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PERMANENT MISSION OF THAILAND
GENEVA

OHCHR REGISTRY

07 AUG 2013

6 August B.E. 2556 (2013)

Recipients :.....SPD.....

Dear Sirs / Madam,

I wish to refer to my previous communication dated 3 May 2013 providing preliminary response to your joint letter dated 26 April 2013 regarding the alleged case of Mr. Andy Hall, concerning the criminal charges brought against him by Natural Fruit Company in Thailand.

In this connection, I have the honour to transmit herewith further clarification on the above-mentioned case, including the outcome of the inspection of the Ministry of Labour at the company. I hope that the information provided would address your concerns and be helpful for the preparation of your respective report.

The Permanent Mission of Thailand remains at your disposal should you require additional information.

Yours sincerely,

(Thani Thongphakdi)

Ambassador and Permanent Representative

Mr. Pavel Sulyandziga,

Working Group on the issue of Human Rights and Transitional corporations
and other business enterprises,

Mr. Frank La Rue,

Special Rapporteur on the promotion and protection of the right to freedom
of opinion and expression,

Ms. Margaret Sekaggya,

Special Rapporteur on the situation of human rights defenders,

Mr. François Crépeau,

Special Rapporteur on the human rights of migrants,

Ms. Joy Ezeilo,

Special Rapporteur on trafficking in persons, especially women and children,

Office of the High Commissioner for Human Rights,

GENEVA.

**Clarification by the Royal Thai Government
regarding the charges brought against Mr. Andy Hall**

Details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the case

Labour Inspection

- The Royal Thai Government attaches utmost importance to the rights of workers, both Thai nationals and migrants, on a non-discriminatory basis and recognize their significant contributions to the Thai economy. Upon learning about the alleged human rights violations by Natural Fruit Company in the Finnwatch report titled “Cheap has a high price : Responsibility problems relating to international private label products and food product in Thailand” written by Mr. Hall, the Ministry of Labour promptly conducted an inspection on the Company. The outcome of the inspection can be found in the document attached herewith. Follow up to the visit is still continuing.

Criminal Lawsuit

- The Criminal Court is currently in the process of considering whether to accept or dismiss the criminal case brought against Mr. Hall (under Thai law an aggrieved party is entitled to file both civil and criminal law suits). The Court is waiting for the plaintiff to confirm the location of the defendant, after which the Court will send out a court order for a preliminary hearing to decide whether or not to accept the said case. The next court hearing is scheduled on 19 August 2013.

Legal basis of the criminal charges brought against Mr. Hall and compatibility with the international human rights instruments.

- Natural Fruit Company has filed a criminal lawsuit (No. Or.517/2556) against Mr. Andy Hall with the Bangkok South Criminal Court on 4 February 2013 on two main grounds, namely :
 - 1) The offence of defamation, in accordance with Section 328, supplemented by Section 326, of the Penal Code;
 - 2) Importing to a computer system of forged or false computer data, in a manner that is likely to cause damage to the third party or the public, in accordance with Section 14 of the Computer Crime Act.
- Article 19 of the International Covenant on Civil and Political Rights (ICCPR) recognizes that the right to freedom of expression is not without limits. The right to freedom of expression carries with it special duties and responsibilities, and may be subject to certain restrictions as provided by law as necessary to uphold the rights or reputations of others. In addition, Article 17 of the said covenant also provided everyone with the right to protect his or her honour and reputation.

Measures to ensure that human rights defenders in Thailand, in particular those working to protect the rights of migrant workers, are able to carry out their peaceful and legitimate activities without fear of judicial harassment or other restrictions.

- Freedom of expression is a right enshrined in the Constitution of the Kingdom of Thailand (Section 45). The right is enjoyed by every individual, so long as the exercise of such right does not violate the rights of others. Everyone in the country, human rights defenders included, stands equal before the law and are equally protected by the provision of the law.
- The very vibrant and active civil society currently operating in Thailand testifies the freedom Thailand guarantees to civil society organizations in conducting their work. Thailand recognises the roles of these organizations in the advancement of the country’s human rights agenda.

**Department of International Organizations
Ministry of Foreign Affairs
6 August 2013**

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**The outcome of the inspection by the Ministry of Labour of Thailand
regarding the alleged human rights violation by Natural Fruit Company**

Background of the Investigation

The Ministry of Labour conducted a thorough inspection on Natural Fruit Co.,Ltd. on 28 January 2013. The labour inspector interviewed the factory manager (Mr. Sukit Koyawanich), one of the company's human resource staff, and six Myanmar workers, as well as conducted an inspection of relevant documentation and other evidence. Two interpreters were present to ensure accuracy of the information collected. Subsequently, the labour inspector conducted a follow-up visit on 4 February 2013 to follow up on the implementation of the suggestions and instructions made during the first visit.

Natural Fruits Co.,Ltd. is located at 179/12 Moo 11 Tambon Nongtatam, Amphur Prachin, Prachuap Khiri Khan Province. The Managing Director is Mr. Wirat Piyapornpaiboon. The company produces canned pineapples and dried fruits. It employs a total of 854 employees: comprising 243 Thai citizens, 610 Myanmar citizens, and 1 Cambodian citizen.

Allegation I: Hiring of illegal migrant workers and child labour

- The labour inspector did not find any child labour below the age of 18. According to the 6 Myanmar workers interviewed, none of the workers saw child labour employed in the company. It could be the case that children of the Myanmar workers seen were visiting their parents at the company during their school holidays. Even so, these children would not be allowed in the factory's compound in any case.

Allegation II: The company pays daily and monthly wages, as well as overtime payment, at the rates below the legal minimum requirements. Workers are not given holidays or appropriate welfare.

- Based on the payment slips to the workers, the wages paid to all workers have been no less than 300 baht a day since 1 January 2013.

- The company pays overtime compensation at the rate of 1.5 times the hourly wage rate. However, the company rounds down the decimals in their calculation of overtime compensation. The labour inspector then instructed the company to refrain from rounding down the decimals in order for the workers to receive their overtime compensation in full.

- All workers are entitled to one day-off per week. The company has designated Sunday as a day-off for all workers except for technicians and assistant technicians who take turns taking their one day off during the week.

- The company announces 13 public holidays per year both in Thai and in the Myanmar language. During these public holidays, the workers are paid at the minimum wages. The labour inspector then asked the company to pay the workers at their daily wage (instead of the minimum wage) during these public holidays. The company agreed to follow the inspector's instruction, and would pay the remaining difference for the period of 16 – 31 January 2013 to the workers on the next pay day on 5 February 2013.

Allegation III: Confiscation of passports and refusal to return them when the workers want to resign or change their employers

- The employer admitted that the company kept some of the workers' passports, but only upon the workers' requests. In general this practice is for convenience in responding to the tri-monthly inspection by the Immigration Bureau. Every worker who requests the company to keep his or her passport has to submit a signed document stating such a request. Workers who wish to keep their own passports are free to do so.

- In December 2012, the company returned all passports and work permits to their respective owners. In doing so, the workers signed relevant document acknowledging the receipt of their travel documents.

- All workers were aware that a fee of 6,010 baht, to be paid by the workers, was required for passport issuance. The company paid the required fee in advance, and at present, all workers had already paid back the company in full.

Allegation 4: Wage deduction for water and electricity fees, transportation fee, uniform, ID card and other items

- The company provides accommodation for migrant workