Durex both directly – e.g. by changing product packaging and marketing styles in consultation with relevant stakeholders – as well as indirectly through relevant collaborations with other actors working on the issue of tackling cultural barriers associated with condom use in Thailand.</p> <p>Analyse further potential accessibility issues associated with price points – e.g. by commissioning a study not only in Thailand but across relevant markets and consider how to ensure access to condoms for at-risk populations in partnership with organisations such as Ministries of Public Health and relevant NGOs.</p> |

**Table 2. Enfa non-exhaustive summary table**

|                 | RISKS AND IMPACTS  | KEY RECOMMENDATIONS  |
|-----------------|--|--|
| <b>UPSTREAM</b> | Potential risks to the livelihoods of Thai smallholder dairy farmers | <p>Commission research into the implications of RB dairy ingredient import practices on local dairy farmers in high-risk markets including Thailand to understand the role RB can play to minimise negative impacts and increase its local milk sourcing.</p> <p>Engage with relevant stakeholders such as FAO, key players in the Thai dairy sector (Department of Livestock and Department of Trade Negotiations), other companies that import milk ingredients to Thailand and elsewhere to understand how they have assessed and addressed the potential adverse impacts on smallholder farmers of importing milk ingredients.</p> |

**Table 2. Enfa non-exhaustive summary table** continued

|                           | RISKS AND IMPACTS   | KEY RECOMMENDATIONS   |
|---------------------------|---|---|
| <b>MIDSTREAM SUPPLIER</b> | Vulnerable conditions for migrant and female workers; health and safety concerns; freedom of association restrictions | <p>Embed social compliance requirements in commercial negotiations, transactions and contracts with suppliers to ensure feasibility of implementation.</p> <p>Use leverage to ensure that corrective actions are taken to address the risks and impacts included in the dedicated factory feedback sheet, including:</p> <ul style="list-style-type: none"> <li>• OHS impacts through an OHS assessment and OHS audit programmes, including a focus on Water, Sanitation and Hygiene (WASH)</li> <li>• Workers contracts and access to all relevant safety and security information in a language and/or format accessible to them</li> <li>• Conduct regular spot checks of high-risk suppliers and encourage them to audit their own high-risk suppliers</li> </ul> |

**Table 2. Enfa non-exhaustive summary table** continued

|                       | RISKS AND IMPACTS   | KEY RECOMMENDATIONS  |
|-----------------------|---|--|
| <b>OWN OPERATIONS</b> | <p>Systematic overtime; living wage issues; unequal conditions for direct workers and contracted workers; heavy lifting, repetitive movement and other health and safety concerns; potential cumulative impacts on communities; ineffective grievance mechanism options</p> | <p>Embed social performance targets in incentive structures for factory management.</p> <p>Make use of the dedicated factory feedback sheet to devise a corrective action plan between RB HQ, RB Thailand and RB factory management. Focus on the following areas:</p> <ul style="list-style-type: none"> <li>• Reduce the use of systematic overtime in consultation with workers</li> <li>• Engagement between the RB factories to share good practices and lessons learnt including with regard to unionisation</li> <li>• Facilitate dialogue between workers of the two RB factories</li> <li>• Assess and address, including through independent external OHS studies, the impacts of repetitive work, heavy lifting, night shifts, etc.</li> <li>• Conduct an audit of the accommodation the labour agency provides to its workers</li> <li>• Engage proactively with the labour agency including to ensure overtime is voluntary and that contracted workers who do the same tasks as RB's own workers do so under similar conditions</li> <li>• Engage with industrial estate management to discuss, assess and address potential cumulative community impacts the estate may have due to environmental footprint</li> <li>• Engage with all workers to identify how existing grievance/Speak Up functions can be improved</li> </ul> |



**Table 2. Enfa non-exhaustive summary table** continued

|                   | RISKS AND IMPACTS  | KEY RECOMMENDATIONS  |
|-------------------|--|--|
| <b>DOWNSTREAM</b> | Marketing of follow-up formula and growing-up milks >one year not within scope of RB's BMS Policy and Thai Milk Code; potential and actual negative marketing practices through promotional activities, cross-promotion, social media and interaction with healthcare system; health claims on packaging; unclear distinction in packaging | <p>It is recommended that RB Thailand takes proactive steps to collaborate with industry peers on the following actions:</p> <ul style="list-style-type: none"> <li>• Initiating a process to influence the Thai government in raising its national standards on marketing and advertising of BMS in order to be aligned with the World Health Organization (WHO) Code and World Health Assembly (WHA) resolutions, e.g. through the Thai industry association, Pediatric Nutrition Manufacturers Association (PNMA)</li> <li>• Jointly support improvement of industry practices in Thailand by raising awareness within the BMS industry in Thailand on the role and use of social media</li> <li>• Jointly with industry peers, conduct an independent assessment of a representative sample of physical retail shops and online e-commerce platforms looking at the marketing practices of Infant Formula and Child Nutrition (IFCN) products &lt;36 months, benchmarked against the WHO Code and WHA resolutions, to assess what kind of non-compliances are found, to identify trends and address such non-compliances</li> <li>• Support the improvement of industry practices among retailers by raising awareness and training retailers and resellers on responsible BMS marketing practices</li> </ul> <p>As a medium-term recommendation, RB HQ should revise its BMS Policy in accordance with the WHO Code and WHA resolutions, expanding the scope to cover products &gt;12–36 months. Such revision should take place through external stakeholder consultation.</p> |

**Table 2. Enfa non-exhaustive summary table** continued

|                                 | RISKS AND IMPACTS | KEY RECOMMENDATIONS   |
|---------------------------------|-------------------|---|
| <b>DOWNSTREAM<br/>CONTINUED</b> |                   | <p>Once a revised BMS Policy is adopted, conduct an internal assessment of RB Thailand (and other high-risk markets) to assess compliance gaps with the revised BMS Policy and Procedures.</p> <p>In the interim, RB Thailand should take a number of actions in the short term, including:</p> <ul style="list-style-type: none"> <li>• Making clearer distinctions between the different packaging of Enfa Stage 1 and 2 versus Stage 3 and 4 products</li> <li>• Ceasing direct outreach through phone calls to (future) mothers who visit private clinics</li> </ul> <p>When implementing a revised BMS Policy, RB Thailand should, among others, take the following actions:</p> <ul style="list-style-type: none"> <li>• Assess what promotion materials for Enfa IFCN products up to three years with brand name and logos are distributed and adjust these in accordance with the WHO Code and WHA resolutions</li> <li>• Cease using social media channels for active marketing of Enfa IFCN products up to three years</li> <li>• Reassess labels of all Enfa products &gt;three years to ensure that no claims are made on labels that could be interpreted by consumers as idealising infant formula</li> </ul> |

# CHAPTER 1

## CHAPTER 1

# INTRODUCTION

At the start of 2019, Reckitt Benckiser (RB) decided to commission its first ever human rights impact assessment (HRIA). The HRIA was a pilot for finding new approaches for the company to assess and address human rights impacts in high-risk contexts. The HRIA was conducted by the Danish Institute for Human Rights (DIHR) as part of a partnership between the two organisations formed in 2019<sup>1</sup>.

**” An HRIA is a process for identifying, understanding, assessing and addressing the adverse effects of a business project or activities on the human rights enjoyment of impacted rightsholders such as workers and community members<sup>2</sup>**

The HRIA was implemented in Thailand given that RB has a strong presence in the country, from sourcing of raw materials to own production as well as sales and marketing of several products. In addition, Thailand is a country with known human rights risks at farm and factory levels and in terms of marketing and sales of products. Therefore, from a business as well as a human rights perspective, RB's first HRIA was conducted in Thailand.

The HRIA took a value chain approach to identifying and assessing potential and actual human rights impacts associated with two of RB's important health brands in Thailand: Durex (condoms) and Enfa (infant formula and child nutrition). As a result, the assessment identifies human rights risks and impacts of the two brands in an upstream, midstream and downstream perspective.

The objective of the HRIA was to assess the actual and potential human rights impacts, identify their root causes and make recommendations for actions to avoid, address and/or remediate identified impacts. In accordance with the United Nations Guiding Principles on Human Rights and Business (UNGPs), the assessment takes into account all internationally recognised human rights and assessed both actual and/or potential impacts caused or contributed to by RB's own activities as the owner of the two brands, as well as impacts directly linked to Durex and Enfa brands through business relationships.<sup>3</sup>

This report presents the main HRIA observations and recommendations. It provides an overview of positive elements and improvement areas for Durex and Enfa, identifies larger contextual issues and root causes of importance to RB's impacts as well as delivering recommendations to be acted on by RB at the group level or in the country context.

The report includes:

- the methodology and approach of the HRIA, including limitations of the assessment (chapter two);
- key human rights issues associated with the Durex value chain (chapter three);
- key human rights issues associated with the Enfa value chain (chapter four); and
- recommendations for avoiding and addressing identified human rights impacts for both Durex and Enfa value chains (chapter five).
- brief background information about responsible business conduct, the business and human rights agenda in Thailand, RB and its operations in Thailand (annex 1);



## CHAPTER 2

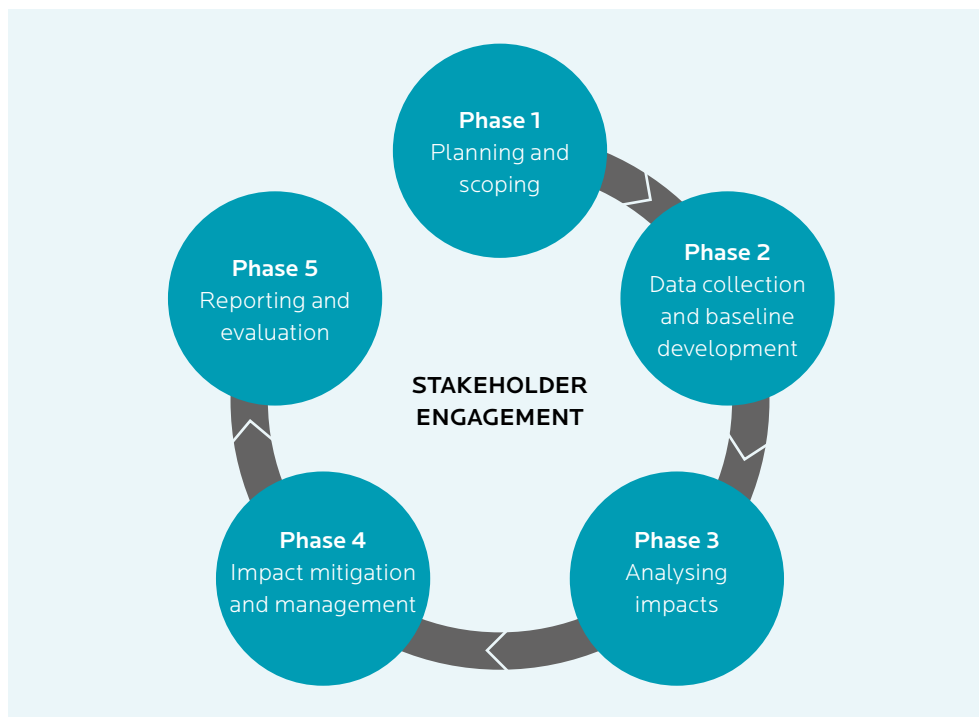


# CHAPTER 2

## METHODOLOGY

The HRIA has been implemented over a six-month period starting approximately in August 2019. The HRIA follows the usual steps of a HRIA, namely, 1) planning and scoping, 2) data collection and baseline development, 3) analysing impacts, 4) impact mitigation and management, and lastly, 5) reporting and evaluation<sup>4</sup>.

**Figure 1. HRIA phases, Illustration from DIHR HRIA Guidance and Toolbox**



The approach taken to conducting the first three phases is outlined below. Following the publication of this report, it will be the responsibility of RB to act on the findings to mitigate and manage impacts as well as report on progress in doing so as follows from phases four and five.



## 2.1 STEP I: PLANNING AND SCOPING

The first step of the HRIA was the planning and scoping phase. An implementation plan was made for the assessment, including timeline, followed by initial data collection to determine the scope of the HRIA. The data that served as the basis for the initial scoping of the assessment was gathered through three activities:

- Desktop review of publicly available sources concerning the operational context of RB in Thailand with a focus on RB's two brands Durex and Enfa and relevant human rights aspects;
- Desktop review of internal documents and other materials shared by RB Headquarters (HQ) and RB Thailand concerning the activities under assessment, including relevant audit reports and site presentations; and
- A kick-off meeting with relevant RB Thailand managers, including functional and factory managers, which was an opportunity for RB Thailand to present its activities and for the DIHR assessment team to ask questions and better understand the scope of RB Thailand's activities.

Based on information provided by RB and own desktop research, the DIHR assessment team initially analysed all data to select which factories, business partners and locations to include in the scope of the in-country field visit. In the scoping stage, the team among other things considered:

- Expected human rights risk of relevance to RB's operational footprint in Thailand and implications for assessment scope;
- Number and types of RB factories and their locations;
- Number and types of key suppliers and business partners and their relative importance to RB (spend and dependency);
- Locations of RB and suppliers and business partners' sites; and
- Cases of non-compliances identified through audits at RB sites.

The scoping informed the subsequent design of the assessment process, such as the identification of factories, sites and suppliers to be visited, the identification of external stakeholders for interview and the development of interview guides for the field visits with different stakeholder and rightsholders groups.

It was also in the initial scoping stage that the team decided to focus on just two of RB's brands, namely Durex and Enfa, due to the relevance of these brands to RB's presence in Thailand, as well as the potential severity of the human rights risks associated with the two product families. Rather than focusing on human rights issues associated with, for instance, the brand's supply chain only, it was decided to assess impacts across their full value chains to get a holistic snapshot of potential and actual human rights issues associated with all main aspects of these brands.

## 2.2 STEP II: DATA COLLECTION AND BASELINE DEVELOPMENT (IN-COUNTRY VISIT)

Step 2 was the phase in which primary data was collected through engagement with various stakeholders, during the in-country visit to Thailand. The visit took place from 4–15 November 2019. An overview of the different stakeholders engaged with during the in-country visit can be found in table 3 below.

**Table 3 Overview of stakeholder engagement**

| RB THAILAND  | SUPPLIERS, CONTRACTORS AND BUSINESS PARTNERS   | INDIVIDUAL EXPERTS, ACADEMIA, NGO, INTERNATIONAL ORGANIZATIONS AND GOVERNMENT INTERVIEWS   |
|--|--|--|
| <ul style="list-style-type: none"> <li>• Kick-off and debriefing with RB Thailand management team</li> <li>• Durex factory management</li> <li>• Enfa factory management</li> <li>• Enfa marketing managers</li> <li>• RB Thailand marketing management</li> </ul> | <ul style="list-style-type: none"> <li>• A packaging supplier (management and workers)</li> <li>• A fourth-party logistics provider-distribution &amp; embellishment (management and workers)</li> <li>• A labour agency contractor (management and workers)</li> <li>• Industrial estate environmental manager</li> <li>• Rubber processing facility (management and workers)</li> <li>• Head of Quality, Tesco Lotus Thailand</li> </ul> | <ul style="list-style-type: none"> <li>• WWF Thailand</li> <li>• Earthworm Thailand</li> <li>• Thai Rubber Union</li> <li>• Planned Parenthood Thailand Surat Thani branch</li> <li>• International Organization for Migration</li> <li>• Rubber Authority of Thailand (provincial and branch levels)</li> <li>• UNDP Asia</li> <li>• District Labour Department</li> <li>• Save the Children Thailand</li> <li>• UNICEF Regional Office for South-East Asia</li> <li>• UNICEF Thailand office</li> <li>• Thai Breastfeeding Foundation</li> <li>• Independent migrant labour expert</li> <li>• NGO working on sexual and reproductive rights in Thailand</li> </ul> |

The assessment team consisted of two DIHR senior advisors with expertise in conducting human rights assessments in the Fast-Moving Consumer Goods (FMCG) sector, as well as work experience in Thailand, supported by a Thai consultant with experience in labour rights and stakeholder engagement in Thailand. From RB's side, two representatives joined the HRIA, RB's group level social and human rights senior manager and RB's regional social and human rights manager for South Asia and ASEAN.

To kick off the in-country visit, an initial meeting was held with the RB Thailand management team, which allowed the DIHR assessment team to introduce the topic of human rights and business, and to explain the HRIA in-country process to the RB Thailand team. The kick-off was also an opportunity for DIHR to ask some questions to the RB Thailand team and vice versa. During the field visit the HRIA team met with a variety of stakeholders (internal and external), including internal RB Thailand staff, local and international non-governmental organisations (NGOs) and civil society organisations (CSOs) as well as United Nations (UN) agencies working on relevant topics and government representatives.

Stakeholders were selected based on their experience of working on issues relevant to the scope of the assessment, such as expertise in relation to human rights and business in Thailand, labour rights, migrant workers, the rubber sector, and issues related to the advertising, sales and marketing of infant formula. The interviews with external stakeholders were conducted as one-on-one interviews (or on a few occasions with a small group of stakeholder representatives).

While the two RB representatives were present in most interviews with government agencies and two UN agencies, they only participated in specific CSO interviews, after an assessment was made by DIHR and the local consultant in dialogue with the CSO in question regarding whether or not it was appropriate for them to participate. In all meetings where RB representatives were present, prior consent from the interviewees was sought. None of the RB representatives was present during rightsholder interviews with workers and community members, with the exception of focus group discussions with rubber plantation workers, where general questions were asked about the nature of work.

A significant part of the field visit was dedicated to engagement with rightsholders (male and female factory workers of different positions and functions, plantation workers and collection centre staff). The workers who were interviewed at factories and processing plants were randomly selected on the day the HRIA team visited the site, based on their availability. Workers were selected from a variety of functions and tasks they performed. The interviewees came from a range of different worker categories, including skilled and non-skilled workers, unionised and non-unionised workers, Thai and migrant workers, and included RB's own workforce as well as contracted or so-called third-party workers.

During the HRIA, the assessment team used various data gathering and interview approaches and techniques, including focus group interviews, women-only group interviews, one-on-one interviews with key interviewees and interviews with external stakeholders. The assessment team also prompted workers specifically to provide anonymous written input on paper on the main issues they face in their work as well as their main recommendations to be addressed. This was done to ensure that group dynamics in focus group interview settings did not hinder individuals from sharing their own opinions.

Although extensive interview questionnaires were developed before the interviews focusing on a wide range of human rights issues, in practice the interviews were semi-structured. They focused on the most important human rights issues highlighted through the desktop research performed as part of the initial stages of the HRIA and based on input from external stakeholders the HRIA team met during the course of the HRIA, as well as the priorities raised by the interviewees themselves.

As part of the assessment, the team visited an area in the Surat Thani province in southern Thailand to assess the impacts of latex sourcing and processing for the production of Durex condoms. For this segment of the HRIA, the DIHR assessment team engaged with the organisation Earthworm Foundation (EF), with which RB had existing collaboration as part of its Rurality project focused on improving the resilience of smallholder farmers<sup>5</sup>. During this part of the assessment two RB Thailand representatives from the procurement team joined the assessment team.

In collaboration with DIHR, the EF Thailand team organised a three-day assessment visit to rubber plantations. During the visit, the team saw the rubber tapping process at the farm level, held interviews and focus group discussions with plantation owners and Thai and migrant rubber tappers, and visited a number of latex collection centres and a latex processing plant. The EF Thailand team selected the plantations, plantation owners and workers and collection centres based on their prior engagement and knowledge of the area. A careful selection was made to engage with a range of tappers, including Thai and migrant workers, both male and female. To conclude the in-country visit, the DIHR assessment team held a debriefing meeting with the RB management team to present preliminary assessment findings and provide an opportunity for both the assessment team and the RB Thailand management team to ask questions.

After the in-country visit, the DIHR assessment team held a number of remote interviews with experts relevant to the scope of the assessment, who had either not been available for an in-person meeting in Thailand or were not in Thailand. These included an expert on migrant labour, a critical business partner, RB Thailand's marketing team and an industry association.

In total, the assessment included interviews with 163 individuals. A rough indication of the split between different groups can be seen in table 4 disaggregated by gender. Table 3 Overview of stakeholder engagement.

**Table 4. Number of people interviewed by gender**

|                                      | FEMALE | MALE |
|--------------------------------------|--------|------|
| Manager (RB and non-RB)              | 30     | 30   |
| Workers (RB and non-RB)              | 52     | 43   |
| External stakeholders (non-business) | 3      | 5    |

### **2.3 STEP III: DATA ANALYSIS**

The third stage of the HRIA was the analysis of all the primary and secondary data gathered during steps I and II and the drafting of this HRIA report. During the data analysis phase, an opportunity arose to present the preliminary findings of the assessment to a group of HRIA experts convened by DIHR. RB's senior social and human rights manager introduced the HRIA and high-level findings which led to valuable input and suggestions for further research. These suggestions led the assessment team to conduct additional desktop research on themes that had emerged from external stakeholder interviews as pertinent topics relevant to the scope of the assessment.

In addition to this report, the DIHR assessment team also prepared site-level feedback reports for the two RB factories and two suppliers factories visited. These factory feedback reports contain more detailed findings and recommendations, so that appropriate action and response to all issues identified can be taken.

### **2.4 LIMITATIONS**

The HRIA has a number of limitations. The team decided to focus on just two RB brands in Thailand, Durex and Enfa, leaving out assessment associated with other RB brands and their impacts in Thailand. Due to the large scope of issues covered in the value chain assessment of these two brands, the assessment team was not able to include all RB sites and suppliers and business partners explicitly in the data collection. Instead, a careful selection was made in order to cover a representative number and variety of sites, giving priority to those that are central to the two brands and could carry human rights risks. For example, potential issues at one of RB's three factories in the country were not assessed due to the limited relevance to the brands in question. Similarly, issues for office workers at RB's commercial office were not assessed. Further, the assessment was implemented prior to the impacts of COVID-19 including in Thailand, and as a result does not factor in COVID-19-related risks and impacts.

In order to enable a meaningful analysis of the value chains of the two brands, the value chain steps had to be simplified to enable focus on the main stages. However, this also means there are elements to the value chains of both brands which are likely to include human rights risks that were not part of this assessment.

There was furthermore a larger focus on issues related to the Durex brand than Enfa in the data collection stage, as the assessment team was able to spend a number of days in the rubber producing area to understand impacts in the far upstream value chain of Durex. The same was not possible for Enfa, as the vast majority of the main raw material, milk ingredients, are imported and no local sourcing of milk takes place. Enfa products furthermore consist of other ingredients, for example sugar, that may come with their own human rights risks related to the sourcing thereof, and risks associated with these ingredients were not included in the assessment.

With regard to downstream aspects of the Enfa value chain, there were also a number of limitations. Due to limited time and limitations in the assessment methodology, the assessment team was unable to conduct primary data collection regarding the marketing of Enfa in Thailand in the sense that the team did not speak directly to the buyers of Enfa products (parents/caretakers), nor did it do an analysis of marketing of Enfa at physical sales points or online sales outlets. Instead the team conducted desktop research on the issue and spoke to relevant organisations with expertise in child rights, marketing of infant formula and its impacts and breastfeeding in the Thai context. These interviews were not restricted to the collection of views on the performance and responsibilities of RB only, but often focused on the performance and responsibilities of BMS producers in general.

The assessment team had two working weeks in-country to conduct the data collection during which a number of sites, including suppliers and business partners in Surat Thani, had to be covered. This meant that the assessment team had limited time at certain sites, which can make findings from the site assessments incomplete.



The selection of rubber tappers and collection centres visited was done by Earthworm Foundation. While some of the workers interviewed sold their latex to RB's business partner, others supplied their fresh latex to other latex processing factories that are not part of RB's supply chain. Therefore, some of the data collected was not necessarily of direct relevance to RB's activities in Thailand. Nonetheless the assessment team considered the findings relevant as they provided a broader picture of the working and living conditions of rubber tappers and others in the rubber value chain in Thailand.

The workers interviewed during the assessment were mostly randomly selected by the assessment team based on a list of all workers. In a few exceptional cases, factory managers selected some workers, e.g. where workers selected by the assessment team were not present or could not be excused from their work station. A few short conversations with workers, such as canteen and cleaning personnel or security staff, were held during the factory tour. During these conversations, other workers or managers were often present, so no sensitive questions could be asked and therefore, while some relevant information was gathered, the data from these interviews were limited.

With regard to engagement with external stakeholders, the assessment team was unable to personally meet all identified external stakeholders due to time limitations. However, the team organised follow-up calls with stakeholders where relevant.

# CHAPTER 3

## CHAPTER 3

# HUMAN RIGHTS RISKS AND IMPACTS ASSOCIATED WITH DUREX IN THAILAND

This chapter presents some of the main human rights risks and negative impacts associated with the production and marketing of the Durex brand in Thailand. The chapter includes risks and impacts identified across the Durex value chain from aspects linked to the main raw material, rubber, to conditions among suppliers, to improvement areas for RB's own production facility as well as attention points associated with the marketing and sales of Durex condoms.

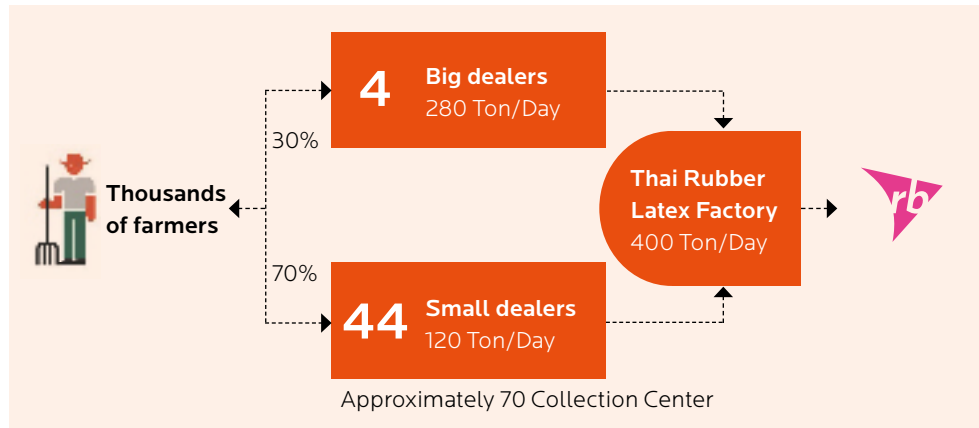
Aligned with human rights due diligence criteria outlined by the UN Guiding Principles on Business and Human Rights (UNGPs), identification and assessment of potential and actual negative impacts is a necessary first step for RB to avoid and address negative impacts where it is causing, contributing or directly linked to them. Recommendations for how to do that follow in chapter 5.

### 3.1 RAW MATERIAL ASPECTS: THE UPSTREAM RUBBER INDUSTRY, THE SITUATION FOR SMALLHOLDER FARMERS AND THE LINK TO RB

**Table 5. Durex overview – upstream observations**

| SECTION OVERVIEW                   |   |
|------------------------------------|---|
| Main rights at risk                | Right to an adequate standard of living; right to non-discrimination; right to health; right to life, liberty and security; land rights; right to participation; right to social security |
| Potentially affected rightsholders | Smallholder farmers and tappers, including with migrant background, and their families and landless farmers   |
| Main issues identified             | Livelihoods of smallholder farmers and tappers; migrant worker vulnerabilities; health and safety concerns; increased vulnerability of landless farmers                                   |

**Figure 2. The upstream rubber value chain**



RB mainly sources natural latex from two countries, Thailand and Malaysia<sup>6</sup> The Thai rubber procured by RB is grown in Surat Thani exclusively by smallholder farm owners, i.e. farmers owning an agricultural holding smaller than a farm. However, none of these farm owners are directly hired by RB. Rather, they sell to one or more middlemen who then sell the rubber to RB in bulk. As such, RB's control or ability to directly influence the daily income and working conditions of the farmers involved in growing latex used for RB's condom production is limited. At the same time, these farmers and their ability to sustain themselves by farming rubber are absolutely crucial elements in the Durex value chain, as field latex used to produce condoms is the main product ingredient for Durex. RB is, in other words, directly linked to the human rights risk and impacts at the farmer level through its sourcing of latex.

### **Text box 1. About latex**

Latex, or natural rubber latex, is a sticky milky liquid that can be tapped from select plants and trees including rubber trees.

Latex is used to make condoms, but also many other products including gloves, tyres, clothing and shoes. In its most useful form, latex is waterproof, resilient and has a high stretch ratio.

At the early stage of processing, latex is typically sold in the following forms: fresh field latex, unsmoked sheet, cup lump or crepe blankets. Of relevance to condom production is the liquid field latex.

At the same time, sourcing of latex by companies such as RB is only one element of the global rubber market. Natural rubber is traded at the global commodity market as an agricultural product with macro-level economic factors influencing the rubber price. Global rubber prices have seen a significant downfall over the last few years (a decrease of approximately 40% over just the last two years<sup>7</sup>). Global economic trends, the slowdown of China's economy, and the strength of the Thai Baht (THB) have all affected the daily rubber price. In some industry contexts, like tyre producing, natural and synthetic rubber is furthermore largely substitutable, which impacts on the demand and supply of natural rubber and hence the price setting<sup>8</sup>. Today rubber farming is largely unprofitable for many actors in the agricultural value chain, including in Thailand<sup>9</sup>.

Addressing the income situation for farmers and the long-term sustainability of rubber farming is, however, not something RB can do on its own, nor is it the sole responsibility of RB. Many other duty bearers, including other industry players as well as government entities have a role to play. For RB the question therefore becomes what it can do to use its leverage where most relevant in trying to mitigate the situation for farmers, and from a business perspective in ensuring supply continuity. This question will be discussed further below, including by outlining the key aspects of rubber farming relevant to the farmers' livelihoods and of relevance to a holistic response to the situation from RB.

Thailand is the world's largest exporter of rubber. Latex (see text box 1) has been known as “white gold” because of the economic boost it has fostered for the region and for Thailand<sup>10</sup>. Thailand's rubber exportation reached an all-time high of 41,520.160 million THB in March 2011. In November 2019, at the time of the assessment export data was significantly lower, at 9,068.250 million THB<sup>11</sup>. Still, in 2018 rubber and rubber articles remained among Thailand's top five export product groups in terms of value generation<sup>12</sup>.

In total, 90% of rubber production in Thailand is produced by smallholders, whereas only 10% comes from large plantations. To sustain the sector and help struggling farmers, the Thai government launched several subsidy programmes towards the end of 2019<sup>13</sup>. However, the potential positive impact of these schemes had yet to reach farmers at the time of the HRIA.

The rubber yield varies between regions in the country due to variations in how conducive the soil, temperature and rainfall characteristics are to latex growing. In northern Thailand, the rubber yield averages approximately 1,000 kg per hectare (Ha), in north-eastern Thailand it is 1,300 kg per Ha and in southern Thailand it is almost 1,600 kg per Ha<sup>14</sup>. The southern parts of Thailand are the most important for the rubber industry, with approximately 80% of the country's rubber being produced there<sup>15</sup>. Weather, as well as climate change impacts on the rubber yield, is another factor greatly impacting the living income of farmers as their income is a simple function of the daily rubber price times the daily yield.

Smallholder rubber farmers in Thailand are considered to be particularly affected by low natural rubber prices since they are highly dependent on their rubber sale and are often monoculture farmers, i.e. farmers of just one crop<sup>16</sup>. An interviewee highlighted that to fully understand the impacts that the low prices have on farmers one must acknowledge that in southern Thailand rubber is not just an agricultural crop. Rather, farming rubber is fully integrated in the lifestyles and livelihoods of farmers from the way they live to when they sleep.

### 3.1.1 LIVELIHOOD OF RUBBER FARMERS AND STANDARD OF LIVING IMPACTS OF LOW RUBBER PRICES

Smallholder farm owners in Surat Thani generally farm their own land or hire tappers, many of whom have a migrant background, to tap trees, if their land is too big for them to cover themselves. For an introduction to the first stage of the rubber value chain and the main players see text box 2.

#### **Text box 2. The first stage of Durex's value chain and its main players**

Once tapped, fresh field latex in Surat Thani is generally sold from smallholder farmers to so-called dealers that run local collection centres. Some farm owners also function as dealers that collect the daily yield from surrounding plantations before it is transported to the local primary processing factories in approximately 2-metric tonne containers on pick-up trucks. The dealers, in turn, have agreements with local primary processing factories (midstream rubber industries, see section 3.2) that procure the daily yield.

Dealers generally do not alternate between these midstream rubber factories, but usually supply to one factory only and have limited visibility into whether the conditions might be better when selling to other factories. The dealers interviewed for this assessment, however, said that conditions were more or less the same across the local factories in Surat Thani. These factories in turn supply international clients, including RB, but also industry players in other rubber-reliant industries such as tyre manufacturing and gloves.

Farm owners and tappers generally split the daily income 50-50 or 40-60 (respectively). The farmers' and tappers' income is as mentioned tied to the daily rubber price, which is set and communicated centrally by Thailand's Rubber Authority (RAOT)<sup>17</sup>. At the time of assessment, the daily price was as low as 35 THB per kg of latex. As the assessment took place in November, the rubber trees were delivering peak yield – i.e. the daily income was at its height from a volume perspective. At other times of the year, the yield can be significantly less. Even at this peak time,



dealers, farmers and tappers interviewed for the assessment all found that the current rubber price was too low to cover their living expenses. According to farmers, tappers and dealers interviewed, kg prices around 50-60 THB could work for all, if other costs remained unchanged. This estimate is supported by research indicating that the costs of production of Thai rubber is typically 55-60 THB/kg<sup>18</sup>.

Low prices ranging from 30–45 THB/kg have, however, been a reality for the past few years and is unfortunately expected to remain the case for the coming years<sup>19</sup>. This market outlook implies that those who have the resources are leaving rubber farming in pursuit of other more profitable crops. One dealer interviewed mentioned how just a few years ago 70 farmers were selling their daily yield to him and now only 35 farmers remain. Another stated that in the southern region, 40% of the previous rubber farms have been converted over four years. This is echoed in a research piece looking into the price relationship between natural rubber and synthetic rubber, highlighting that there is a clear supply response in natural rubber to the low prices, making the current situation unsustainable<sup>20</sup>.



**Picture 1. Tapper at collection centre showing payment slip of the day. Photo DIHR assessment team**

Cutting down a rubber plantation to convert farm land to other crops is, however, not an option for all farmers. Rubber trees take five to seven years to reach their productive stage. Going after a more profitable crop requires significant conversion investment costs, which many farmers do not have due to the losses generated over the past years. Many farmers are, in other words, trapped in unprofitable farming livelihoods and some of them in poverty. It is estimated that 40% of farming households in Thailand are struggling below the poverty line<sup>21</sup>.

Whereas the situation for farm owners is indeed very serious, as mentioned some of them have had the resources to invest in other cash crops and convert their land gradually from rubber to durian, making them less vulnerable to the low prices. Furthermore, the recent subsidy schemes by the government have the potential to enable improvements for smallholder rubber farmers at least in the short term. Rubber tappers, however, are even more vulnerable as they do not own the land and therefore cannot significantly supplement their income by farming other crops should they have the funds required for seeds or other initial investment. Tappers typically live directly on the land they tap and are often offered a simple but free house with paid electricity and water, as long as they tap the land. While the government subsidy in theory could and should reach these workers through their employers, tappers interviewed for this assessment had not received any subsidies. Some of them were not even aware of any government subsidy scheme. Interviews with the rubber authorities, RAOT, confirmed the challenge of reaching especially migrant tappers with the subsidies, as they are not directly registered with RAOT. Only farmers who are registered are eligible for the subsidy.

The rubber tree is not productive every day of the week and the yield varies across the year. The number of rest days needed for a tree depends on the type of tree, its age and the farmer's strategy for getting maximum yield. For example, some tappers harvest three days and then take a rest day. Others tap two days and stop one. Tappers interviewed for this study reported having approximately 200 active tapping days a year. As the income for rubber farmers and tappers is tied to the yield, the number of tapping days and the resulting yield directly impacts their daily, weekly and annual income. Tappers reported that the rest days are often spent sleeping and buying food. The ones interviewed for this assessment generally bought rather than grew all their food items, as they did not own the land so could not decide to use parts of the land for farming vegetables or keeping livestock for their own consumption. Furthermore, they reported that due to the many hours involved in tapping rubber, they had no time or energy to produce food for themselves.

### 3.1.2 THE ADDED VULNERABILITIES OF MIGRANT TAPPERS

Thailand's rubber industry has attracted a lot of migrant workers. Notably, the main rubber regions of the south are close to the border with Myanmar, making it easy to cross. The vast majority of tappers interviewed in the Surat Thani province for this assessment were of Burmese descent. Many migrants moved to Thailand when the rubber price was very high so rubber plantations were expanding and in dire need of workers. As the rubber prices have continued to decline, the migrants have since found themselves in very vulnerable labour situations<sup>22</sup>. In addition, many Thai workers no longer see agricultural work as an attractive option for their future careers. As a result, the sector has, in general, become highly dependent on migrant workers. This picture is evidenced by reports stating that in 2019 there were approximately 440,000 regular migrant workers from neighbouring Cambodia, Laos and Myanmar working in Thailand's agricultural sector<sup>23</sup>. That number is, however, only the registered regular workers, and the actual number (including "irregular workers") is therefore considered to be much higher. The majority of migrant workers in the agricultural sector come from Myanmar (75%), with Cambodia (14%) and Laos (11%) representing less of the migrant agricultural workforce<sup>24</sup>.

Rubber plantation tappers, including in Surat Thani, are mostly year-round workers due to the continuous harvest (tapping) of latex. As year-round workers, most migrant workers in the rubber industry should principally be covered by the labour rights and social protections provided under Thai law. The sector is, however, currently underserved by the Thai labour inspectorate, limiting enforcement of the regulations governing migrants' working conditions<sup>25</sup>. The precarious situation of migrant workers in the rubber industry is also exacerbated by the remote locations of the rubber plantations. Due to this, they have been reported to be vulnerable not only to poor labour standards and hazardous work situations, but also to robbery, rape and even murder<sup>26</sup>. However, the violence threat is largest in neighbouring Songkhla province, from which RB does not source any latex<sup>27</sup>. Finally, while access to healthcare, education and other social security measures are formally available to migrants and their children, language obstacles, lack of transport means, or other barriers can hinder them from accessing these services in practice.

### 3.1.3 HEALTH AND SAFETY IMPACTS ON RUBBER FARMERS

The assessment team did not undertake a technical or exhaustive health and safety inspection among rubber farmers. However, some of the main health and safety risks observed during assessment visits are included here to increase awareness in RB around these risks. Vulnerability in access to healthcare is of particular importance in connection to the health and safety risks involved in farming rubber. Pesticide exposure tests conducted among agricultural workers in Thailand between 2012 and 2014 indicated that “one third of tested workers presented unsafe levels of pesticide exposure”<sup>28</sup>. At none of the many plantations and collection centres visited for this assessment was there use of personal protection equipment (PPE). This is despite recurring chemical handling, including of ammonia and formic acid, both of which come with known health risks associated with skin contact, eye contact or inhalation<sup>29</sup>. Disposal and waste management of such chemicals observed during this assessment were also questionable at both plantation and collection centre level.



**Picture 2. Waste water at collection centre. Photo DIHR assessment team**

While OHS risks are significant in the sector, agricultural workers often do not receive any training on OHS nor any PPE. On rubber plantations, this held true for 97% of workers in a study conducted by the International Organization for Migration (IOM). The most reported concerns by workers on rubber plantations specifically are risks related to dangerous animals (52%) and risks associated with lifting heavy weights (8%). The most common health problems reported on average among palm oil, maize, rubber and sugarcane workers were headaches (61%), severe joint and muscular pain (56%) and dizziness (48%)<sup>30</sup>.

Tapping rubber is night work and hour-intensive work. The low prices are further driving tappers to cover as many trees as possible in a night. Tappers interviewed for this study reported starting their work day at 9pm and ending at 11am. For those with small children at home there is little opportunity to sleep during the day, and some tappers reported as little as three hours of sleep in a day. Night work and sleep deprivation also come with known health impacts, which can in turn have risks during working hours leading to accidents, especially when handling tools and chemicals. Further night work in a Malaria-prone area comes with heightened risks of Malaria infections. Finally, the limited appeal of rubber tapping to the younger generation has led to an aging workforce among farmers and tappers, despite the physically demanding tasks involved, enforcing issues associated with heavy lifting, for example.

#### **3.1.4 LAND RIGHTS AND ITS EFFECTS ON RUBBER FARMERS**

A final human rights aspect worth highlighting in relation to the situation for rubber farmers, including those involved in RB's value chain, has to do with land rights issues. The issues are mainly associated with farmers living and farming on forest land and are deeply integrated with inequality and power dynamics in Thailand. In 2012, the top 10% in terms of wealth owned 61.5% of fully titled landholdings and the lowest 10% owned 0.07%. These levels of inequality have been reported to have risen tremendously under the Military Junta<sup>31</sup>. Some 10% of farming households in Thailand are landless<sup>32</sup>. Lack of land ownership among farmers, especially in forest areas, has become a systemic problem for farmers in Thailand including in the Surat Thani province from where RB sources.

The land title issue associated with farming on forest land is interlinked with efforts by the Thai government to combat deforestation. Thailand has introduced a range of policies and regulations to combat deforestation. Thailand's forest coverage fell from about 70% of total land area in 1900 to about 25% in 2006<sup>33</sup>. The most frequently cited causes of deforestation in Thailand have been excessive and uncontrolled commercial tree felling as well as urbanisation<sup>34</sup>. Including as a result of government interventions, forest cover has lately seen an increase to 32% in 2017<sup>35</sup>. It should be noted, however, that rubber plantations are relatively good for the environment, when

compared with other cash crops such as palm oil. Normal duration of plantations is 25–30 years and at the end the wood is used for furniture, not just burned.

While regulations and policies introduced have tried to tackle environmental challenges, they have simultaneously created social challenges and negative human rights impacts. Farmers, especially hill tribes and ethnic minorities, have been among the most affected groups by forest policies. For example, when the government in 2014 launched the “forest land<sup>36</sup>” reclamation operation in the Phetchaburi province<sup>37</sup>, these groups of people, even with long presence over the land, faced difficulties to claim their rights over the land due to the lack of legally approved evidence of ownership. Most of them were found to possess no land ownership documents<sup>38</sup>. Many were forced to leave their land under the clearance operation carried out by the military rangers. Much of this land is classified as state forest land, and national laws did not recognise customary land rights. This group of farmers, mostly hill tribes and migrants<sup>39</sup>, were forced to leave the land without consent. The government also did not have concrete policies in place to provide financial supports to these groups of people affected by the clearance operation. Therefore, many were driven into debt and landlessness.

For those continuing to live and farm in forest areas in the southern provinces including in Surat Thani, issues include restrictions on the collection of forest products, the restriction of logging of preserved high-value woods (including rubber) and restrictions on the transformation<sup>40</sup> of forest land. For example, if the land in question is deemed forest land there is a prohibition to plant or have precious woods in possession, including rubber, without informing the Royal Forest Department according to the Forest Act. If the land is found to have the precious woods, including rubber trees, farmers are not allowed to cut, destroy, deroot, or move the logging woods outside of the area without state permission. In order to receive permission, they need to submit their request to the Forest Department. If allowed, they are required to pay logwood fees, transportation fees and other fees to the Forest Department. With no land ownership, the prohibition to sell, plant, or transform rubber trees<sup>41</sup> is very challenging for the farmers.

Several researchers, governments and NGOs have come out to support and promote alternative income sources for rubber farmers affected by the above-mentioned forest regulations. Research and projects on agroforestry or introduction of alternative crops or herbs to ensure mixed method farming were introduced including in Surat Thani province<sup>42</sup>. However, projects have faced difficulties in the implementation phase due to restrictions of land ownership. The forest land issue has also led to difficult circumstances for environmental and human rights defenders, some of which has led to violent disruptions as well as deaths. Examples include the clearance operation at Kaeng Krachan National Park, where the Karen human rights defender, Billy Polajee Rakchongcharoen disappeared in 2014 and was found murdered in 2018<sup>43</sup> and the Klong Sai Pattana case in Surat Thani that involved the deaths of four land rights activists<sup>44</sup>. Specific challenges of female land rights defenders have also been flagged as a higher risk<sup>45</sup>.

However, a new Community Forest Act B.E. 2562 entered into force in November 2019 after environmentalists and villagers had pushed for a new bill since the government decided to end logging concessions in 1989 to save depleted forest areas<sup>46</sup>. Section 31 of the Community Forest Act permits any community within the forest area to ask for permission to manage and use the forest. The Act aims to empower local residents to make decisions on management of the environment in which they live. Despite recent signs of progress, land issues continue to be of relevance to the ability of rubber farmers to realise their rights including to ensure an adequate standard of living.

### 3.1.5 RB'S COMMUNITY INVESTMENT PARTNERSHIPS

As mentioned, RB currently has no direct interface with the rubber farmers and tappers that farm and tap the latex that goes into RB's production of Durex condoms. RB further does not currently require its Thai latex supplier to ensure farmers in its supply chain earn a living income, for example, by paying farmers a price premium or other means aimed at making the situation sustainable for farmers.

### **Text box 3. RB on the Rurality programme in the context of latex**

Through Earthworm's Rurality programme we are funding work to improve smallholder livelihoods within the direct supply chains of our suppliers by:

- Creating strong and stable relationships between farmers, first buyers and other key stakeholders along the supply chain to leverage commercial relations, seize opportunities and find solutions.
- Improving livelihoods and social conditions by increasing the value of cash crops, developing a stable farming business by diversification and ensuring a safe working environment.
- Maintaining and enhancing the quality of their natural environment and habitat areas by encouraging responsible farm development and adopting integrated farm management practices.

We are committed to maintaining a clear focus on latex sustainability supply chain resilience and will continue to support smallholder programmes at scale.

Price premiums are just one of more measures a company can take to combat poverty among smallholder farmers. Mars, for example, in its farmer income statement recognises that important levers include increasing productivity, increasing income from secondary crops, adjusting farm sizes, adjusting farm gate and market price, and in some cases including further value-adding activities, such as crop processing<sup>47</sup>. To further explore the role of companies in impacting farmers' income, Mars has also started the Farmers Income Lab, a think-do tank that aims to answer the question: "What are the most effective actions that companies, like Mars, can take to enable smallholder farmers in global supply chains to meaningfully increase their incomes?"<sup>48</sup> Such an initiative is relevant for a company like RB that faces the same question.

Aware of the challenges faced by rubber farmers RB has, however, for several years been partnering with NGOs in Thailand to address some of the issues faced by rubber farmers. Notably a partnership with the



Earthworm Foundation has enabled the implementation of a ‘Rurality programme’ including among farmers and tappers that form part of RB’s supply base (see text box 3)<sup>49</sup>.

The goal of the Rurality programme is to enhance the economic resilience of farmers through capacity building to diversify their source of income, improve on-farm productivity and market connectivity. The programme among other things includes farm inspections, trainings and interventions at the collection centre level.



Picture 3. Awareness-raising poster from Rurality seen at collection centre. Photo DIHR assessment team

RB and EF have, however, yet to firmly connect and embed the Rurality programme with RB’s latex supplier. According to EF the lack of involvement of RB’s supplier is: “representing a lost opportunity to encourage positive changes or simply the creation of greater awareness in the supply chain. Although farmers and collection centres do receive these messages [around sustainability] from Rurality, this is not enough in itself to push for change”<sup>50</sup>. Despite good elements and positive results from the Rurality programme, it is furthermore questionable whether the programme in its current form has the design and scale to fundamentally address and change the root causes of the difficult situation faced by farmers.

In addition to the Rurality programme, a partnership with the Planned Parenthood Association of Thailand has included an emphasis on improving sexual and reproductive health among workers and farmers in the rubber industry in southern provinces. Despite efforts to try and direct programme activities at workers at RB’s direct latex supplier,

the partnership has so far not been able to include such workers. As such, the programme is being implemented among other factories in the areas but is currently not benefitting people in RB’s direct supply chain.

Both collaborations in other words have the potential to become more relevant, if they were to tackle more explicitly the key issues and stakeholders directly involved in RB’s value chain as well as tackle explicitly the main issues at stake, including how to best to increase farmers’ income. Finally, although these initiatives likely include a range of positive outcomes for farmers and community members, they can and should not be used to offset negative human rights impacts as defined by the UNGPs.

### 3.2 HUMAN RIGHTS RISKS IN THE MIDSTREAM RUBBER INDUSTRY – INCLUDING RB’S LATEX SUPPLIER

**Table 6. Durex overview – midstream observations**

| SECTION OVERVIEW                          |  |
|---|--|
| <b>Main rights at risk</b>                | Right to a living wage; right to non-discrimination; right to safe and healthy working conditions; right to work; right to form and join trade unions; right to adequate housing; right to water and sanitation; right not to be subjected to forced labour; right to information; rights of minorities; rights of the child, right to protection of mothers before and after child birth, right to privacy and right to a family life |
| <b>Potentially affected rightsholders</b> | Factory workers including with migrant background, and their families and children   |
| <b>Main issues identified</b>             | Vulnerable conditions for migrant workers; health and safety concerns; inadequate housing for workers; safety risks and other vulnerable conditions for children; freedom of association restrictions  |

Fresh field latex such as that sold by the farmers to local dealers is processed into a variety of midstream products. Concentrated latex is needed by RB for the production of Durex condoms. Initial processing of field latex to concentrated latex happens in the midstream rubber industry, which is dominated by national Thai rubber companies that sell to international buyers including RB.

RB sources from only one of these companies and is therefore well placed to identify any human rights issues associated with this step of the Durex value chain. RB is, however, only one of many customers for this first-tier supplier and as such its leverage is relative to that of other buyers. RB's supplier procures field latex from a large number of smallholders through 48 licensed dealers and their associated collection centres. The factory employs approximately 200 workers enabling it to operate around 70 machines day and night.

RB's latex supplier was visited as part of this assessment. The visit included a meeting with management, a tour of the factory grounds and workers' accommodation, as well as randomised focus group worker interviews taking place at the living quarters and an interview with workers in the factory's worker committee.

### **3.2.1 VULNERABILITIES OF MIGRANT FACTORY WORKERS**

Due to the low-skilled and relatively strenuous type of work associated with the midstream rubber production, migrant workers are prevalent at this stage including at RB's supplier. Factory workers are therefore a mix of Thai, Burmese, Laotian and Cambodian, including at RB's supplier. In 2018, there were approximately 4.9 million non-Thai residents in Thailand. Out of those, approximately 3.9 million were low-skilled migrant workers from neighbouring countries Cambodia, Laos, Myanmar and Vietnam. To this number can be added approximately 550,000 stateless and hill tribes (some potentially indigenous), 200,000 temporary stay and 100,000 refugees and asylum seekers. About half of all the migrant workers are women. As a group, migrant workers make up more than 10% of the total labour force<sup>51</sup>.

Traffickers, recruitment agencies and corrupt immigration officials are known to take advantage of the often-precarious situations of migrant workers and have overcharged those workers as they arrive to work in low-wage jobs. "Invisible" costs of getting a job, i.e. payment of fees, have mostly been borne by the workers themselves, rather than the employers, and are effectively deducted from the already low salaries the workers receive. According to an IOM study the cost of migration differs significantly between the different neighbouring countries. Laotian migrants pay approximately US\$ 366 to migrate, whereas Cambodian (US\$ 55) and Burmese (US\$ 44) migrants pay significantly less. More than 40% of migrants have to borrow money to pay for the migration costs<sup>52</sup>.

In order to address some of the issues related to the abuse of migrant workers and to keep closer control, the Thai government approved a new regulation (Royal Ordinance on Foreign Worker Management, B.E. 2560 (2017)), which includes harsh penalties for employers who fail to hire migrant workers in official ways. However, the new regulation also includes penalties (including prison terms) for migrant working without permits, which led to large amounts of migrants fleeing Thailand after it was announced. The government's decision to penalise the migrant worker has been criticised by civil society groups<sup>53</sup>.

According to migrant experts interviewed for this assessment, due to the improvements of regulation around migrant workers in Thailand, many of the costs have now been shifted across borders, so workers are charged more in Myanmar or Cambodia than they prior to the legal changes in Thailand. The majority of workers at RB's rubber supplier have migrant background. Out of these, almost 25% are from Myanmar. Many of the workers do not speak Thai, and even if the factory uses bilingual workers to translate information to those who do not speak Thai, the language barrier leads to increased vulnerability of the non-Thai speaking group of workers. The issues identified including through worker interviews involve:

- Workers expressed that they either did not have written contracts, contracts written in a language they understood or were not aware of any documents that outlined their rights and working conditions.
- RB's supplier making use of wage deductions in connection to the costs associated with renewing work permits, completing required health checks and paying of brokers and agencies facilitating the processes. Workers reported that they need to travel back to countries of origin, in particular to Myanmar, to renew permits. The company pays the workers' transport while the workers pay the agencies themselves, sometimes through wage deductions/company loans of up to 2,000 THB per week. With a reported salary of around 4–6,000 THB per week and social requirements to send remittances back home, workers could be left with very little money.
- The factory rarely has overtime, which workers complained about, indicating that wage levels for normal working time is below living wage.

### 3.2.2 HEALTH AND SAFETY ISSUES OF MIDSTREAM RUBBER INDUSTRY FACTORY WORKERS

Converting field latex to concentrated latex among other things involves spinning the field latex in centrifuges to separate out water, dissolved chemicals and other impurities. Workers at such sites can be involved in various tasks, ranging from receiving the product from dealers, to adding chemicals to operating machines, or cleaning tanks, centrifuges and other equipment upon usage via water treatment. For example, a worker can be involved in manually washing the centrifuges that have been in touch with the field latex and added chemicals. The factory tour conducted for this assessment illustrated the labour-intensive nature of washing centrifuges and other equipment.

Thailand's Occupational Safety, Health and Environment Act of 2011 sets out the labour protections standards around OHS for workers in Thailand. According to the act, OHS should be defined as "actions or working conditions which are safe from any cause resulting in danger to life, physique, mentality or health arising out of or related to working"<sup>54</sup>. The general provisions outline that employers must provide employees with "safe and hygienic working conditions and environment" and prevent employees "from any harm on life, physique, mentality and health"<sup>55</sup>. The law also includes regulations around e.g. harmful and hazardous working conditions and the use of PPE<sup>56</sup>.

Despite this regulation, union leaders estimate that "only 20% of workplaces, mostly large factories for international companies, comply with the government's OSH standards"<sup>57</sup>. Workplace accidents are furthermore quite common in the Thai agriculture sector, and accounted for 17% of workplace injuries between 2002 and 2010. According to IOM reports, the most frequent causes of injury were caused by falling objects (12%) or agricultural machinery (10%). Workers who operate machinery and have not received proper training are also more likely to suffer from workplace injuries<sup>58</sup>.

This assessment did not include a technical assessment of compliance with health and safety regulation by RB's rubber supplier. However, various examples of health and safety concerns were observed during the factory tour or raised by factory workers. These include but are not limited to:

- insufficient signage of health and safety risks on the company premises
- insufficiently monitored ammonia levels in air, water and latex products as well as in workers
- general insufficient use of PPE by workers (limited or no use of protective glasses, masks and gloves). For example, workers use bare hands to peel off dried up liquid latex that has been processed with ammonia from storage tanks and equipment
- workers working in direct sunlight without protection or cover (receivers)
- workers climbing on tall, old and unsafe storage tanks without appropriate shielding or safety equipment at risk of severe or deadly accidents in case of slips, trips and falls
- workers working in confined spaces, i.e. storage tanks with high levels of ammonia and associated inhalation risks
- insufficient shielding of dangerous areas, e.g. around waste water reservoirs with close proximity to staff living quarters
- environmental management systems, including waste and waste water management of sub-standard quality including at staff living quarters

The ammonia odour was significant at the supplier factory despite large outdoor areas. Although workers undergo an annual health check, these checks do not include a health monitoring programme that checks for short or longer-term health issues associated with ammonia such as skin allergies, respiratory issues or eyesight<sup>59</sup>. The company only once or twice annually monitors the ammonia levels in the air, otherwise ammonia levels are only checked in the liquid latex due to relevance to the product quality. While some workers did not express any physical or health-related symptoms associated with working with these chemicals, others reported breathing problems due to the constant ammonia exposure<sup>60</sup>. The assessment did not capture in detail why these issues exist, although management highlighted that the way to improve performance in this area was not only about policies or availability of PPE, but also about training and enforcement of health and safety standards including enough supervisors on the factory floor to ensure enforcement.

### 3.2.3 WORKERS' ACCOMMODATION AND ASSOCIATED HUMAN RIGHTS CONCERNS INCLUDING FREEDOM OF ASSOCIATION

Also, due to the prevalence of migrant workers, it is common for rubber factories in the south to offer worker accommodation. RB's latex supplier also offers accommodation to its workers and at the time of assessment housed 90% of its workers onsite. The dormitory was built in 1990 and includes 90 rooms. The accommodation is close to free for workers, although they do pay a monthly maintenance contribution as well as some electricity costs. The workers' housing was used by both Thai and migrant workers.

As embedded in the ILO Workers' Housing Recommendation "it is generally not desirable that employers should provide housing for their workers directly, with the exception of cases in which circumstances necessitate that employers provide housing for their workers, as, for instance, when an undertaking is located at a long distance from normal centres of population, or where the nature of the employment requires that the worker should be available at short notice"<sup>61</sup>. When employers do offer housing, a range of checklists are available to ensure that these enable "structural safety and reasonable levels of decency, hygiene and comfort"<sup>62</sup>.

In the case of RB's supplier many of the issues identified at the time of assessment were due to the fact the accommodation was constructed when only 100 workers were employed. With the doubling of number of workers, toilet facilities and room capacity are significantly strained and general maintenance of the accommodation is visibly required. Rooms typically fit four workers. While some of the rooms include a toilet, 40 rooms are without toilets. The living quarters are further only reachable by an unpaved road. Workers report how heavy rainfall and monsoon rains have led to landslide issues affecting their access to, as well as the safety and comfort of, the accommodation area. Despite having voiced this issue to management including through the worker welfare committee, workers are yet to see improvements to the road.

Several of the workers living in the staff quarters have families including children who are at school or pre-school. Rights of the child, right to protection of mothers before and after childbirth, right to privacy and the right to a family life are, however, at significant risk for these families and children and the factory has not taken steps to identify risks and

impacts on these families and children associated with the living quarters. For example, the open-surface water treatment reservoirs are situated close to the staff quarters without being fenced or made otherwise inaccessible to small children.

In general, living in workers accommodation increases workers' dependence on the employer and hinders their integration in society. As such, where workers do reside on employers' premises, it is crucial that in particular their freedom of association is fully recognised and realised to the greatest extent possible given local legal realities. This is challenging in the Thai context.

Thailand's 2017 Constitution does grant individuals the right to freedom of association subject to restrictions by law enacted to "protect public interest, peace and order, or good morals". The Labour Relations Act (LRA) B.E. 2518 (1975) "allows private-sector workers to form and join trade unions of their choosing without prior authorisation, to bargain collectively, and to conduct legal strikes with a number of restrictions". However, there are significant restrictions in place on who may join a union and a requirement that a union represents at least 20% of the workforce also proves to be an obstacle for collective bargaining in the country<sup>63</sup>.

Restrictions on who exactly can join a union concern migrant workers, regardless of whether they are registered or undocumented migrants, as neither are allowed to form unions or take up union official roles. Migrant workers are, however, allowed to join unions that were initially organised by Thai citizens and that are led by the same. Even though this option remains, migrant workers do not participate in unions to a large degree. This has in part been explained by language barriers, poor understanding of their rights and that Thai workers and migrant workers are generally segregated both within industries and by geographic locations<sup>64</sup>.

While social dialogue systems in Thailand are permitted, they are underutilised, which is evidenced by "low collective bargaining coverage rate and the very low trade union density rate". According to ILO data, the trade union density rate was 3.2% in 2016, up from an even lower level, 1.4%, in 2008. It is also problematic that trade unions only exist



in fewer than half of Thailand's provinces (34 out of 76), which points to a poorly functioning collective bargaining system and tripartite processes at the provincial level<sup>65</sup>.

A further illustration of a poorly functioning collective bargaining system is that there have been reports of workers being dismissed for engaging in union activities, employers replacing striking workers with subcontractors, threats to union leaders and inciting violence to get a court decision to prohibit planned protests and strikes. Human rights organisations have also claimed that employers have tried to cover up anti-union activities on several occasions<sup>66</sup>.

In the case of RB's latex supplier, there was no union in place. Workers were, however, organised in a worker welfare committee. The committee positively included staff with a migrant background, but of the five representatives met by the assessment team three held managerial positions, which influences the power dynamics in the committee and might hinder the union from functioning in accordance with its objectives.

### 3.3 RB'S OWN MANUFACTURING AND PRODUCTION OF DUREX

**Table 7. Durex overview – own operation observations**

| SECTION OVERVIEW                          |  |
|---|--|
| <b>Main rights at risk</b>                | Right to a living wage; right to rest and leisure; right to non-discrimination; right to equal pay for equal work; right to safe and healthy working conditions  |
| <b>Potentially affected rightsholders</b> | Factory workers including female workers, third-party workers, unskilled workers and workers with migrant background   |
| <b>Main issues identified</b>             | Systematic overtime; living wage issues; unequal conditions for direct workers and contracted workers; repetitive movement and other health and safety concerns; ineffective grievance mechanism options |

The third step of Durex's value chain covers the actual production of condoms which happens in RB's own factory. RB's condom factory is in Bangpakong on the outskirts of Bangkok and produces Durex condoms not only for Thailand, but the entire world market. In 2018

more than 1 billion condoms were shipped out of this factory to more than 50 different countries. 97% of the production is for export. Aside from condom manufacturing, the factory is also home to research and development (R&D) and sourcing from 29 raw material suppliers and 22 packaging material suppliers.

The factory has been in operation since 1994. Today it has approximately 1,000 workers (around 700 permanent and 300 subcontracted) on rotational shifts making sections of the factory operational 24/7 while are operational 24/6. 70% of the workers are female.

The production process consists of a 14-day production flow described below and visualised in figure 3.

1. Concentrated latex brought to the factory from midstream supplier in bulk
2. Compounding
3. Dipping
4. Finishing (wash and dry)
5. Electronic testing; each condom is tested for holes
6. Foiling and lubrication
7. Packing
8. Shipping

**Figure 3. RB Condom production process**



The assessment included a full day visit to this factory. The visit included a meeting with management, a tour of the factory grounds as well as randomised focus group worker interviews with both own and contracted workers from different functional areas as well as an interview with the factory's union representatives.

### 3.3.1 LABOUR RIGHTS INCLUDING FREEDOM OF ASSOCIATION FOR RB'S OWN WORKERS

Workers at the factory established a union as early as 2010. The union is open to RB's own workers, in accordance with national law. Running a union and collaborating with the factory management has not been easy at all times. Interviews with both factory management, union representatives and workers did, however, reveal a number of positive outcomes for RB's workers. For example:

1. Whereas the factory previously used daily workers, today all workers get paid monthly.
2. Improvements of several worker welfare benefits have been negotiated – e.g. an increase in the food allowance, night work premium and the number of annual paid holidays.
3. Openness and dialogue between management and the union was also mentioned as a positive outcome in itself, enabling a degree of trust including to allow union representatives to talk openly to external parties.

Despite strong results and a relatively productive union relationship, the assessment visit also identified a number of improvement areas in relation to the working conditions for RB's own workers. For example:

- The factory systematically makes use of overtime to a degree where 12-hour shifts are the norm and not the exception. According to site management, contracted working hours in employment contracts are from 8am–5pm, including one-hour rest time. Overtime is voluntary and on top of this. According to site management workers sign up for overtime on a monthly basis; however, should a worker be unable to perform overtime for personal reasons, they need to provide one day's notice to their supervisor. Interviewed workers were aware that overtime was not mandatory per se, but highlighted that in their understanding:
  - contracts set working hours from 7am–7pm
  - the factory needs to be notified one month in advance if an employee does not want to do overtime
  - there is a limit to how many people can be given permission to not work overtime per work station

- if a worker does not do overtime on four shifts in a month, he or she is no longer eligible for the monthly 'hard-working bonus', which workers repeatedly referred to as a critical incentive<sup>67</sup>.

While overtime may in other words not be contractually mandated by RB, worker interviews indicated that overtime is systematically built into work schedules and that implementation of policies, practices and incentive structures can lead to a situation where overtime becomes de facto mandatory including in the eyes of workers.

- Workers work a maximum of six days a week in accordance with law; however, due to rotational shifts, exactly which days they work in a week varies. Workers at the production lines expressed wanting to ensure Sunday is a day off, to be able to have time with their families. They also questioned why the factory's office staff only work five days and have both Saturday and Sunday off, while they work six days a week.

The factory's relatively positive current relationship with the union is a strong point and one that deserves recognition in a country context where freedom of association is significantly restricted. However, not all workers are part of the union and it is of importance that the factory management offers complementary avenues for dialogue and potential raising of complaints or grievances so as to ensure dialogue options for all workers. While the factory does have a suggestion box and RB's internal grievance mechanism, and details of the Speak Up hotline are available at the premises, interviews with RB's workers highlighted the need to ensure that such instruments are working effectively, including that they are considered legitimate and accessible by workers. Effectiveness also includes ensuring that workers understand the relevance of these mechanisms to report any potential or actual human rights impacts including those associated with their working conditions. Some workers interviewed highlighted that to their understanding the Speak Up hotline was mainly relevant to reporting anti-corruption or sexual harassment cases.

Addressing some of the negative impacts identified and outlined above requires careful consultation of workers. For example, many of RB's

workers interviewed highlighted that the factory's systematic use of overtime was one of the good things about working at RB, compared with other factories where overtime is not always offered. Gradually phasing in less systematic use of overtime to comply with international standards around working hours in other words needs to be implemented with due attention to negative wage effects for workers. Furthermore, the overtime and wage issue is not unique to RB, but rather a systemic issue for factory workers in Thailand. Notably, with an expected economic slowdown in 2020 as well as potential COVID-19 implications, workers are expected to be particularly challenged if overtime reductions are not implemented with consideration for living wage impacts<sup>68</sup>.

Thailand has laws setting and regulating the legal minimum wage in the country. However, in its concluding observations from 2015, the UN Committee on Economic, Social and Cultural Rights (CESCR) stated that the minimum wage in Thailand was "not sufficient to ensure decent living conditions for workers and their families"<sup>69</sup>. In 2018, the minimum wage was raised to 330 THB per day in provinces with high living expenses, whereas it was raised to 308 THB per day in provinces with low living expenses<sup>70</sup>. While it was positive that the minimum wage was increased, it was increased less than anticipated<sup>71</sup>. In December 2019, a new bill on minimum wage levels was passed effective as of 1 January 2020, which will also involve a slight increase in all provinces<sup>72</sup>. Minimum wage levels were, however, only raised slightly (by 2–7%) since the CESCR report and legal minimum wages in Thailand may not be sufficient to constitute a living wage. Apart from the minimum wage being low, it has also been reported that minimum wages are not well enforced in small companies, particularly in border and rural areas and certain sectors<sup>73</sup>.

Where workers protest at a reduction in working hours, this can be a sign that the factory's remuneration of 'normal working hours' (e.g. 48 in Thailand) does not equal a living wage, even if the local legal minimum wage requirements are met<sup>74</sup>. Consultation of workers in adjusting working hours is, in other words, crucial. While interest in the concept of a living wage has recently gained a lot of attention including by NGOs and Multinational Enterprises (MNEs), the principle is not new. For example, the Labour Charter included in the Treaty of Versailles which later became the ILO institution highlighted the

need for “payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country”<sup>75</sup>. Implementation of the principle has, however, proven difficult for both companies and states.

Thailand’s Labour Protection Act (LPA) includes regulation concerning working hours. According to the Act the maximum normal work hours a day is eight, and the maximum per week is 48 (six work days in a week). For work considered hazardous (according to ministerial regulations) the daily maximum is seven and the weekly maximum is 42<sup>76</sup>. With regard to overtime, such hours are according to Thai law limited to a maximum of 36 hours a week<sup>77</sup>. In total, this amounts to an acceptable maximum workweek of 84 hours, which is significantly beyond ILO labour standards with a maximum of 60 hours, under exceptional circumstances<sup>78</sup>. Overtime is, in other words, another area where legal compliance will not prevent negative human rights impacts and compliance with international standards.

Another aspect that might significantly change the factory’s current employment is the gradual introduction of increased automation. As the factory makes plans for automation of, for example, the electronic testing and packaging functions, it is key that associated human and labour rights impacts are identified and mitigated as best possible and that workers are invited into designing the transformation. This, for instance, includes anticipating and preventing impacts on workers in a close dialogue with them as worry over losing jobs is known to affect workers’ mental and physical health. It includes retraining and reskilling current workers to enable them to take on new tasks complementing the use of technology, as well as implementing fair compensation in consultation with workers when job losses are unavoidable. Notably, foreseeing skills gaps and investing in training of workers can enable new partnerships and synergies with local government and education institutions’ priorities in the age of automation<sup>79</sup>.

### 3.3.2 CONDITIONS FOR CONTRACTED WORKERS AND THE EQUAL TREATMENT PRINCIPLE

RB's contracted workers are subject to the working conditions set by their direct employer, the contractor, and not RB. Of the workers at the factory, 30% are contracted workers. These workers are further not part of the factory union. Third-party workers are contracted for specialised functions such as security guards, cleaning, canteen and a factory nurse, but the majority of them are embedded in the factory's core production processes (primarily in packaging). According to site management, the factory has previously conducted a mapping exercise to identify critical and non-critical production roles. According to RB, non-critical roles are manual jobs with limited use of machinery and include packaging and material delivery. All non-critical production roles are staffed by contracted workers.

A basic human rights principle of relevance in this context is that of equal treatment. In this context avoiding negative impacts includes ensuring equality in the basic working and employment conditions, i.e. pay, working time, overtime, breaks, holidays, etc. The equal treatment principle is typically enshrined in national labour laws as is the case in the Thai Labour Protection Act including in section 11/1.

In 2008, the Thai government further made specific amendments to the Act with the aim of protecting subcontracted workers who do the same work as regular employees, where such jobs are part of the "production process or business" of the company. The Act now specifies that: "Where an entrepreneur has entrusted any individual to recruit persons to work, which is not a business of employment services, and such work is any part of manufacturing process or business operation under the entrepreneur's responsibility, and regardless of whether such person is the supervisor or takes the responsibility for paying wages to the persons who perform work, the entrepreneur shall be deemed as an Employer of such workers. The entrepreneur shall provide contract employees, who perform work in the same manner as employees under the employment contract, to enjoy fair benefits and welfare without discrimination."<sup>80</sup>

The revision of the Act has made clear that subcontracted and direct employees should be treated fairly and equally as a matter of legal compliance. That a failure to do so is a potential liability issue was

underlined in a 2012 case handled by the Thai Supreme Court, which confirmed that the correct interpretation of 'fair' is equal<sup>81</sup>. In other words, the use of subcontracted workers can and should not be used as a way to reduce labour costs if the actual tasks performed by the subcontracted worker are the same as those performed by permanent workers.

Consequently, to prevent and address negative human rights impacts on contract workers, there is a need to ensure that factories, including RB's own factory makes use of subcontracting only for temporary functions – i.e. to fill gaps in peak periods or to perform specific specialised tasks that do not belong to the core business of the factory. All permanent core functions, even if they are suitable for low-skilled workers, should be performed by own workers.

Interviews with current subcontracted workers at the factory highlighted that this is likely not the case at the moment. For instance, some of the subcontracted workers interviewed mentioned being hired on three-month contracts that can be renewed indefinitely. Some of the interviewees had been working at RB's factory for one or more years doing tasks similar to those of RB's own workers, e.g. in packaging or electronic testing (ET). An example was further given of a contracted worker who had worked at the factory for five years without being offered a permanent contract by RB.

In addition to ensuring that only the truly temporary functions are subcontracted, there is a need to proactively ensure that the contractors used offer their workers similar conditions as RB. This also applies when enforcing such requirements might come with price implications for labour costs. Concretely for RB's factory, significant differences in basic working conditions exist across the two worker categories, signalling that RB is not ensuring that its labour contractors match RB's own standards. Illustrative examples of differences raised by workers interviewed are included in table 8. However, according to RB at starting salary, both contracted and own workers are paid the same minimum wage (330 THB a day).



**Table 8. Examples of differences between standards for RB own workers and subcontracted workers**

|                    | FEMALE | MALE |
|--------------------|--------|------|
| Food allowance     | 128    | 50   |
| Night work premium | 130    | 80   |

While differences in remuneration and other basic conditions can amount to negative human rights impacts, they interplay with and are exacerbated by the vulnerability of contracted workers in comparison with direct employees. For example, at RB’s factory, contracted workers and RB’s own workers wear different uniforms which, according to workers create a de facto hierarchy among workers, even if people are working in the same functions. Further, contracted workers, even if they are formally employed by a third party, still report to RB managers and spend all their working hours at RB’s premises. As such, they have very limited ability to voice concerns and grievances with their own direct employer. None of the third-party workers interviewed at the factory were aware of any channels for voicing grievances with their own direct employer. While the contracted workers did recognise that they could raise issues with the RB manager supervising them, for instance, they explained how they fear doing that, as it might impact their contract renewal, being hired on short-term contracts only. While some of the workers had noticed posters from RB advertising Speak Up hotlines, they were not certain that this hotline was open to them, being third-party staff and no one interviewed had ever tried calling the number or knew of anyone who had. This is despite the Speak Up hotline being formally available to all contractors, suppliers, distributors or anyone with an issue or complaint about RB conduct.

Finally, the principle of equal treatment is not only one of relevance to a comparison of conditions between own workers and contracted workers. Interviews highlighted the need to ensure this principle is embedded more generally across workers. For example, the lunch break for workers in ET is only 45 minutes long as they have another 15 minutes later in the day/night, whereas workers in other sections have a full hour over lunch. The ET workers explained that this is an issue, because it takes time to get in and out of the factory and to walk to the canteen and back, which makes the 45-minute break a challenge. Workers in

electronic testing further have daily targets and expressed that if they do not meet them the targets are added to the quota for the next day, whereas workers in packaging for instance do not have daily targets. This, however, was contrasted by information shared by RB-management who confirmed the use of daily targets in ET, but claimed they were not added to the next day when not met.

### 3.3.3 ENVIRONMENT, HEALTH AND SAFETY IMPACTS

There are several environmental and social known risks associated with the manufacturing of rubber products. The European Bank for Reconstruction and Development (EBRD) has developed a standalone guidance note for assessing environmental and social issues associated with manufacturing of rubber products. The guidance highlights the materiality of waste water and water use, hazardous materials and chemicals handling as well as fire and explosion risks<sup>82</sup>.

This assessment did not, however, include a technical assessment of environmental, health and safety (EHS) aspects including potential impacts on surrounding communities. It should be noted, however, that the factory is located in an industrial zone without close proximity to communities, therefore impacts on communities are expected to be minimal. The factory further has a dedicated EHS management system and manager and associated certifications and monitoring of performance.

Health and safety, and in particular occupational health and safety concerns of workers, were however brought up by workers. Worker interviews pointed out significant potential and actual occupational health impacts experiences by workers associated with select tasks and functions at the factory. Notably, workers in the ET unit experience backache and shoulder pain associated with the repetitive movements linked to their function and their long shifts. The workers highlighted that almost all workers in ET have these symptoms, despite a permitted two to three-minute hourly break to allow for exercises or stretches. Workers in ET indicated that in their perception for an ET worker to be able to move to another section, e.g. packaging, which is lighter work, they need a note from the doctor. In contrast, factory management highlighted that a few times a year, workers in the ET area are asked if they want to move to other areas. Accordingly, the site management has moved some ET workers to Foiling, for example. The factory

management reported that the site has not received any negative feedback from workers themselves nor union leaders around these issues. Some workers, however, mentioned that factory management was not responding adequately to the severity of the health issues ET workers are facing. Workers suggested considering rotating stations so that they can alternate between ET and packaging for instance, offering ergonomic chairs, which have been promised but not yet installed or that those with health symptoms should be allowed easy transfer to other work stations.

Finally, all workers rotate weekly between day and night shift. Workers highlighted symptoms such as sleep deprivation, dizziness, headaches and disrupted eating patterns, as well as associated difficulties for workers with family obligations in connection to the rotational shift system.

### 3.4 DOWNSTREAM HUMAN RIGHTS ASPECTS

**Table 9. Durex overview – downstream observations**

| SECTION OVERVIEW                          |   |
|---|---|
| <b>Main rights at risk</b>                | Right to health including sexual and reproductive rights; right to non-discrimination; right to freedom of information; right to privacy; right to protection of mothers before and after childbirth; rights of children and young people                                   |
| <b>Potentially affected rightsholders</b> | General population. Vulnerable groups include: gay and other men who have sex with men, sex workers, people who use drugs, trans people, prisoners in all settings and adolescent girls and young women and their male partners in high burden settings as well as migrants |
| <b>Main issues identified</b>             | Potential accessibility risks associated with price points; potential acceptability risks due to cultural context, stigma barriers etc.   |

The final stage of the Durex value chain is its introduction to the market and consumers<sup>83</sup>. Despite the production of Durex products in Thailand, the Thai market is in fact a relatively small market for Durex. Illustratively, Durex made up only 5% of RB's business in Thailand in 2018.

With Durex, RB is the brand-owner of a product family which, at this stage of the value chain, is of critical value to several public health priorities and can be an enabler of sexual and reproductive rights fulfilment. Condoms are the only devices that both reduce the transmission of HIV and other sexually transmitted infections and prevent unintended pregnancies<sup>84</sup>. At the same time, UNFPA, WHO and UNAIDS explicitly call for increased private sector investment in condom distribution and promotion<sup>85</sup> (see text box 4). In that sense, whereas the raw material sourcing and production of the products are associated with several negative human rights risks and impacts as illustrated in previous sections, this stage of the value chain brings into play inherent positive social contributions associated with Durex. The section below highlights how such contributions can be strengthened further by adding a human rights lens as well as a contextual analysis to the marketing and sale of Durex in Thailand whereby potential human rights concerns can be identified and addressed.

This segment of the assessment is primarily based on desktop analysis along with stakeholder interviews with sexual and reproductive rights organisations and experts. The assessment did not include interviews with consumer groups.

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#### **Text box 4. UNFPA, WHO and UNAIDS position statement on condoms**

Condoms are a critical component in a comprehensive and sustainable approach to the prevention of HIV and other sexually transmitted infections (STIs) and are effective for preventing unintended pregnancies. In 2013, an estimated 2.1 million people became newly infected with HIV and an estimated 500 million people acquired chlamydia, gonorrhoea, syphilis or trichomoniasis. In addition, every year more than 200 million women have unmet needs for contraception, leading to approximately 80 million unintended pregnancies. These three public health priorities require a decisive response using all available tools, with condoms playing a central role.

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### 3.4.1 SEXUAL AND REPRODUCTIVE RIGHTS AND CONDOM USE IN THAILAND

As early as 1991 Thailand's government launched a '100% condom use' programme, aiming to significantly improve condom usage rates in the country and this was later widely copied in the region. Despite fluctuations in public attention and funds available to support condom use, promoting condom usage has been a relatively consistent policy and action agenda for the government ever since. Health authorities began a new three-year campaign in 2016 (as part of its National Condom Strategy for 2015–2019), distributing around 40 million free condoms per year, targeting young people in particular<sup>86</sup>. The National Condom Strategy included campaigns to promote safe sex and combat negative perceptions of condom use<sup>87</sup>.

Despite such efforts, condom use continues to be low in Thailand. Among adults of all ages, it is estimated that around two thirds use condoms with non-regular partners. However, reliable data in this domain can be a challenge. In comparison, a 2017 scientific study with data from Chiang Mai concluded that regular condom use was reported in less than 5% of the population<sup>88</sup>. A specific concern relates to the low condom use among the youth. In 2010, it was reported that only 20–40% of sexually active teenagers use condoms<sup>89</sup>. Thailand has the second highest teenage-pregnancy rate in the region<sup>90, 91</sup>.

An expert working in the field of sexual and reproductive health in Thailand interviewed for this assessment further raised a condom deficiency issue in Thailand. It has not been possible to further underpin this potential issue through data available online, but according to the interviewee there is a supposed national gap of 20 million condoms foreseen for the coming years. The Global Fund however recognises significant gaps in condom access and use in many countries. The Fund recommends that condom strategies and programmes are changed at different levels to address the issue: "At the systems level, better stewardship of national condom programmes requires improved quantification of need and understanding of existing use, strengthened procurement and supply systems, and a strong evidence base to understand market dynamics and factors influencing uptake and use. National condom programmes also require efforts to develop a supportive environment, including national demand creation efforts, improved coordination and advocacy in support of a total market

approach, and enabling policy and regulatory environments that support diversified markets to sustain condom access. At the community level, efforts need to include adequate male and female condom and lubricant procurement and supplies, peer-based distribution to priority populations, distribution of free commodities for those with greatest need especially in rural and isolated locations, behaviour change communication to support effective condom use, demand creation activities and targeted social marketing. Condom interventions should address barriers that hinder access to condom use, particularly by young people and key populations, and ensure people have the knowledge, skills and power to use condoms correctly and consistently.”<sup>92</sup>

This contextual and policy context is of key importance to RB’s decisions regarding marketing and sale of Durex in Thailand. Interviews with sexual and reproductive rights and health organisations in the context of this HRIA highlighted that if a company like RB wants to be part of improving the condom usage rates in Thailand and thereby enhance the social value of its product, then it also requires the willingness from RB to root decisions in a contextual analysis of potential barriers for the Thai population in using Durex, even if there is a commercial implication thereof.

#### **3.4.2 AAAQ AND DUREX IN THAILAND**

One way of analysing Durex’s market presence with a human rights lens is through the criteria of Availability, Accessibility, Acceptability and Quality, the use of the so-called AAAQ framework. These criteria provide a hands-on approach to working with economic, social and cultural rights including the right to health and sexual and reproductive rights<sup>93</sup>.

General Comment no. 14 on the right to health includes many references to sexual and reproductive health rights including in the context of family planning and the right to prevention of disease<sup>94</sup>. According to the General Comment family-planning measures and the prevention and treatment of sexually transmitted infections, sexual and reproductive health must live up to the AAAQ criteria. In the context of condoms, the below overview offers a simplified presentation of the relevance of the AAAQ criteria to the sale and marketing of condoms:

**Availability** refers to the existence of sufficient quantities of condoms throughout the country.

**Accessibility** refers to the physical and economic access (distance and costs) to condoms, as well as access on a non-discriminatory basis and with sufficient information.

**Acceptability** refers to the sensitivity of condom manufacturers including when it comes to marketing practices to local culture and ethics, including in a gender-sensitive manner.

**Quality** refers to the need of condoms to be scientifically and medically appropriate and of good quality.



Picture 4. Condom sale at 7-Eleven Bangkok. Photo DIHR assessment team

Several of the stakeholders interviewed for this segment of the HRIA highlighted that Durex was known among Thai consumers as a high-quality brand and that the quality dimension also made consumers willing to pay more for Durex condoms than other brands. Two of the AAAQ criteria, however, give rise to potential risk areas when applied to the Durex brand. In relation to accessibility, Durex is a higher-end brand and as a result its price point is comparatively much higher than other brands available in the Thai market, raising potential issues in terms of affordability for poorer segments of society (see picture for comparison). In a context where condoms, due to public health efforts, in principle are freely and readily available, e.g. at health clinics – one could however argue that this should be less of a concern because people in need of condoms can always get them for free at clinics. Interviewees from sexual and reproductive health organisations did, however, challenge this argument, highlighting that due to the stigma associated with sex and prevention methods some vulnerable groups might not be ready to receive condoms at a clinic, which might involve facing medical personnel. As examples of groups that may face this stigma, young teenagers as well as migrants were mentioned. With

respect to the latter group, fear of interaction with public authorities as well as awareness gaps might hinder migrants from seeking sexual and reproductive help at health facilities, making them rely on products available over the counter. Many migrants do not have the same access to social security as Thai citizens due to irregular employment terms and as such are also reluctant to go to hospital or healthcare centres due to the associated costs. Migrants in the Thai sex industry are a particular at-risk group. Thailand, along with many other nations, fails to adequately protect the human and labour rights of these men, women and transgender individuals. Sex work remains criminalised, perhaps as a result of – and indeed perpetuating – the stigma of and discrimination against sex work and those who engage in it. Criminalisation of sex work has often created further vulnerabilities for an already marginalised population of workers<sup>95</sup>. In short, RB's current price points for Durex products might unintentionally contribute to sexual and reproductive discrimination issues in Thailand by excluding poorer as well as other vulnerable segments of society.

The second criterion highlighting potential risk areas for the Durex brand is that of acceptability. Interviewees highlighted acceptability issues as of higher relevance in the Thai context when compared to availability and price points. Interviewees stressed that the stigma associated with buying condoms is not to be underestimated in a Thai context. As a result, many people are not comfortable buying a pack of condoms over the counter, as it implies that they are sexually active. Packaging and naming of products that is explicitly sexual in nature was believed by interviewees to hinder the uptake of condoms, especially among young women, an at-risk group in Thailand as the teenage pregnancy statistics demonstrate. These interviewees highlight that making the packaging of condoms look less like condoms or be 'disguised' as something else would be an important enabler for condom sales in the Thai market, along with making online purchase further accessible, including by taking into account discreet packaging for at-home delivery. Assessing acceptability risks associated with the Durex brand further includes recognising that some populations are of particular risk including in connection to stigma. These include gay and other men who have sex with men, sex workers, people who use drugs, trans people, prisoners in all settings and adolescent girls and young women and their male partners in high burden settings<sup>96</sup>. Targeting of such vulnerable groups, however, needs to be balanced with the non-



discrimination principle. Notably, some argue that direct marketing and promotion of condoms to sex workers and not the general population can add to the discrimination of this group by framing them as vectors of disease<sup>97</sup>.

### **3.4.3 PPAT PARTNERSHIP – OPPORTUNITIES FOR FURTHER VALUE GENERATION**

As mentioned in section 4.1 RB currently has a partnership with Planned Parenthood Association Thailand (PPAT) on improving the sexual and reproductive health of workers in latex factories and rubber plantations in the Surat Thani Province. As already mentioned, the collaboration could benefit from further tying in the scope with RB's operational footprint in the area. At the same time the existing relationship with PPAT could be an opportunity to further utilise knowledge and expertise of this and other relevant organisations and experts in the area to inform RB's decisions that relate more closely to the marketing and sale of the brand. This includes how RB can market and sell the product in a manner sensitive to human rights and the local context. Such dialogue would also enable RB to enhance the value of its social impact donations and financial contributions.

## CHAPTER 4



## CHAPTER 4

# HUMAN RIGHTS RISKS AND IMPACTS ASSOCIATED WITH ENFA IN THAILAND

After RB's acquisition of Mead Johnson Nutrition (MJN) in 2017, RB expanded its business with an Infant Formula and Child Nutrition (IFCN) division<sup>98</sup>. The IFCN division is a major contributor to the total revenue of RB's Thai business, making it one of the key brands for the business. Thailand is further one of RB's primary production hubs for the Enfa products.

The below section describes potential and actual human rights impacts along the full value chain of Enfa. Unlike chapter 3 on Durex above, this chapter starts with the marketing, advertising and sales of Enfa IFCN products, followed by RB's own manufacturing process of infant formula, to suppliers involved in packaging, embellishment and distribution, up to the stage of import of skimmed fresh milk to Thailand. This is done as downstream human rights issues associated with the marketing and consumption of Enfa products have comparatively been given more emphasis in the HRIA given their potential severity.

### **4.1 DOWNSTREAM ASPECTS: MARKETING, ADVERTISING AND SALES OF ENFA IN THAILAND**

According to the WHO, for infants who cannot be breastfed, infant formula is the only suitable breastmilk substitute. However, marketing and advertising of infant formula also comes with a number of potential negative risks and impacts that will be discussed further below.

In general, the global Breast Milk Substitutes (BMS) industry, including in Thailand, applies industry standards and implements national legislation when it comes to marketing and advertising practices of BMS, which are not all aligned with international human rights standards, including lack of adherence to the rights of the child. UN-appointed experts have expressed that breastfeeding is a human rights and child rights issue and that in accordance with the UN Convention on the Rights of the Child "children have the right to life, survival and

development and to the highest attainable standard of health”, of which breastfeeding must be considered an integral component. In this same joint statement in support of increased efforts to promote, support and protect breastfeeding by UN experts on right to food, right to health, discrimination against women and rights of the child, they warn that a major obstacle to breastfeeding is the misleading marketing of companies of BMS, which can negatively affect various child rights<sup>99</sup>.

This lack of alignment poses a challenge, especially when individual companies, such as RB and a number of other BMS companies, have committed to implementation of the UNGPs, while the industry as a whole lags in this regard.

Therefore, besides individual actions that should be taken by BMS manufacturers, industry-wide collaboration is required to raise the bar and address some of the systemic potential risks and impacts found in this report. This report includes observations and recommendations of relevance to RB, as well as collective observations addressed to the BMS industry at large.

RB's IFCN products are among the most important products for RB Thailand from a market perspective. A significant proportion of RB Thailand's revenue comes from its IFCN products, under the brand Enfa. In terms of particular products, Enfa Powder accounts for 50% of the RB portfolio in Thailand, of which its milk formula for infants age one to three years old, Enfagrow A+, occupies 39% of the portfolio and Enfa Smart+ covers 11%. Other product categories include Enfalac Baby Formula – 56% (Stage 1 and 2), Enfagrow Children Milk Powder – 22% (Stage 3 and 4) and Enfagrow Liquid Milk (UHT) – 16% (Stage 3 and 4). Other brands include Enfamama, Nutramigen, Pregestimil and Puramino. Enfa products are categorised under stages, ranging from stage 1 to stage 4.

RB sells its IFCN products through a variety of channels in Thailand. These include large supermarket chains like Tesco, Lotus and BigC, and outlets like 7-Eleven, through general trade which includes distribution to retail outlets throughout Thailand, through e-commerce, including websites like Lazada, Shopee, BZB and others, and through medical channels, such as hospitals and clinics. RB's Enfa products are distributed throughout the country.

After acquiring MJN in 2017, RB committed to marketing its new product range of BMS products ethically and responsibly at all times. It also committed to be transparent, to engage with the BMS industry and to improve its practices<sup>100</sup>. Soon after the acquisition, RB released a standalone policy and procedure on marketing of BMS. In the RB Policy the company assures the provision of safe and adequate nutrition and appropriate marketing and distribution. RB has also committed to support governments in the development and implementation of appropriate industry standards via collaborative actions.

In the policy, RB acknowledges the importance of the principles and aims of the 1981 WHO International Code of Marketing of Breast-milk Substitutes<sup>101</sup> (WHO Code) and subsequent relevant WHA resolutions. In lower-risk countries, the policy is to follow national implementation of the WHO Code and WHA resolutions. The policy is applicable to higher-risk countries (which includes Thailand) as defined by the FTSE4Good BMS Marketing Criteria. Higher-risk countries are those with more than 10 per 1,000 mortality rate under five years of age, or more than 2% of acute malnutrition (moderate or severe wasting) in children under five years of age. In these countries, RB respects whichever are the stricter requirements, national laws and/or regulations implementing the WHO Code or RB's own BMS Policy<sup>102</sup>. In the past, MJN's marketing practices have, however, been criticised by international NGOs. For instance, a 2018 report on marketing of BMS in Thailand, published by the Access to Nutrition Foundation, argued there was a low level of compliance with the WHO Code, noting 1,007 alleged detected incidences of non-compliance with the WHO Code and subsequent WHA resolutions and related national regulation. According to the report, these alleged non-compliances consisted primarily of point-of sale (POS) promotions (935 out of the 1,007) and product references in adverts or the provision of educational materials<sup>103</sup>.

RB responded to the report, disputing the 1,007 non-compliances as follows:

- a) The standard of measurement should be vis à vis the local Thai government implementation of the WHO Code and WHA resolutions, not the WHO Code and WHA resolutions themselves. National law at the time applied marketing restrictions for infant products up to 12 months of age and not 12–24 months of age
- b) Many of the ‘relevant’ observations were attributable to POS promotions by retailers, which are outside the ambit of RB’s control
- c) The Access to Nutrition Foundation could not provide supporting data and substantiation (photos, evidence) for the alleged incidences of non-compliances, and therefore RB questioned not only their validity, but also claimed to be unable to follow up/take corrective actions<sup>104</sup>

Save the Children has also expressed its concern about RB’s acquisition of MJN and emphasised that RB has “to moderate the aggressive marketing of milk formula perused by the previous management of Mead Johnson”. The organisation ended its partnership with RB after it acquired Mead Johnson<sup>105</sup>.

Identifying and managing risks associated with being an IFCN company is a relatively new discipline for RB. At the same time, several contextual factors influence the risk levels associated with BMS production and marketing in Thailand. These include legacy issues inherited from MJN, a BMS Policy that does not cover products from 12 up to 36 months (further elaboration on this follows below) and the Thai context, where national legislation is in some areas weaker than the WHO Code and WHA resolutions. Jointly, these elements make RB Thailand’s BMS activities high risk in terms of securing respect for international human rights, including child rights.

Given that RB has committed to implementing the UN Guiding Principles on Business and Human Rights, the company has agreed to align its activities with international human and child rights standards, which are in this particular area higher than national legislation in Thailand. Implementing a higher standard than other industry players is never easy, as it can involve facing difficult decisions around impacts to the business.

Given that this is a relatively new area for BMS manufacturers globally and only few companies are applying such higher standards, seeking industry-wide collaborations and actions on this topic is one route RB can consider. The section below presents the main challenges and observations in this regard.

#### 4.1.1 KEY OBSERVATIONS RELATED TO ENFA'S DOWNSTREAM IMPACTS

**Table 10. Enfa overview – downstream observations**

| SECTION OVERVIEW                          | SUPPLIERS, CONTRACTORS AND BUSINESS PARTNERS  |
|---|---|
| <b>Main rights at risk</b>                | Right to health; right to non-discrimination; right to freedom of information; right to protection of mothers before and after childbirth; rights of children and young people  |
| <b>Potentially affected rightsholders</b> | Infants and young children, pregnant women, mothers and parents   |
| <b>Main issues identified</b>             | Marketing of follow-up formula and growing-up milks >one year are not within scope of RB BMS Policy and Thai Milk Code; RB Thailand's marketing practices through promotional activities, cross-promotion, social media and interaction with healthcare system are not aligned with WHA resolutions; risks related to health claims on packaging and unclear distinction in packaging; limited actions by the Thai government, BMS industry and retailers generally to raise industry standards in alignment with WHA resolutions |

In the below section the potential negative impacts related to the marketing, advertising and sales practices of the Enfa brand in Thailand are outlined. The observations are based on desktop research in relation to the marketing practices of infant formula producers in Thailand, as well as a benchmarking the WHO Code and WHA resolutions against the Thai Marketing Control on Food for Infants and Young Children Act (hereafter called the Thai Milk Code), which was enacted in 2017 and entered into force in 2018. In addition, the assessment team conducted stakeholder interviews with both Thai and international organisations and experts working on the intersection of child rights, marketing to children, infant formula and breastfeeding practices in Thailand. Lastly, interviews were held with RB Thailand's managers responsible for the marketing of BMS and scientific and regulatory affairs, including in relation to Enfa.

In addition, a limited number of outlets were visited by the assessment team to observe how Enfa products were marketed and advertised in these stores. These included a number of 7-Eleven and Tesco outlets, as well as smaller retailers in Bangkok. It should be noted that no interviews were conducted with retailers, buyers of BMS products (parents, caretakers or pregnant women) or healthcare professionals as part of the assessment. It should also be noted that many of the observations mentioned below are related to the infant formula/BMS industry in Thailand in general, and not only to RB and its Enfa brand specifically. These issues are included with the aim of further raising the awareness of RB and other BMS manufacturers on the potential risks of marketing and advertising BMS products in Thailand. Where findings relate to RB Thailand specifically, this is highlighted.

In general, desktop research and interviews held during the assessment suggest that most major BMS manufacturers in Thailand, while in compliance with Thai legislation, are not acting in accordance with the WHO Code and subsequent WHA resolutions in one or more respects.

In terms of potential impacts related to the marketing and advertisement of Enfa products in Thailand, the key observations are as follows.

#### **Scope of the WHO Code and WHA resolutions and age categories**

The WHO Code was adopted by the WHA in 1981 to protect and promote breastfeeding by ensuring the appropriate marketing and distribution of BMS (see text box 5 below on WHO positions on breastfeeding vs current breastfeeding rates in Thailand)<sup>106</sup>. In the original WHO Code of 1981, the scope was limited to the marketing of BMS to infants age 0–6 months and was extended to 12 months in 2013 through an additional WHA resolution. Since the WHO Code has been adopted, the WHA has passed a number of additional resolutions to clarify and add provisions to the WHO Code (see below). Recommendations by the WHA have the same level of authority as the WHO Code, clarifying and extending certain provisions. For Code implementation alignment by companies, both the WHO Code and WHA resolutions are equally authoritative<sup>107</sup>.



### **Text box 5. WHO position on the benefits of breastfeeding and information on breastfeeding rates in Thailand**

According to the WHO, breastfeeding is one of the most effective ways to ensure child health and survival. However, nearly two out of three infants are not exclusively breastfed for the recommended six months. Breast milk is considered safe and clean and contains antibodies which help protect against many common childhood illnesses. Breast milk provides all the energy and nutrients that the infant needs for the first months of life, and it continues to provide up to half or more of a child's nutritional needs during the second half of the first year, and up to one third during the second year of life. Breastfed children perform better on intelligence tests, are less likely to be overweight or obese and are less prone to diabetes later in life.

The rate of children that are breastfed in Thailand continues to be extremely low. Although 97.4% children in Thailand are breastfed at some point, according to 2018 data only 23.1% of infants are exclusively breastfed until the age of six months and only 13% until two years. An expert interviewee stated that 28% of infants are being exclusively breastfed. This relatively low percentage has to do with more women entering the labour market, and very short maternity leave in Thailand (under the Labour Protection Act of 1998, women employees are entitled to 90 days of maternity leave; however, less than that is usually granted with pay), which has led to lower breastfeeding rates.

Inappropriate marketing of BMS can undermine efforts to improve breastfeeding rates and duration worldwide. With an already low percentage of breastfeeding, there is an even larger consumer market in Thailand for BMS manufacturers to target

Importantly, in May 2016, WHA Resolution 69.9 (Ending inappropriate promotion of foods for infants and young children)<sup>108</sup> was passed and subsequent guidance was published that clarified that BMS “should be understood to include any milks (or products that could be used to replace milk, such as fortified soy milk), in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to age three years (including follow-up formula and growing-up milks), thereby stating that follow-up formula and growing-up milks fall under the scope of the Code and should thus not be promoted”<sup>109</sup>.

In summary, the WHO Code and subsequent WHA resolutions aim to safeguard breastfeeding by ending inappropriate marketing and distribution of BMS. Because continued breastfeeding to babies up to two years and beyond saves lives and promotes the health of both the mother and baby, it is important that this protection includes follow-up formula. Follow-up formula has been shown to replace the intake of breast milk and therefore acts as a BMS. The WHO has therefore stated that classification of follow-up formulas for children aged 6–36 months as BMS is fully consistent with the WHO Code and other WHO policies and recommendations<sup>110</sup>.

While not a legally binding instrument, the 191 WHO Member States have confirmed their support for the WHO Code and for implementing the Code and its subsequent resolutions including via national legislation<sup>111</sup>. As of April 2020, 136 countries of the 194 WHO Member States have legal measures in place related to the WHO Code. Of these, 25 countries have measures substantially aligned with the Code; 42 have measures which are moderately aligned; 69 have only included some provisions and 58 have no legal measures at all<sup>112</sup>. The WHO Code is also mentioned in the International Convention on the Rights of the Child. These elements show that all the actors, including states and companies, are committed to promoting the application and respect of the letter and the spirit of the WHO Code and WHA resolutions<sup>113</sup>.

Besides its primary audience, governments, the WHO Code of 1981 clearly addresses companies, including BMS manufacturers and distributors. It states that “independently of other measures, companies must regard themselves responsible for operating according to the principles and aims of the Code”.

In RB’s BMS Policy, RB “acknowledges the importance of the principles and aims of the WHO Code and subsequent relevant WHA resolutions”<sup>114</sup>. At the same time the Policy is only applicable to age 0–12 months. WHA Resolution 69.9 and the relevant guidance documentation (Article 11)<sup>115</sup>, on the other hand, requires avoiding aggressively marketing infant formula for infants up to 12 months, but also follow-up and growing-up milks aimed at children age 36 months (three years).

Only Enfa products for infants until age 12 months fall within the scope of RB’s BMS Policy and the Thai Milk Code (which includes Enfa Stage 1 and 2 products, see below). RB refers to these as ‘Covered Products’. Not Covered Products hence include all Enfa follow-up formulas and other child nutrition products for children above 12 months until age three years (such as Enfa Stage 3 and 4 products).

### **Text box 6. WHO Code and WHA resolutions**

The International Code of Marketing of Breast-milk Substitutes (also known as the WHO Code) is an international health policy framework for breastfeeding promotion adopted in 1981 by the WHA of the WHO. The WHA is the supreme decision-making body for WHO and determines the policies of the WHO. The WHO Code is a set of recommendations. The Code in itself is not a binding treaty or a law. Rather, countries that commit to the WHO Code have to enact national legislation to implement provisions of the WHO Code.

The WHO Code recommends restrictions on the marketing of breast milk substitutes, such as infant formula, to ensure that mothers are not discouraged from breastfeeding and that substitutes are used safely if needed. A number of subsequent WHA resolutions were drafted and agreed by Member States to further clarify or extend certain provisions of the WHO Code.

Governments are required to act on the WHO Code, taking into consideration subsequent relevant WHA resolutions. In the WHA resolution that adopted the WHO Code, WHO Member States were urged to translate the WHO Code into national legislation, regulation or other suitable measures. While many countries have fully or partially adopted the WHO Code as law, some countries have not. In countries that have not implemented the WHO Code as a national measure or where monitoring and enforcement is weak, violation of the WHO Code remains.

On its own, the WHO Code is not legally enforceable on the private sector. Companies are only subject to legal sanctions for failing to abide by the WHO Code where it has been incorporated into national legislation. However, BMS companies are responsible for adherence to the WHO Code “independently of any other measures taken for implementation”. This means that even if a government has not fully implemented the WHO Code in national legislation, manufacturers and distributors are still expected to comply.

Like many other global BMS manufacturers, while acting in alignment with its own BMS Policy and Thai legislation, namely the Thai Milk Code, RB cannot be sure to be operating in accordance with WHA Resolution 69.9, according to which follow-up and growing-up products until three years of age should also be covered. Accordingly, some of the human rights and child rights issues that this resolution aims to address remain a risk and potential impact area for RB to act on.

### **The Thai national context is conducive to non-compliances nationwide by the entire BMS industry**

Non-compliances with the Thai Milk Code and the WHO Code and WHA resolutions by BMS manufacturers are frequently found in Thailand due to a number of factors.

First, according to stakeholders, the monitoring of implementation of the Thai Milk Code is weak due to lack of capacity and resources in the Department of Health, which is tasked to monitor the implementation of the law. Particularly at the provincial level, enforcement of the law is weak. Also, one stakeholder mentioned that the relatively low penalties for failing to comply with the Thai Milk Code could hinder full adherence thereof, including by multinational companies. For example, any company that advertises infant formula which is not in compliance with section 24 of the Thai Milk Code can be fined 100,000 THB, (a little over US\$ 3,000), one year in prison or both, and 10,000 THB for each day of non-compliance. Other sections of the Thai Milk Code provide maximum penalties of 300,000 THB (US\$ 9,200) for non-compliances.

Another factor in the Thai context is the lack of public funding for research and professional development within the healthcare system, such as attending conferences and seminars. Therefore, according to interviews with stakeholders, the private sector, including BMS companies, are increasingly engaging with and funding universities in Thailand to co-organise events where they can interact with healthcare professionals (HCPs). While funding by the BMS industry could potentially help advance the healthcare system in contexts where the government lacks resources, through such interaction there is also a risk that some Thailand-based BMS manufacturers (indirectly) promote IFCN products.

A final factor is the lack of an active civil society that is vocal on this topic in Thailand, as is the case in Bangladesh and India<sup>116</sup>, where civil society organisations can hold the BMS manufacturers and the government accountable. For example, whereas Save the Children is very vocal on the issue internationally, the Thai branch is not working actively on the issue.

### **Inconsistencies between the Thai Milk Code and the WHO Code and WHA resolutions**

Another reason for non-compliance with the WHO Code and WHA resolutions stems from an understanding by BMS companies that compliance with the Thai Milk Code equals compliance with the WHO Code and subsequent WHA resolutions. While the Thai Milk Code is quite stringent in many areas and in these areas the BMS companies are in compliance with the WHO Code and subsequent resolutions, in some areas the Thai Milk Code is weaker. According to stakeholders interviewed, at the time of the drafting of the new Thai Milk Code, while no specific companies were named, it was alleged that some BMS manufacturers in Thailand made an effort through lobbying to keep the Thai Milk Code weak where possible.

The Thai Milk Code covers three classes of food: (1) Food for infants in the first 12 months, which means milk or other product used as food which contains appropriate and adequate nutrients for feeding infants according to the law on food; and milk or other product used as food with the wording indicating that it is usable for infants; (2) Food supplements for infants age six months to one year; (3) Food for young children age one to three years, which means milk or another product used as food with the wording indicating that it is usable for young children and only that is prescribed by the Minister on the advice of the Committee.

The Thai Milk Code says that advertising of food for children age 12–36 months is allowed only if there is no mention or reference to infants. Other articles of the Thai Milk Code apply to both infants and young children. The Thai Milk Code is consistent with or more stringent than the WHO Code and WHA resolutions in some areas, while a number of provisions in the law are weaker and provide a gap in local legislation.

RB's BMS Policy is stricter than the Thai Milk Code in a number of areas. The below table provides an overview of some examples where the Thai Milk Code is weaker than the WHO Code and WHA resolutions and where RB's BMS Policy is stricter than the Thai Milk Code.

**Table 11. Comparison between the Thai Milk Code and RB's BMS Policy**

| GAPS IN THE THAI MILK CODE VIS-À-VIS WHO CODE AND WHA RESOLUTIONS  | RB'S BMS POLICY – MORE STRINGENT PROVISIONS   |
|--|---|
| <p>The Thai Milk Code does not define the distributor as any person involved in activities related to marketing but defines it as an actor involved in the exchange of goods. However, the WHO Code addresses not only any person engaged in business, but also sale and marketing agents specifically, whether it is a person or corporation. This creates a gap when it comes to marketing personnel or any outsource marketing agent not directly involved in commercial exchange.</p>  | <p>Article 2 of RB's BMS Policy expressly applies also to authorised third parties acting under the direction of RB. This applies to distributors, sales/marketing agents and contractors.</p>  |
| <p>The Thai Milk Code does not provide a definition of marketing personnel, nor does it include any definitions directly pointing to the act of marketing.</p>   | <p>RB's BMS Policy also defines marketing and marketing personnel.</p>  |
| <p>According to the WHO Code, sales incentives for marketing personnel should not include the volume of sales infant formula when calculating bonuses, nor should quotas be set specifically for sales of these products. This article is not included in the Thai Milk Code.</p>  | <p>According to Article 8.1 of RB's BMS Policy, bonus or sales incentives for RB marketing personnel must not be based on specific volume targets and/or achieving predetermined quotas of Covered Products.</p>  |
| <p>While the WHO Code includes private healthcare centres in its scope, in the context of prohibition of marketing and advertising of infant formula to healthcare workers, the Thai Milk Code makes no mention of private clinics in its definition of health workers. This constitutes a gap as nowadays many persons, in particular Thai mid-income families, visit private clinics rather than public hospitals or health clinics. If not in scope this can lead to interaction between healthcare workers and BMS manufacturers promoting their products.</p> | <p>RB's BMS Policy does mention private healthcare entities. In this definition, healthcare entities are "any governmental, non-governmental or private institutions or organisations engaged in providing healthcare to pregnant women, mothers or infants. This includes facilities where health workers provide healthcare in private practice but does not include private homes or pharmacies or other established sales outlets".</p> |

**Table 11. Comparison between the Thai Milk Code and RB’s BMS Policy** continued

| GAPS IN THE THAI MILK CODE VIS-À-VIS WHO CODE AND WHA RESOLUTIONS   | RB’S BMS POLICY – MORE STRINGENT PROVISIONS  |
|---|--|
| <p>The Thai Milk Code refers to labelling as per the Thai Act on Food and Medicine<sup>117</sup>. The Thai Milk Code does not require the mention of health hazards as a result of incorrect preparation on IFCN labelling.</p>   | <p>Article 9.2 of RB’s BMS Policy says that labels of Covered Products should be clear, conspicuous, easily readable and understandable, and in an appropriate language, including (d): instructions for appropriate preparation and a warning against the health hazards of inappropriate preparation.</p>                                      |
| <p>While the Thai Milk Code prohibits manufacturers, importers and distributors from donating any materials or organising academic seminars in support of marketing or advertisements, it does not mention specifically the donations of “educational materials” to HCPs or the healthcare system. This is a gap in that companies could distribute materials as educational, although they contain marketing elements.</p>   | <p>Article 4.3 of RB’s BMS Policy specifically addresses informational/education materials and/or practice-related items and specifies that these should not display Covered Product brand names or logos. In addition, Article 6.8 does not allow donated materials/practice-related items to include Covered Product brand names or logos.</p> |
| <p>The Thai Milk Code prohibits the manufacturer, importer or distributor from giving or offering any gift, money or anything to persuade or give benefits to a healthcare professional. However, the Thai Milk Code does allow the giving of a “traditional” or “moral gift”<sup>118</sup> to healthcare professionals. This may result in a risk of different interpretations by BMS manufacturers as to what is considered a traditional gift and what could be seen as a gift or benefit to HCPs to influence them.</p> | <p>According to Article 7.3 of RB’s BMS Policy, RB allows for a small, inexpensive gift on an occasional basis to HCPs in recognition of significant cultural, national or religious events. In addition, RB has a dedicated Standard Operating Procedure regarding gifts to HCPs.</p>   |

The above table demonstrates that RB applies more stringent provisions than the Thai Milk Code in many areas and having in place such a stringent policy should be commended. However, RB Thailand’s compliance with national legislation or its own BMS Policy does not ensure full compliance with the WHO Code and WHA resolutions.

Furthermore, higher policy standards alone do not in and of themselves guarantee implementation. In other words, it is critical that the Policy is also enforced and monitored by RB, through continued internal and



external compliance programmes including BMS audits carried out by Bureau Veritas and other third-party auditors. RB has implementation procedures that include both internal and external monitoring. The effectiveness of these implementation and monitoring procedures has not been assessed by the HRIA team.

In addition, given that the Thai Milk Code is weaker than the WHO Code and WHA resolutions in a number of areas, there is an opportunity for RB, together with its Thai peers in the BMS industry, to influence the Thai government in raising its standards to be aligned with the WHO Code and WHA resolutions.

**Engagement with pregnant women and mothers**

While the WHO Code and subsequent resolutions prohibit direct or indirect contact between a BMS manufacturer’s marketing team and pregnant women and/or mothers of infants and young children up to three years of age, in Thailand such contact still takes place. RB’s BMS Policy restricts direct or indirect contact for the purpose of marketing of Covered Products, which is limited to products up to age >12 months. However, it was mentioned by the stakeholders the team met, that social media is extensively used by BMS manufacturers, including RB, to reach pregnant women and mothers, especially in the middle-income consumer segment.

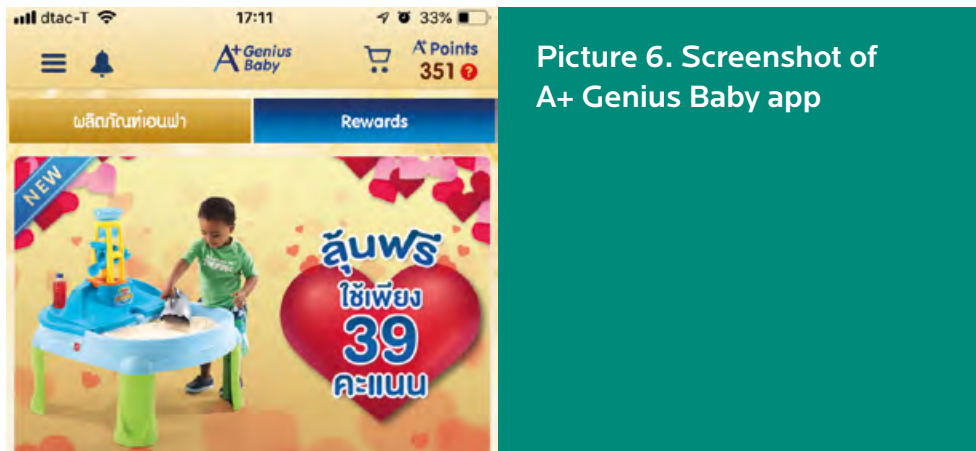


Picture 5. Gift option included in Enfa app

This is done, for example, through WhatsApp or Line<sup>119</sup> groups and/or Facebook groups. In Thailand RB has a specific app targeting Enfa consumers, as well as social media groups using, for example, Facebook, WhatsApp and Line in addition to its own Enfababy website (see picture 5 for screenshot of the 'A+ Genius Baby app').

RB Thailand acknowledges that it uses these channels to promote all of its Enfa brand products except for Stage 1 and 2 products, including to pregnant women, as this group is not covered by the Thai Milk Code and Article 5.5 of RB's BMS Policy, which restricts contact for the marketing of Covered Products. The app sells Stage 1 and 2 products but does not offer a discount on these products.

The A+ Genius Baby app suggests live chat and Facebook groups when consumers need more information on which products would best fit the baby. There is a risk that the BMS manufacturers or marketing agents use social media groups and apps to advertise the products to mothers or pregnant woman though it is prohibited in Thai law (Article 18 of the Thai Milk Code). The penalty of violation of Article 18 is a fine up to 300,000 THB (Article 38). According to international research on the use of social media for marketing of infant formula, although not Thailand specific, social media, such as Facebook and apps, is widely used by BMS manufacturers and marketers. Marketers use a range of social media strategies (including Twitter, Facebook and sponsored posts on parent blogs) to reach customers<sup>120</sup>. Other research has shown that Facebook pages and other mobile and web-based technologies can be used as an unregulated platform for BMS manufacturers to promote all categories of BMS, share nutrition and breastfeeding information, and encourage parents to engage in digital conversations<sup>121</sup>. Academic research has suggested that there is a need for enhanced monitoring and enforcement given the increased use of social media for marketing of BMS which is difficult to regulate<sup>122</sup>.



Picture 6. Screenshot of  
A+ Genius Baby app

The above shows that the use of social media for marketing and advertising of BMS is common and comes with challenges. This could be an opportunity for RB Thailand together with the Thai government, the industry association and other stakeholders to play a frontrunner role in raising awareness within the BMS industry in Thailand on the role of social media and educate stakeholders, from BMS manufacturers to retailers, on what is and is not permitted according to the WHO Code and WHA resolutions.

It was also mentioned by stakeholders interviewed for this assessment that, while no specific companies were named, some BMS companies in Thailand hand out free samples and gifts at hospitals to pregnant women, which is a way to reach them at an early stage and ‘attach’ this target audience to them from then onwards. In the A+ Genius Baby app several gifts are offered as a giveaway for Stage 3 products and the app includes significant discount options in violation of Article 18 (1), (3) and (4) of Thai Act (see picture example).

Another stakeholder mentioned that due to the marketing restrictions of infant formula, some BMS manufacturers in Thailand (though no specific companies were mentioned) aggressively market products aimed at pregnant women such as supplementary drinks, to a degree that they overconsume these products, which could potentially harm their unborn children.



### **Idealising breast milk substitutes**

The WHO Code makes clear that “informational and educational materials should not use any pictures or text which may idealise the use of BMS”. An example of this is when BMS brands associate their products with qualities you want in your child. In the case of RB and Enfa, there is a lot of emphasis on the positive impacts of the baby’s brain development through the use of Enfa products. For example, this screenshot included says: “Do you know 85% of brain development starts from the pregnancy until three years of age? Support the brain development of baby, leading to success, by DHA 100 mg per day” and it then features the cups of “A+” milk.

The name of the app is ‘Genius’ and the members club for consumers is called ‘Enfa smart’. According to the app, membership of the Enfa Smart Club includes “1) Manual to develop comprehensive skills of baby in the first three years of age, 2) Direct line with expert on child development with many channels, 3) SMS tricks – Comprehensive development in the first three years of age, and 4) Special benefits throughout the year for the Enfa Smart Club family”. There is a risk that consumers interpret this to imply that the Enfa product enhances brain development and makes children smarter and that therefore this is the best choice, including for infants.

### **Promotion of and advertising of infant formula to and interaction with healthcare professionals**

During stakeholder interviews, it was mentioned that, in spite of the fact that the WHO Code prohibits promotion of BMS in healthcare facilities, as well as the sponsorship of meetings of health professionals or scientific meetings by BMS manufacturers, in Thailand, a number of BMS manufacturers (no specific companies were named), continue to interact with healthcare workers, through the organisation of events, seminars and conferences where HCPs are invited. RB's BMS Policy has a dedicated article regarding events for HCPs, so this risk is considered minimal for RB's activities in Thailand. It was also mentioned by stakeholders the team spoke with that gifts and promotions are also often provided by some BMS manufacturers to healthcare workers, in particular to medical paediatricians. Advertising by BMS manufacturers in hospitals and healthcare centres was also considered very common practice in Thailand. A stakeholder interviewed mentioned that they had observed that Enfa-branded products were found in children's hospitals, in the form of brand sponsored height scales and the like. However, the assessment team did not observe these products themselves as no hospitals or healthcare facilities were visited.

Lastly, the Access to Nutrition Index report of 2018 on Thailand mentioned nine non-compliances by RB/MJN on information and educational materials of Enfa products, of which five non-compliances related to Stage 2 and 3 products for children age 12–36 months. RB responded to these allegations by saying that the five non-compliances related to products for age 12–36 months and therefore were in accordance with the Thai Milk Code and that no photographic evidence was provided of these non-compliances.

### **Cross-promotion of BMS**

The WHO defines cross-promotion as a consumer sales promotion technique in which the manufacturer attempts to sell the consumer new or other products related to a product the consumer already uses or which the marketer has available. WHO has pointed out that “this can include packaging, branding and labelling of a product to closely resemble that of another (brand extension)”<sup>123</sup>.

When it comes to infant formula, cross-promotion is common when similar products for older children (i.e. follow-up and growing-up milk) are promoted through marketing techniques such as promotional value packaging, discounts, toys or vouchers in the packaging or that offer the possibility to win a prize. When a brand promotes one of its products, consumers are inclined and persuaded to buy its other products, including infant formula for infants till 12 months, that often look similar in terms of packaging and labelling, often referred to as brand extension by the WHO.

When it comes to BMS, this is an often-applied strategy and companies have been found to use cross-promotion in Thailand. According to stakeholders RB has been found to use cross-promotion by marketing its product Enfagrow, a product for children >12 months, through price promotions and gifts, thereby potentially enticing the same consumers to buy its infant formula for children up to age 12 months. Another example that interviewees shared is cross-promotion through television advertisements.

While it was mentioned by stakeholders that in general BMS manufacturers in Thailand do not advertise infant formula for children up to 12 months in television advertisements, some BMS manufacturers do advertise growing-up milks. These only in the last few seconds of the advertisement make clear that the product is a formula for a 12+ month child rather than a BMS for age <12 months. Through such ads, it is challenging for consumers to differentiate whether the product that is being advertised is for an infant or for older children and could therefore be at risk of misinforming customers.

### **Product labelling**

According to the WHO Code, “product information must be factual and scientific; no pictures of infants, or other pictures or text idealising the use of infant formula should be depicted, and labels must state the superiority of breastfeeding and warn about health hazards; labels must be written in the local language”.

However, the Thai Milk Code is weaker, as the element of labelling in the law falls under the Thai Food and Drug Administration (FDA) and not the Department of Health. Therefore, in Thailand, BMS manufacturers can make health claims on their labels and still operate

within the law. For example, according to the Access to Nutrition report of 2018, interviews with external stakeholders and the assessment team's own observations, it was found that RB's product labels state that its products include nutrients that are also found in breast milk, or that 'growing-up' milk is good for the development of the brain including by marketing products using the word 'genius' or 'smart'. This comes with the risk of non-alignment with the WHO Code regarding not idealising the use of infant formula or making consumers doubt the superiority of breastfeeding.



**Picture 8. Enfa products on sale. Photo DIHR assessment team**

WHA Resolution 69.9 says that BMS manufacturers need to clearly differentiate between infant formula and other products in their packaging and labelling; they should have different designs<sup>124</sup>. What has generally been observed in Thailand is that among BMS manufacturers minor changes are made between their products and labels, so that there is legal compliance, but in practice the differences between Stage 2 and Stage 3 products are so minimal that this is not clear for consumers. This contravenes WHA Resolution 69.9 which recommends that "the labels and designs on products other than breast milk substitutes need to be distinct from those used on breast milk substitutes to avoid cross-promotion", for example, through different colour schemes. Stakeholders interviewed highlighted this as a main area where companies that have committed to the WHO Code could easily demonstrate their awareness and sensitivity towards the vulnerabilities of infants by implementing very visibly different labelling and packaging of infant-oriented products.

The photo taken by the assessment team demonstrates that RB's Enfalac Stage 2 (for infants under 12 months) and Enfalac Stage 3 (for young children above 12 months) have packaging with different colours and clearly mark which stages they target. However, the colour of the boxes of Stage 2 and 3 are both gold, which could lead to misinterpretation by consumers, despite the different coloured banners (which are orange and pink respectively).

### Promotions through sales and distribution of BMS

To prevent negative impacts associated with actions of distributors or retailers, it is the role of the BMS manufacturer to use leverage including by raising awareness with its distributors or retail outlets around compliance with the WHO Code and ensure it does not market or advertise the products within the scope of the WHO Code.

RB's BMS products are sold throughout Thailand at large outlets such as Tesco Lotus, BigC and 7-Eleven, and in smaller retail shops in cities and provincial areas. RB Thailand organises workshops where it invites its general trade partners (retailers) to train them on the RB BMS Policy, the Thai Milk Code and the Industry Code of Practice, which is commendable. However, the Thai Milk Code and RB's BMS Policy only cover products up to 12 months, so there is a risk that these retailers market and advertise products up to three years of age, which is not in accordance with the WHA resolutions.



Picture 9. Retail shelf decor example from Tesco Lotus Thailand demonstrating promotion



When it comes to small retail outlets, it is difficult or almost impossible to monitor WHO Code compliance, including for RB. For example, sometimes there is no direct link or interaction between a sales outlet and the BMS brand. The picture of the Enfa shelf decor in a Tesco Lotus shop, for example, offers a “free learning beach set when buying three boxes of Enfa A+ Stage and opportunities to win a gold necklace”. RB’s BMS products are also sold online via e-commerce, through platforms like Lazada, Shopee, etc. RB provides training to these platforms and they are well aware of what products they can or cannot promote. RB applies the Thai Milk Code and its own BMS Policy, which both allow for marketing and advertising of products age 12 months and above. Therefore, the e-commerce platforms that sell RB’s products apply the same frameworks. This practice is not considered in accordance with WHA resolution 69.9. One specific challenge posed is the fact that any person can sell, market and promote products on Lazada, which is challenging to control. However, it should be commended that RB Thailand is undertaking positive efforts to address this challenge. An RB Thailand team tracks e-markets on a daily basis and when a non-compliance is found, they alert Lazada and they, in turn, control their trade partners.

As one of the main challenges of improper marketing and advertising of BMS in Thailand relates to the practices of retailers, RB Thailand, together with its peers, could play an important role in improving their practices. This could be done by raising awareness and training retailers on responsible BMS marketing practices.



According to the Thai Milk Code, companies can sell infant formula online, but they cannot use promotions or give gifts. However, when it comes to digital sales, marketing and advertising by e-commerce platforms, it is very difficult to monitor and control compliance, as the

government is not able to censor digital marketing practices. In the Access to Nutrition Index 2018 Thailand report, it was found that RB/MJN had 935 non-compliances when it came to promotion of its BMS, both in physical retail shops and through online sales. Of these 935 non-compliances, 568 related to products for age 0–12 months (Covered Products). RB responded to this report saying that it was not correct to classify these non-compliances as RB-MJN specific, as they were related to third parties and independent retailers. In the report, no distinction was made between RB and the other companies assessed in terms of the type of non-compliances. However, the report did mention that most non-compliances by the BMS companies subject to the report related to price promotions and that free gifts, such as a toy, bag, bib, diapers or calendar, were also identified<sup>125</sup>. It was said that the manufacturing companies like RB most likely did not initiate these promotions, but the retailers did themselves. However, given the risks associated with RB's retailers and resellers of BMS products not complying with the WHO Code, RB, together with its peers, should use its leverage to prevent impacts. Enforcing RB's own BMS Policy therefore also involves using its leverage with retailers to ensure their observance of RB's BMS policy.

Relatedly, the assessment team was told by workers, during a visit to distribution centre where RB's BMS products are co-packed, that they often include a promotion in the packaging; this could, for example, be a gift card in an Enfagrow pack, or a value-pack of three boxes of Enfagrow that are reduced in price. While Enfagrow is not a Covered Product according to RB's BMS Policy, according to WHA Resolution 69.9, all products up to 36 months are covered and therefore gift cards or price promotions should not be permitted for this age category.

### **Health risks associated with consumption of infant formula and child nutrition**

While not only specific to the Thai context, it was raised by one Thai stakeholder and demonstrated through desktop research that follow-up formulas contain unhealthy ingredients such as high levels of sugar.

Research has concluded that follow-up and growing-up milks provide unnecessary added sugars to the diets of young children, and in most cases, consuming 400 ml per day would mean that these milks provide almost all, or more than, the total free sugars recommended in the diet per day. The majority of these milks are also flavoured and may encourage young children to prefer sweet tastes going forward and challenge their acceptance of unprocessed and minimally processed nutritious local foods recommended<sup>126</sup>.

As another potential health impact, stakeholders have also mentioned the risk of health impacts to infants and children due to waterborne diseases after consumption of BMS with contaminated water in Thailand, not only in rural areas, but also in Bangkok metropolitan region. RB's product labels of all Thai products do include clear instructions in terms of safe formula preparation and there is general awareness regarding the risks of water contamination.

While no evidence-based research was conducted by the assessment team to assess the potential impacts associated with use of contaminated water for infant formula, it should be noted that a risk exists that children's health may be affected if BMS are used with such contaminated water. Therefore, proper education for users of infant formula and child nutrition, as well as clear instructions on labels, are required to prevent such adverse health impacts from occurring.

#### **4.2 THE MANUFACTURING OF ENFA IN THAILAND**

The next stage in the Enfa value chain is the manufacturing of the product. RB has one manufacturing site for its IFCN products in Thailand, a factory strategically located not too far from Bangkok and close to seaports, airports and road connections, in order to have easy access to the imported raw materials and to distribute the finished IFCN end products across Thailand and export to neighbouring countries.

The core activities at the factory visited by the assessment team include manufacturing, R&D and sourcing of IFCN milk formula. In total, around 250 permanent workers and 200 subcontracted workers worked at the factory at the time of the assessment. The factory operates 24 hours, five days a week and produces three main brands, Enfa, Sustagen and Gentlecare.

The products are distributed across Thailand (40% of total production) and 60% is exported to countries including India, Indonesia, Malaysia, Maldives, Pakistan, Singapore, Sri Lanka and Vietnam. The main Enfa products include Enfamama, Enfamil A+, Enfagrow A+ and various Enfalac products. The factory, which used to be Mead Johnson’s manufacturing facility before acquisition by RB, is located in a modern industrial estate with a number of other multinational companies.

The assessment team visited RB’s factory where Enfa products are manufactured, packed and dispatched. A kick-off meeting with seven members of the senior management team was held and the assessment team had a tour of the facilities to better understand the operations in the factory. The team also had the opportunity to speak to the environmental manager of the industrial estate where the factory is located. Lastly, the team had a meeting with one of the labour providers that provides the factory with workers who are not directly employed by RB. The rest of the day at the factory was dedicated to interviews with workers, including a group of RB’s own factory production workers, third-party packaging and end line workers, a group of non-Thai and female workers representing different workers categories including canteen and cleaning staff, a security staff member and the factory nurse. In total 19 workers were interviewed.

#### 4.2.1 KEY OBSERVATIONS RELATED TO RB’S ENFA FACTORY IN THE THAI LABOUR CONTEXT

**Table 12. Enfa overview – own operations observations**

| SECTION OVERVIEW                          |  |
|---|--|
| <b>Main rights at risk</b>                | Right to a living wage; right to rest and leisure; right to non-discrimination; right to equal pay for equal work; right to adequate housing; right to water; right to safe and healthy working conditions   |
| <b>Potentially affected rightsholders</b> | Factory workers including female workers and workers with migrant background, unskilled workers, community members living in the vicinity of the factory   |
| <b>Main issues identified</b>             | Systematic overtime; living wage issues; unequal conditions for direct workers and contracted workers; heavy lifting, repetitive movement and other health and safety concerns; potential cumulative impacts on communities, including impacts on access to water, ineffective grievance mechanism options |

The main areas in which the assessment team identified human rights risks and impacts are outlined below.

### **Wages**

In RB's Enfa factory no workers interviewed reported earning below the minimum wage, and many categories of workers, including the canteen and cleaning staff, earned above the minimum wage. As highlighted in section 3.3 above, the legal minimum wage is, however, not necessarily a living wage, which was confirmed by workers.

Recently the factory reduced the number of working days per week from six to five days a week due to decreased demand of Enfa and thus lower production. Due to this decrease all third-party workers now earn less than in the past. The labour agency has made an effort to keep this reduction at a minimum by continuing to pay its workers at 75% of their daily wage for the sixth day that they used to work. However, workers expressed that due to the reduction they no longer earn a living wage. They used to earn around 8,000-9,000 THB per 15 days, but now their wage is approximately 6,000 THB, of which a large amount goes towards covering accommodation costs, which are high in the Bangkok metropolitan region.

### **Working hours**

In factories that operate seven days a week and 24 hours a day, the risk of excessive working hours is large. While laws exist to regulate working hours, including at the factory level, working hours are generally long in Thailand, and in Bangkok in particular. Long working hours are, however, often welcomed by workers, as overtime becomes a way to ensure a living wage when base salaries are too low.

The Enfa factory, at the time of assessment was only operating five days a week. Nevertheless, 12-hour shifts and systematic use of overtime was common. For example, third-party packing workers at the factory often have to make 12-hour days, with 1.5-hour rest time (1-hour lunch and 0.5 hour before starting overtime). According to factory management, all workers can voluntarily sign up to overtime before each shift should they wish to work above eight working hours in a day. Similarly, workers can notify their supervisors ahead of their shift if they do not want to perform overtime and in urgent cases workers can leave anytime. In contrast, interviewed third-party workers referred to

overtime as “obligatory”, as a “condition for the job” and when asked about a normal shift duration reported 7am–7pm, indicating systematic use of overtime. Interviewed workers among RB’s own workers acknowledged that overtime was something they signed up to voluntarily by entering a contract, but that “if you are an overtime worker, you have to do it”.

Overtime rates vary between one to three times the normal hourly wage rate; as described in section 3.3, the Thai LPA includes regulation regarding working hours and overtime<sup>127</sup>. At the RB factory, all workers categories who reported working overtime also reported being compensated for overtime in accordance with law.

### **Occupational Health and Safety**

Excessive working hours, as described in section 3.3, can be considered an OHS risk. When factory workers work too long, or too many days consecutively without rest days, and use machinery or equipment, this increases the likelihood of OHS risks and injuries. In addition, factories are a place where different types of health impacts could occur if the right measures are not taken, such as the use of protective equipment, training, and a channel to report any risks.

As described in section 3.3, Thailand has regulation in place that sets out labour protection standards around OHS for workers in Thailand. However, it is estimated that less than a quarter of factories comply with government OSH standards<sup>128</sup>. At RB’s factory, workers expressed their satisfaction with the working conditions, in terms of workload and temperature control, compared to other factories they had worked. They also said that generally speaking there was a strong health and safety culture, and that besides slips, trips and cuts, there had been no major accidents with lost time implications recently.

However, a number of concerns were observed and mentioned in interviews with both RB and third-party workers, which indicates that no systematic assessment of OHS risks and impacts has been done at the factory, focusing on the potential long-term health effects of night work, repetitive movements and lifting heavy loads. Workers mentioned that they had requested back support equipment to ease the lifting of 25 kg heavy loads, but this request was dismissed by management who argued that such equipment was not recommended according

to research. They also expressed that there was no rotational system to prevent repetitive stress injury. Furthermore, while the factory has a trained nurse onsite, in accordance with the local law she is not present during the evenings, night shifts or weekends, and therefore no adequate, immediate medical care can be provided to workers if necessary. To give an example, one third-party worker mentioned that he sustained a metal cut during a night shift, and took care of the cut himself.

### **Freedom of association**

As described in 3.3, according to Thai law, workers have a right to associate and collectively bargain, but in practice there are restrictions and many workers in Thailand are not unionised. The Enfa factory does not have a union, but some other factories in the industrial estate do have unions as do other RB factories. While there is no formal policy against unionisation from the side of the factory management, management representatives expressed concerns to the assessment team about factory workers unionising, highlighting how social unrest because of unionisation has happened at other factories.

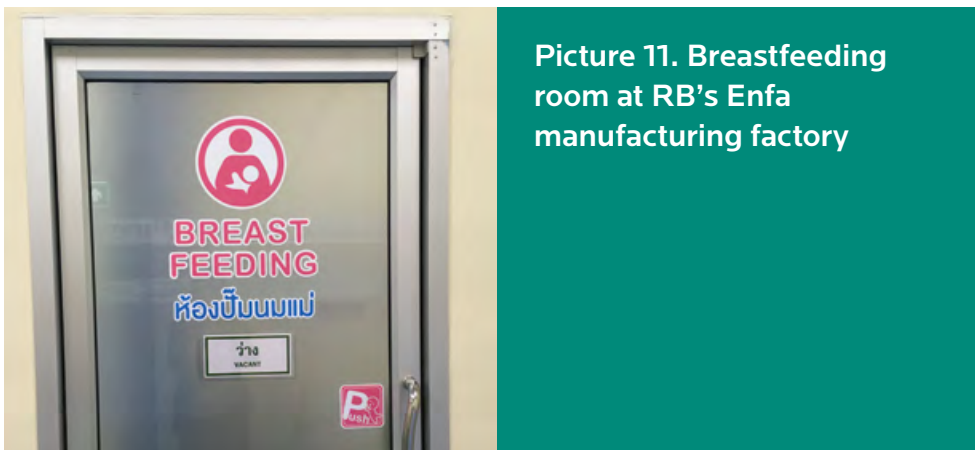
While it is not the role of a factory management to organise a union, it is absolutely key that it does respect the workers' rights to unionise and it creates an enabling environment for workers to do so. Especially in a context where there have been reports of workers being dismissed for engaging in union activities, employers replacing striking workers with subcontractors, threats to union leaders and inciting violence to get a court decision to prohibit planned protests and strikes. Human rights organisations have also claimed that employers have tried to cover up anti-union activities on several occasions<sup>129</sup>.

As described, RB's other factory, the Durex manufacturing facility, does have a union and a number of differences in workers' conditions were significant between the two factories. These differences could demonstrate that the presence of a union can lead to better dialogue between workers and management and often better implementation of labour rights.

### Vulnerable groups in the workplace

As described above in section 3.3, migrant workers are one of the groups in Thai workplaces most exposed to risks of labour rights abuses. They often need to pay recruitment fees or fees for renewal of their work permits, which should be paid by the employer. It was found that at RB's factory, the labour agency that employs migrant workers from Myanmar and Cambodia paid for their work permit and renewals thereof. If the workers could not read their contract in Thai, the content would be read out, or read by a colleague, making sure the worker understood the content before signing.

However, given that some of the non-Thai workers working in the factory cannot read Thai language, it may be a concern that these workers cannot read safety and security signs, nor read any of the RB factory policies and procedures including information about its Speak Up hotline if they would like to lodge a complaint.



Women in the workplace are another group at risk, with exposure to discrimination and unequal treatment. The Thai Labour Protection Act sets out guarantees for equal treatment and equal pay for male and female workers unless this treatment is not possible due to the characteristics or nature of the work. It also prohibits sexual abuse or harassment against workers, includes special protections for pregnant workers or subcontracted workers, and prohibits child labour with special protections for young workers. While certain protection exists, a significant gender pay gap exists in Thailand's labour markets, and women earn less than men in all sectors. At RB's Enfa factory there



is a breastfeeding room, which, given that RB is a BMS company, and should promote and enable its employees to exclusively breastfeed until infants are age six months, is a good thing. It allows women to continue to work and combine this with family life. Interviews demonstrated that some female workers have used the room to nurse their infants or express milk during breaks.

A last group at risk are workers using accommodation provided by their employers. The labour agency that provides third-party workers to RB's factory also provides accommodation to workers if they wish to make use of these facilities. The interviewed workers mentioned that they did not make use of the accommodation facilities as these were not considered convenient, therefore none of the interviewees could share information about the workers' accommodation. At the time of the assessment this accommodation had not been inspected or audited by RB to assess the living conditions, which might therefore be below standards.

### **Environmental and community impacts**

Production factories where waste water and waste are produced are known to have environmental impacts. In addition, in industrial zones, where multiple factories operate, there is a risk that cumulative environmental impacts can materialise when more than one factory produces more waste than permitted, or pollutes water or creates excessive noise. The assessment team did not conduct a technical assessment of the environmental impacts of RB's factory operations, nor of the industrial zone as such. The industrial estate in question is generally well regarded in the area and in the media with regard to the sustainability agenda due to the proactive efforts by the owner of the industrial zone. However, through an interview with the industrial zone environmental manager and a review of media reports, it was pointed out that while the industrial estate has pollution and environmental monitoring systems in place, in the past there have been complaints, including in relation to access to water; community members living nearby have raised concerns that the industrial estate is a flood risk area<sup>130</sup>. They have also complained about water contamination, the blocking of a public canal due to the construction of a golf course at the industrial estate, that could lead to flooding<sup>131</sup> and noise pollution caused by trucks passing by. While the assessment team did not gather any hard evidence, there is a risk that these issues could potentially be attributed to the industrial estate and therefore to RB's factory<sup>132</sup>.

### 4.3 RB'S SUPPLY CHAIN: SELECTED SUPPLIERS – PACKAGING, EMBELLISHMENT AND DISTRIBUTION

**Table 13. Enfa overview – midstream supplier observations**

| SECTION OVERVIEW                          |  |
|---|--|
| <b>Main rights at risk</b>                | Right to a living wage; right to non-discrimination; right to safe and healthy working conditions; right to water and sanitation; right to work; right to form and join trade unions; right not to be subjected to forced labour; right to information; rights of minorities |
| <b>Potentially affected rightsholders</b> | Factory workers, including female workers, third-party workers, unskilled and workers with migrant background, and their families  |
| <b>Main issues identified</b>             | Vulnerable conditions for migrant and female workers; health and safety concerns; insufficient availability of water and sanitation; freedom of association restrictions   |

Potential human rights issues related to the sourcing and production of the main ingredients of RB's Enfa products that takes place outside Thailand were excluded from the scope of this assessment. This includes risks associated with the sourcing of fresh milk, the production of milk base and skimmed milk powder and other main ingredients such as sugar.

Whereas the assessment team did not visit any of the raw material suppliers delivering milk base, powder or any other ingredients for the products, it did visit a packaging supplier that delivers labels, cardboard packages etc. and serves both Durex and Enfa brands. This packaging supplier has many international clients and at the time of the assessment had around 1,300 workers, of whom all except the security personnel were the company's own permanent workers.

The team also visited one of the main fourth-party logistics providers (out of three), where RB's products are embellished and distributed. Embellishment covers any activity that adds to the previously released consumer pack. This might include, but is not limited to: the addition of a sales flash or promotional items, banding with another product, assembly into a display unit, etc. In the case of RB Thailand, this included the repackaging of Enfa products, relabelling, or adding a promotion or gift card to the packaging.

Given that both sites are operated by RB Thailand's suppliers, visiting these sites and comparing them allowed the assessment team to better understand how RB's Supplier Code does or does not trickle down to its suppliers and business partners and how, in turn, they apply the principles set out in RB's Supplier Code to their own subcontractors and third-party workers. RB's Supplier Code of Conduct applies to all first-tier suppliers. However, RB has been more proactive in rolling it out for certain supplier groups and is, for example, only this year moving to raw material and packaging suppliers.

Both site visits included a kick-off meeting with the management team, a site tour and a number of short group or individual interviews with different categories of workers.

#### **4.3.1 KEY OBSERVATIONS REGARDING PACKAGING SUPPLIER AND DISTRIBUTION CENTRE**

The packaging factory, run by a Thai family-run conglomerate, was a state-of-the-art, well-maintained facility with well-developed management systems. Factory management demonstrated good practice in a number of areas including a written human rights policy – something not very common among Thai businesses – high safety standards, a high retention rate and implementation of progressive changes, such as changing its shift turns for the reduction of the work week to 60 hours to align with international labour standards, without driving down wages for workers. While the factory did not have a union, it did have a well-functioning workers welfare committee where various requests were made, i.e. regarding OHS issues, and these have been met by management. With regard to OHS impacts, some improvement areas were found, such as the lack of gloves for those using cutting machines, glue, sharp knives and tools, lack of ergonomic chairs for those working in the same position all day and the potential impacts of being exposed to a strong smell of ink.

The main findings at the distribution facility also related to OHS impacts and access to water and sanitation, which is a fundamental human right. Most concerning, workers expressed that in their work station they did not have access to sufficient drinking water. According to the ILO, “employers have the duty to provide their workers with adequate amounts of safe drinking water that is easily accessible, as dehydration can quickly reduce physical and mental ability, productivity and can

increase the risk for accidents at the workplace"<sup>133</sup>. Workers also expressed that the number of toilets were insufficient, were not separated for male and female workers, and were of substandard quality and unhygienic. According to the same ILO resource, "employers should provide a sufficient number of toilet facilities based on the workplace and the number of workers, as making workers wait for the toilet may lead to frustration, health problems and reduced productivity. Toilets should also be gender separated and clearly marked, and cleanliness should be maintained in the sanitary facilities"<sup>134</sup>.

Given the above findings, it is recommended that both suppliers carry out an in-depth OHS and WASH risk assessment and address the issues found, which are further elaborated in the separate factory feedback sheets. Further, it is recommended that RB Thailand includes these suppliers in its next internal human rights and OHS audit programmes.

Another observation was that one of the third-party contractors did not have the same safety standards as the factory's own workers, i.e. waste collectors were working onsite in open sandals. The latter case demonstrates that there is a risk that, in spite of the fact that RB Thailand provides its supplier with a Supplier Code and the company also has its own Supplier Code and audit programme for its suppliers, certain issues are still missed, which could lead to potential health and safety hazards. Such examples reinforce the general critique of compliance-based responsible supply chain management programmes resting on e.g. self-assessment questionnaires and audits.

A final important risk area found related to certain groups at risk in the distribution facility, including migrant workers, who given their status, lack of Thai language skills, etc. are often in a vulnerable position, especially when they do not have a written contract. Other at-risk groups includes female contracted workers who couldn't read and/or write, therefore were unable to understand their contracts and safety signage onsite. These examples of potential risks of labour rights abuses show that improvements are required in RB Thailand's responsible supply chain programme vis-à-vis its high-risk suppliers. The systematic identification of high-risk suppliers, in particular those that have subcontractors that employ groups at risk, along with regular spot

checks and ongoing conversations between RB Thailand and its suppliers about potential risks and impacts and how these can be addressed, could help in mitigating such risks.

#### **4.4 UPSTREAM ASPECTS: THE IMPORT OF MILK BASE AND MILK POWDER FOR MANUFACTURING OF ENFA PRODUCTS**

No milk or milk products are sourced domestically within Thailand for the production of Enfa products. In terms of dairy-based ingredients, which is the focus of this section, RB primarily imports milk base (containing whey protein concentrate 80, lactose, casein, high protein skim milk powder and, at times, some specialities depending on the formulations). This product is imported from RB's factory in Singapore. RB sources milk from New Zealand, Australia, the Netherlands, Ireland and a very small percentage from the USA. In addition, RB imports skimmed milk powder for the production of liquid milk and semi-skimmed milk powder for the production of Enfagrow Stage 3 and 4 products.

Several NGOs have highlighted that importing milk from Europe or other developed economies to countries such as Bangladesh<sup>135</sup> and African nations such as Senegal can have a negative effect on the development of the national dairy sector and small-scale dairy farmers in these countries. Some companies have also recognised these issues. For instance, in an article about a Danish dairy company's entry into Senegal, the company stated that there may be possible negative impacts of mass imports on the local dairy markets, with consumers switching to powdered milk exclusively and dairy farmers being unable to sell their products<sup>136</sup>.

Negative impacts on the development of a national dairy sector can lead to associated human rights impacts, in particular the loss of livelihoods for smallholder dairy farmers and associated impacts on the right to an adequate standard of living. Given RB's business model of importing the milk ingredients used for the Enfa product family, a short analysis based on desktop research on this potential impact area in the Thai context is included below.

#### 4.4.1 THE THAI DAIRY SECTOR AND POTENTIAL IMPACTS OF IMPORT OF MILK PRODUCTS

**Table 14. Enfa overview – upstream observations**

| SECTION OVERVIEW                   |  |
|------------------------------------|--|
| Main rights at risk                | Right to an adequate standard of living; right to participation      |
| Potentially affected rightsholders | Smallholder dairy farmers and smallholder dairy cooperatives         |
| Main issues identified             | Potential risks to the livelihoods of Thai smallholder dairy farmers |

Thailand has not traditionally been a major dairy-producing country. The industry developed in the 1960s, ignited by a collaboration between the Danish and Thai royal families on dairy development. In the 1980s, Thailand imported 50,000 dairy cows from Australia and New Zealand. Milk and dairy product consumption and production are in other words a recent phenomenon in Thailand and per capita consumption levels remain low. Due to the lack of a milk drinking and producing tradition until the beginning of the 1980s, most of the milk consumed in Thailand was imported.

As of 2015, Thailand had a raw milk production capacity of 2,800 tonnes a day or a little over 1 million tonnes a year, of which 40% is ringfenced for the royal school milk programme. The remaining 60% goes to the commercial dairy sector. Over the past years, the demand for dairy products has increased and thereby also the production. However, the demand still exceeds the production and therefore Thailand is dependent on import of milk and milk products.

Thailand has stringent import regulations for dairy products with quota and trade tariffs to protect the Thai dairy sector. To protect domestic dairy farmers, partly by controlling the import of dairy ingredients, the Committee on Milk and Milk Products has been established. For example, the annually allowed amount of imported skimmed milk is determined by the domestic production volume of fresh cow's milk each year. This is to ensure that domestic cow milk is fully used and skimmed milk is imported just to fulfil the rest of domestic demand.

The allowed import amount is then cascaded down into ‘quota’ for each importer. The import of skimmed milk within the granted quota is subject to 5% import tax, while importers who want to import skimmed milk beyond this quota are subject to 200% import tax if the import is to supply the Thai market. Critics argue that the incentive for manufacturers to import is higher than to buy locally produced milk, including due to the low import tax rate. Thailand imports approximately 50,000 tonnes of powder milk annually. In 2019, Thailand imported 61,305 tonnes of skimmed dried milk<sup>137</sup>. RB’s quota under the World Trade Organization (WTO) agreement was 415 metric tonnes in 2019<sup>138</sup>.

However, under Thailand’s commitment as a member of the WTO, it had to loosen the strict import regulations and ease quotas and barriers on milk imports by 2003. Thailand had to allow free trade in dairy products and reduce its import tariffs from 5% to 1% on select products such as powdered infant milk. The country also had to withdraw the local content requirement, which was otherwise introduced in 1983 to promote dairy farming. The quota restriction on whole milk powder imports was abandoned while the quota on skim milk powder remained. In addition, under the bilateral Thailand Australia Free Trade Agreement (TAFTA), which was officially signed in July 2004 and entered into force in January 2005, dairy tariffs on powdered milk and yoghurt imported from Australia were removed<sup>139</sup>.

Critics have argued that this liberalisation of dairy imports leads to a strong increase in milk powder imports and decrease in purchases of locally produced milk to the detriment of local dairy farming. According to a study by Rabobank in 2004, trade agreements between Thailand and New Zealand would have a negative effect on the Thai dairy market. Thai dairy farmers would lose price competitiveness because the pledged price of Thai raw milk is higher than the price of imported dairy ingredients. Furthermore, the same study suggests that milk processors prefer to use imported dairy ingredients because of higher quality and lower prices<sup>140</sup>.

Against this backdrop one of the main challenges for the Thai dairy sector is that large milk processors, including companies using imported milk products as the main ingredient for their products,

such as RB in Thailand, have an incentive to buy cheaper imported dairy products rather than the relatively expensive local, Thai milk. This prospect for the Thai dairy industry may be aggravated by the entry of more and more multinational dairy companies into the Thai market<sup>141</sup>.

A number of foreign dairy multinationals from the Netherlands, Japan and Singapore are operating in Thailand and more companies are interested to enter as the Thai dairy market has growth potential. It is argued that the entry of foreign dairy companies may not benefit the local market, as these companies mostly repackage imported milk, which has been the case in West African countries, with associated negative impacts on the dairy sectors<sup>142</sup>.

The development in Thailand has shown some examples in support of the issues raised above. For example, between 2005 and 2007, the dairy cow population in Thailand decreased from 310,000 to 297,000. The decline of cows and thereby milk production over this two-year period mostly affected smallholder farmers and small dairy cooperatives. This decline was attributed to the rising price of gasoline, which increased the costs of milk production. However, the lifting of import tariffs, as explained above, was also seen as a contributing factor<sup>143</sup>.

Looking ahead, with the future signing of new trade agreements between Thailand and Australia and New Zealand, planned for 2025, where tariffs and quotas on shipments from these countries, including imports on dairy products, will be abolished, it is expected that Thailand may further increase its imports of dairy products. According to a 2017 report by the Food and Agriculture Organization (FAO), the import of skimmed milk powder by Thailand is expected to increase<sup>144</sup>. This rise in imports of milk and milk products may further affect the Thai dairy market, especially if the dairy industry is not yet prepared to compete with imported dairy products, which are of better quality. Therefore, Thai dairy farmers will need support in the form of quality enhancement of local dairy products and efficiency, to be ready to compete with foreign counterparts<sup>145</sup>. Companies like RB have a role to play as a major importer, by reconsidering its import practices and exploring how it can source more locally as well as supporting the development of the local dairy sector through other means such as capacity building.



No in-depth studies have been carried out to assess the potential impacts of RB's import of dairy ingredients from Singapore and other developed countries such as New Zealand and Europe on the Thai dairy sector. However, given the above context and the fact that RB imports a significant percentage of its dairy ingredients from developed nations for production of its IFCN products in Thailand, such import practices pose a risk of negatively impacting Thai smallholder dairy farmers. These risks are, however, not unique to the Thai context, but possibly also exist in other important markets for RB, such as India and China, where Enfa is a larger player. For example, China is one of largest importers of milk products.

## CHAPTER 5

## CHAPTER 5

# RECOMMENDATIONS

As illustrated above, applying a human rights lens to both Durex and Enfa in the Thai context brings forward a full spectrum of potential and actual impacts that RB either causes, contributes to or is directly linked to. Some are within the direct control of RB and should be ceased and remediated where relevant. Others involve business partners or play out even further away from RB's direct control and require a more collaborative approach, including through the application of leverage and efforts to increase leverage where it is currently too limited to make a difference.

Below recommendations are included to address the main findings contained in this HRIA. Some recommendations set out to address, in the short term, specific granular findings observed through the field visit. Others address underlying root causes and systemic issues with an aim of ensuring durable long-term impacts. The recommendations are split by the two brands covered in this HRIA. However, some might be relevant across RB's operations in Thailand or even of relevance at the regional or global level. Some require action from the subsidiary only. Others will require collaboration between RB HQ and RB Thailand.

RB is encouraged to develop one or more action plans to address these recommendations, as well as consult relevant external parties when devising them. In addition, RB is encouraged to report transparently on progress made in acting on the findings as well as challenges faced.

### **5.1 RECOMMENDATIONS DUREX**

#### **5.1.1 ADDRESSING RISKS AND IMPACTS FAR UPSTREAM**

1. Addressing risks and impacts far upstream requires a collaborative approach as well as individual leadership from RB. To ensure action at the industry level, RB should identify relevant partnership options, sector collaborations, multi-stakeholder coalitions or similar that tackle the core issues at stake through a rights-based approach: livelihoods, migrant workers, land rights, health and

safety, etc. Such an identification process should include mapping existing initiatives and potential reliable partners. An example is the work of IOM and a leading sports brand on migrant labour issues in Vietnam's rubber sector<sup>146</sup>. Another example is the Farmer Income Lab established by Mars. Reaching out to other businesses working actively on challenges in agricultural supply chains (for example, Unilever, Mars, Nestlé and Danone) as well as international NGOs working on the agenda (for example, Oxfam International) might be a relevant way to gather input on what could constitute the most meaningful way for RB to engage with these issues at industry, country or global levels.

2. In addition, RB should explore and design different scenarios for increasing its role in ensuring farmers and tappers associated with its supply chain earn a living wage and can achieve decent living standards even when rubber prices are low. Such scenarios should be informed by a) the implementation of a living wage analysis with the support of an expert organisation for the rubber producing region where RB sources from and the establishment of a baseline of what farmers currently earn as well as b) a holistic analysis of the different levers that can address the impacts on farmers and their effectiveness. Once the scenarios are developed, RB should convene relevant internal decision-makers to decide on the way forward. Scenarios to consider include:
  - 2.1. Using leverage with RB's latex supplier to offer farmers daily prices as well as other incentives that enable a living wage, even if this requires RB to pay a corresponding price premium
  - 2.2. Identifying an alternative midstream supplier that is willing to guarantee responsible business conduct in its own premises as well as towards smallholder farmers
  - 2.3. Creating closer relationships with farming networks in order to support sustainable farming activity, increasing the income for farmers/farmworkers, for instance, by buying the product directly from farmers with a guaranteed daily price that equals a living wage. This might require investment in the form of developing RB's own primary processing factory in the region, which allows RB to control working and living conditions for workers at the factory or in the form of investing in storage and transport infrastructure to ensure safe collection and transport of the product from Surat Thani to Bangkok

- 2.4. Exploring partnerships with existing initiatives and associations of relevance. These include the Fair Rubber Association<sup>147</sup>, which is also present in Thailand, as well as Thailand-based rubber cooperatives. Prior to the formation of any partnerships, RB should carry out partner due diligence on potential risks associated with any partnership
    - 2.5. Engaging with the Rubber Authority of Thailand (RAOT) to explore potential partnerships around latex supply, based on responsible business conduct as well as to advocate for relevant policy and legal changes to address the situation in the longer term. Prior to the formation of any partnerships, RB should carry out partner due diligence on potential risks associated with such partnerships
  3. If/when implementing a more direct commercial relationship with rubber farmers, use price and other commercial tools as an incentive to ensure the sustainability of rubber farming and addressing of social issues and set social and environmental criteria for farmers wanting to do business with RB. For example, rubber from agroforestry farms could be bought at a higher price than rubber from monocrop farms, landless rubber farmers could get favourable terms in terms of quota guarantees. Demonstration of implementation of health and safety measures such as pesticide reduction, education and PPE could further be a contract requirement. If RB works through partners, use leverage with these partners for them to apply such human rights-based incentive structures
  4. Improve the relevance and value of existing partnerships in light of missed opportunities described in this report. All existing and new partnerships should focus on the key stakeholders and key issues identified in this assessment. Specifically, in relation to the two existing partnerships:
    - 4.1. PPAT: a) ensure focus on tappers, farmers and workers in RB's own supply base in the Surat Thani project, including by applying leverage to ensure that PPAT establishes a productive collaboration with both EF and the midstream supplier; b) explore the potential for widening the scope of PPAT interventions to collect health and safety information, including around the risks flagged in this report and address pressing health issues among rubber farmers and workers, aside from sexual and reproductive health (e.g. OHS related impacts as well as drug use)

- 4.2. EF Rurality programme: engage actively in the next iteration of programme objectives and methods to refine the programme's theory of change and ensure that key issues identified in this report inform the programme and that the programme proactively tackles underlying root causes and is part of addressing these. If there is a desire to increasingly use EF to tackle social and human rights challenges including at the supplier factory level, this will require capacity development.

### 5.1.2 ADDRESSING MIDSTREAM RISKS AND IMPACTS

5. If RB continues to work with the current midstream rubber supplier, it should embed social compliance requirements in the commercial negotiations and transactions with the supplier, even if this requires RB to pay a corresponding price premium. Identify barriers to implement this in practice, including whether the central handling of procurement in the UK is a barrier to effect change locally.
6. Make use of the 'factory feedback sheet' developed as part of this assessment to devise a short-term corrective action plan in collaboration with the supplier. Set clear targets and ensure follow-up. Make sure that no negative consequences materialise for those who participated in the assessment, not least the workers interviewed. Any form of retaliation or negative consequences will constitute a human rights abuse and should be subject to remediation. Key action areas include:
  - 6.1. Assessing OHS impacts through a proper OHS assessment that includes measuring levels of ammonia
  - 6.2. OHS training of staff as well as providing, requiring and enforcing use of PPE
  - 6.3. Aligning workers' accommodation with ILO standards on housing<sup>148</sup>
  - 6.4. Ensuring all workers have contracts in a language understood by them
  - 6.5. Assessing the suppliers' involvement in fees and other costs borne by migrant workers including the practice of wage deductions and ensuring implementation of the employer pays principle



### 5.1.3 ADDRESSING RISKS AND IMPACTS IN OWN OPERATIONS

7. Embed social performance targets in the incentive structure for factory management.
8. Make use of the 'factory feedback sheet' developed as part of this assessment to devise a short-term corrective action plan as a joint effort between RB HQ, RB Thailand and RB factory management. Set clear targets and ensure follow-up. Make sure that no negative consequences materialise for those who participated in the assessment, not least the workers interviewed. Any form of retaliation or negative consequences will constitute a human rights abuse and should be subject to remediation. Key action areas include:
  - 8.1. Reducing the use of systematic overtime in consultation with workers
  - 8.2. Conducting a living wage analysis for workers in Bangkok, with the support of an expert organisation, and implementing a living wage
  - 8.3. Identifying which current contracted-out job functions should be made permanent, as they are not temporary in nature, and implementing this transition
  - 8.4. Ensuring that remaining contracted workers are treated equally to RB's own workers, by embedding such requirements in the commercial negotiations with contractors and the ongoing monitoring of contractors
  - 8.5. Responding to workers' OHS symptoms and complaints
  - 8.6. Engaging with the union and workers in general to identify how RB can improve its existing grievance/Speak Up functions to make them effective
9. Increase collaboration and alignment between factories to allow for exchange of learnings and good practice, e.g. by introducing quarterly meetings to discuss social compliance challenges and improvements involving at a minimum HR and HSE managers. Specifically, sharing experiences in establishing constructive dialogue with workers including unions should be discussed across factories.

#### 5.1.4 MARKET-LEVEL RISKS AND IMPACTS

10. Address acceptability barriers associated with Durex both directly – e.g. by changing product packaging and marketing styles in consultation with relevant stakeholders – as well as indirectly through relevant collaborations with other actors working on the issue of removing cultural barriers associated with condom use in Thailand.
11. Analyse further potential accessibility issues associated with price points, e.g. by commissioning a study not only in Thailand but across relevant markets and consider how to ensure access to condoms for at risk populations, e.g. in partnership with the Ministry of Public Health and relevant NGOs.
12. Explore further the potential condom deficiency issue in Thailand and the desired role of a condom company in addressing them including by establishing a dialogue with the Ministry of Public Health.
13. Involve more RB functional areas in evaluating and adjusting the partnership with PPAT to ensure maximum relevance and value. For example, a next rendition of the partnership could address acceptability and accessibility issues associated with Durex.

## 5.2 RECOMMENDATIONS ENFA

### 5.2.1 ADDRESSING MARKET-LEVEL RISKS AND IMPACTS

#### **Recommendations for RB Thailand and its industry peers**

Collaboration at the industry level is required to change practices in the BMS industry in Thailand in order to align these with the WHO Code and WHA resolutions. Therefore, it is recommended that joint efforts are undertaken to address a number of challenges that apply to the entire industry:

14. In collaboration with industry peers, initiate a process to engage the Thai government in a dialogue on raising its national standards of marketing and advertising BMS to align with the WHO Code and WHA resolutions. This could be coordinated through the Thai infant formula manufacturers industry association, the Pediatric Nutrition Manufacturers Association (PNMA).
15. Support improvement of industry practices in Thailand by raising awareness within the BMS industry in Thailand on the role and use of social media. Educate relevant stakeholders, ranging from BMS manufacturers to retailers, on what is and is not permitted according to the WHO Code and WHA resolutions.



16. In collaboration with industry peers, conduct an independent assessment, conducted over a longer period of time and across Thailand, of a representative sample of physical retail shops and online e-commerce platforms looking at the marketing practices with regard to the IFCN product portfolio for <36 months, benchmarked against the WHO Code and WHA resolutions. Such an exercise should be carried out to assess what kind of non-compliances against the WHO Code exist, to identify trends and address the identified non-compliances.
17. Support the improvement of industry practices among retailers by raising awareness and training retailers and resellers (through regular face-to face or online training) on responsible BMS marketing practices, for example in collaboration with the Thai BMS industry association, or in collaboration with other Thai organisations knowledgeable on the topic.

**Recommendations for RB HQ and RB Thailand:**

18. In alignment with RB's Freedom to Succeed strategy, implement breastfeeding/wellness rooms, and where relevant day care facilities at all sites, especially in factories with high numbers of female workers, such as RB's Durex factory in Thailand. Encourage suppliers and business partners, in particular those related to the Enfa brand, to do the same through awareness raising, workshops and compliance requirements.
19. Through its BMS Policy and Procedures, RB has committed itself to support local governments in their implementation of the WHO Code and WHA resolutions. However, RB's policy commitment seems to be limited to the 1981 WHO Code text and therefore has not committed to the WHA resolutions that cover marketing and advertising practices related to all IFCN products for children until the age of 36 months, including BMS, follow-up formula and growing-up milks. As a medium-term recommendation, RB should revise its BMS Policy to be aligned with the WHO Code and subsequent WHA resolutions. Such a policy revision should take place through external stakeholder consultation.
20. Once a revised BMS Policy is adopted, conduct an independent assessment to assess RB Thailand's compliance with the company's revised BMS Policy and Procedures.

21. Consider assessing whether RB's internal compliance inspection system and the compliance team's capacity to monitor compliance with RB's BMS Policy in its higher-risk markets is adequate. Ensure that such an internal control mechanism also identifies conflicting internal policies and procedures such as incentive structures for marketing staff that work against implementation of the BMS Policy.

#### **Recommendations for RB Thailand<sup>149</sup>**

22. Engage with different organisations in Thailand working on the topic of child rights, and marketing of infant formula to better understand the risks and impacts of RB Thailand's marketing practices regarding Enfa. This could include civil society organisations and independent research institutes working on this topic<sup>150</sup>.
23. In the interim, before a new BMS Policy is adopted, it is recommended that RB Thailand takes a number actions on the short term:
  - 23.1. To increase accountability, report publicly on an annual basis on all interaction with HCPs through seminars, conferences etc.
  - 23.2. Cease any direct outreach through phone calls to (future) mothers that visit private clinics
  - 23.3. Make clearer distinctions between the packaging of different Enfa Stage 1 and 2 products versus Stage 3 and 4 products
  - 23.4. Engage with marketing managers of e-commerce platforms where non-compliances are found to raise awareness about RB's BMS policy and procedures and what the content thereof means in practical terms. Organize workshops on the topic for all e-commerce outlets RB Thailand distributes its BMS to

24. Once a revised BMS Policy has been adopted, which is aligned with the WHO Code and WHA resolutions, various actions are recommended for RB Thailand, including the following:
  - 24.1. Assess what promotion materials for Enfa products for children until the age of three years (36 months) are distributed at healthcare centres and hospitals and what outreach tools exist, including in private clinics and adjust these to comply with the WHO Code and WHA resolutions when these materials include the brand name or brand logos
  - 24.2. Only use social media channels to respond to questions from pregnant women and cease using these channels for active marketing of Enfa IFCN products up to three years of age, which is not in compliance with the WHO Code and the WHA resolutions
  - 24.3. Reassess labels of all Enfa products aimed at infants and children until the age of three years to ensure that no claims or other developmental claims are made on the packaging and labels of these products that could be interpreted by consumers as idealising infant formula. Have external, independent stakeholders from the medical/paediatric field provide input to the labels and text

#### **5.2.2 ADDRESSING RISKS AND IMPACTS IN OWN OPERATIONS**

25. Embed social performance targets in incentive structures for factory management.
26. Make use of the 'factory feedback sheet' developed as part of this assessment to devise a short-term corrective action plan as a joint effort between RB HQ, RB Thailand and RB factory management. Make sure that no negative consequences materialise for those who participated in the assessment, not least the workers interviewed. Any form of retaliation or negative consequences will constitute a human rights abuse and should be subject to remediation. Set clear targets and ensure follow-up. Key action areas include:
  - 26.1. Engagement between this factory and RB Thailand's Durex factory on good practices and lessons learnt regarding unionisation and facilitation of dialogue between workers in the two factories

- 26.2. Commissioning independent external OHS studies to assess 1) the potential long-term impacts of repetitive work on factory workers, 2) impacts of heavy lifting and 3) the potential impacts of night shifts and act upon the findings
- 26.3. Conducting an audit of the accommodation the labour agency provides to its workers. For such audits, it is recommended that a checklist is used that looks at all human rights aspects related to workers' accommodation based on ILO recommendations<sup>151</sup>
- 26.4. Engaging with industrial estate management to discuss and assess potential cumulative community impacts the estate may have, including in relation to water pollution, and acting upon complaints from communities in an effective manner<sup>152</sup>
- 26.5. Engaging with workers, including third-party workers, to identify how the factory can improve its existing grievance/ Speak Up functions to make them more effective

### 5.2.3 ADDRESSING MIDSTREAM RISKS AND IMPACTS MIDSTREAM – DUREX AND ENFA

- 27. Embed social compliance requirements in the commercial negotiations, transactions and contracts with suppliers, rather than being disconnected from RB's purchasing practices. Identify barriers to implement this in practice, including organisational silo issues as well as group-subsidary dynamics and address these.
- 28. Identify which learnings from this HRIA RB wants to embed in its Human Rights and Responsible Business Programme, which includes working on social compliance with suppliers. Learnings could be both substantial (e.g. importance of attention to conditions for direct and third-party workers or methodological such as how to ensure a human rights-based approach to workers interviews).

29. Make use of the 'factory feedback sheets' developed as part of this assessment to devise a short-term corrective action plan in collaboration with the two suppliers assessed. Set clear targets and ensure follow-up. Make sure that no negative consequences materialise for those who participated in the assessment, not least the workers interviewed. Any form of retaliation or negative consequences will constitute a human rights abuse and should be subject to remediation. Key action areas include:

- 29.1. Assessing OHS impacts through a proper OHS assessment and including suppliers in the next internal human rights and OHS audit programmes. Ensure that such an assessment includes a WASH risk assessment and addresses the issues found in relation to access to water and sanitation
- 29.2. Ensuring all workers (migrant or illiterate) have contracts and access to relevant safety and security information relevant for their function in a language or format understood by them
- 29.3. Conducting regular unannounced spot checks of high-risk suppliers that have subcontractors that employ groups at risk, and encourage suppliers to audit their own high-risk suppliers, as further elaborated in the factory sheets

#### **5.2.4 ADDRESSING RISKS AND IMPACTS FAR UPSTREAM**

30. Commission research into the implications of RB's dairy import practices of dairy ingredients for its products on local dairy farmers in high-risk markets including in Thailand.
31. To better understand the state of play of the Thai dairy sector and potential implications on the Thai dairy sector, engagement and dialogue with relevant stakeholders are recommended. The following stakeholders are suggested:
  - One or more expert organisations, such as the FAO, analyse the risks and impacts of RB's dairy imports to Thailand on the Thai dairy sector, including a focus on the future trade agreements between Thailand and Australia and New Zealand, given RB Thailand's import from New Zealand; the different market players and their relative importance to the local dairy sector; identification of risks and/or impacts RB has; suggestions of how these can be mitigated and how RB could support the development of the Thai dairy sector

- Key players in the Thai dairy sector including the Department of Livestock under the Ministry of Agriculture, and the Department of Trade Negotiations, with the aim to better understand the effects of RB's Enfa product and the import of its dairy ingredients; identify the role RB could play to minimise any negative impacts on the development of the Thai dairy industry and positively contribute to the development of the local dairy sector; identify coalitions with other multinational companies that import skimmed powder milk and other dairy ingredients to Thailand that may be facing similar risks; understand how RB can increase its percentage of local milk sourcing rather than relying on imports of skimmed milk powder and other dairy ingredients for its Enfa products
- Other multinational dairy manufacturers such as Arla and FrieslandCampina, to discuss this topic and learn how they have assessed and addressed the potential impacts of importing milk from certain countries that may impact the local dairy market and in particular smallholder dairy farmers

## CHAPTER 6



## CHAPTER 6

### ANNEX 1

#### **RESPONSIBLE BUSINESS CONDUCT AND THE ROLE OF HUMAN RIGHTS**

Respect for human rights is an integral part of responsible business conduct. Authoritative frameworks and standards, such as the UNGPs<sup>153</sup> and the OECD Guidelines for Multinational Enterprises<sup>154</sup>, clearly set out that companies have the responsibility to respect human rights and outline how companies should meet this responsibility.

The corporate responsibility to respect human rights entails that all companies, regardless of their size, sector, operational context, ownership or structure, avoid causing, contributing or being linked to human rights abuses and address such abuses when they do occur. This does not only refer to negative impacts associated with their own operations, but also to those arising from business relationships such as suppliers. Key to companies' responsibilities is carrying out due diligence, the central process of identifying, preventing, mitigating and accounting for actual and potential negative impacts and participating in providing access to remedy for affected rightsholders where human rights abuses do occur.

#### **RESPONSIBLE BUSINESS CONDUCT IN THAILAND**

Thailand has been taking the lead in the ASEAN region in promoting responsible business conduct. After a period of fast economic growth, Thailand is today one of the most developed countries in Southeast Asia. Nevertheless, the country continues to experience structural problems posing barriers to a more sustainable development and workers, communities and other groups continue to face human rights abuses in the context of private sector activities. In this context, the government has demonstrated leadership in terms of advancing the business and human rights agenda<sup>155</sup>.

In 2016, the government presented the Thailand 4.0 development strategy, aiming to close the social gap and transform the country into a high-income society by 2036. Within this strategy, human rights are



an integral part to achieve sustainable development. Furthermore, the government engaged with the UN Working Group on Business and Human Rights and invited it to discuss current initiatives, challenges and opportunities<sup>156</sup>. In October 2019, Thailand's cabinet adopted a National Action Plan on Business and Human Rights, as the first country in Asia to advance the implementation of the UNGPs<sup>157</sup>.

In addition to the improvements on the national level, several internationally oriented events involving multiple actors were organised in Thailand in 2019. For instance, OECD, ILO and EU together invited different stakeholders to an engagement event concerning their joint regional project Responsible Supply Chains in Asia. The goal was to enhance the respect of human rights as well as labour and environmental standards in Asian supply chains. As another example, the Responsible Business and Human Rights Forum, jointly organised by the Thai government, OECD, UNDP Thailand, UN ESCAP, ILO and Global Compact Network Thailand, can be highlighted. For the first time outside of Paris, stakeholders addressed issues regarding responsible business conduct in the context of the OECD Guidelines on a global level as well as within the region<sup>158</sup>.

### **ABOUT RECKITT BENCKISER**

RB is a multinational consumer goods company headquartered in the United Kingdom. The company is operating in more than 60 different countries worldwide with more than 40,000 employees. RB organises its brands in two portfolios, namely Health and Hygiene & Home. The Health portfolio includes leading global brands such as Dettol, Durex, Nurofen, Strepsils and Veet, while the Hygiene and Home portfolio groups together brands such as Harpic, Air Wick, Vanish and Finish.

### **RECKITT BENCKISER THAILAND**

RB has a significant presence in Thailand with one commercial office in Bangkok and three factories in the greater Bangkok area. In addition, six copackers and various suppliers are part of RB Thailand's supply chain in the country. The commercial office employs 958 workers (341 permanent and 617 subcontracted), mainly working in sales, medical sales and marketing. This number also includes merchandisers and nutrition consultants.

One of the factories specialises in the production of infant milk formula. In total, 444 workers (244 permanent and 200 subcontracted) engage in manufacturing, R&D and sourcing. The different resources and components are provided by 85–90 raw material and 20–25 packaging material suppliers.

At another factory, Durex condoms are manufactured by 979 workers (682 permanent and 297 subcontracted). Similar to the Chonburi factory, R&D as well as sourcing are further activities. The factory has in total 29 raw material and 22 packaging material suppliers.

Lastly, a range of products are manufactured in the third factory, including Strepsils, Durex/KY lubricant gels, Nurofen and Dettol. This factory was not included in the scope of this assessment. Apart from manufacturing, the factory also engages in R&D. There are 530 workers (400 permanent and 130 subcontracted) and 56 raw material as well as 47 packaging material suppliers.

Accordingly, 2,911 workers are employed at RB Thailand's own sites, of which approximately 42% are subcontracted.

### **DUREX AND ENFA IN THAILAND**

Durex is the world's leading brand for condoms sold in over 150 countries. The brand encompasses a variety of condoms that are typically made from natural rubber also known as latex. The brand is an integral part of RB's Health division and the factory in Thailand serves the global market. In Thailand, Durex accounted for minority of the sales in 2018.

After the acquisition of MJN in 2017, RB expanded its business with the IFCN division. The Enfa brand includes a range of different products for infants and children, for instance Enfamil A+ and Enfagrow. In Thailand, the IFCN division is a major contributor to the total revenue of RB's Thai business, making it one of the key brands for the business.

# ENDNOTES

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- 4 Figure copied from DIHR's HRIA Guidance and Toolbox:  
**<https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>**
- 5 **<https://www.earthworm.org/id/our-work/programmes/rurality>**
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(b) Burn, dry, crush or doing any manner whatsoever so as to transform it for its element or by product
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In addition, in this Frequently Asked Questions, updated in 2017, it is clearly stated what products are covered by the WHO Code. See: <https://apps.who.int/iris/bitstream/handle/10665/254911/WHO-NMH-NHD-17.1-eng.pdf?ua=1>, p. 8
- 116 In India, the Breastfeeding Promotion Network of India (BPNI), a national network of organisations and individuals dedicated to promoting mother and child health through protection, promotion, and support of breastfeeding, does capacity building, monitors compliance with the Indian Infant Milk Substitutes Act and initiates legal action through filing cases before a court of law. See: <https://www.bpni.org/about-bpni/>
- 117 Unofficial English translation of the Thai Act on Food and Medicine (B.E. 2522) can be found here: [http://food.fda.moph.go.th/law/data/act/E\\_FoodAct2522.pdf](http://food.fda.moph.go.th/law/data/act/E_FoodAct2522.pdf)
- 118 According to Clause 3 of the Notification of the Ministry of Health on principle, method and conditions for giving gifts in accordance to traditions or moral B.E. 2561 (2017), “giving in accordance to traditions or moral” means that giving or proposing to give gifts, money, incentives or any other benefits to any persons on occasions, normally as a part of traditions or culture. [http://laws.anamai.moph.go.th/download/about\\_laws\\_2017/laws\\_concerned/Announce\\_16-22.pdf](http://laws.anamai.moph.go.th/download/about_laws_2017/laws_concerned/Announce_16-22.pdf)
- 119 Line is a social media app for instant communication, widely used in Asia.

- 120 Berkeley Media Studies Group, Mother and child promotion: A preliminary analysis of social media marketing of infant formula, October 6, 2016. See: [http://www.bmsg.org/wp-content/uploads/2016/10/bmsg\\_infant\\_formula\\_marketing\\_social\\_media\\_analysis.pdf](http://www.bmsg.org/wp-content/uploads/2016/10/bmsg_infant_formula_marketing_social_media_analysis.pdf)
- 121 Media audit reveals inappropriate promotion of products under the scope of the International Code of Marketing of Breast-milk Substitutes  
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- 122 Abrahams, S. W. Milk and Social Media: Online Communities and the International Code of Marketing of Breast-milk Substitutes, Journal of Human Lactation. See: [https://www.researchgate.net/publication/225276102\\_Milk\\_and\\_Social\\_Media\\_Online\\_Communities\\_and\\_the\\_International\\_Code\\_of\\_Marketing\\_of\\_Breast-milk\\_Substitutes](https://www.researchgate.net/publication/225276102_Milk_and_Social_Media_Online_Communities_and_the_International_Code_of_Marketing_of_Breast-milk_Substitutes)
- 123 WHO/UNICEF information note: Cross-promotion of infant formula and toddler milks. See: <https://www.who.int/nutrition/publications/infantfeeding/information-note-cross-promotion-infant-formula.pdf?ua=1>
- 124 See: [https://apps.who.int/gb/ebwha/pdf\\_files/WHA69/A69\\_7Add1-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_7Add1-en.pdf), Article 15, recommendation 5.
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- 126 First Steps Nutrition Trust, Sugars in fortified milks marketed for children over 1 year. See: [http://www.babymilkaction.org/wp-content/uploads/2014/10/Statement-on-sugar-in-fortified-milks\\_May2016.pdf](http://www.babymilkaction.org/wp-content/uploads/2014/10/Statement-on-sugar-in-fortified-milks_May2016.pdf)
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- 145 <https://www.dairyreporter.com/Article/2019/03/06/Thailand-preparing-dairy-farmers-in-time-for-2025-Down-Under-deal>
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- 147 <https://www.fairrubber.org/english/>
- 148 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_116344.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_116344.pdf)
- 149 The recommendations for RB Thailand are in relation to all RB infant formula, follow-up formula and growing-up milks until the age of three years, as per the WHO Code and WHA resolutions and guidance.
- 150 Currently RB Thailand engages with the Department of Health, the FDA, the Codex Alimentarius contact point in Thailand, the paediatric nutrition association and the Federation of Thai Industries, but with no civil society organisations.

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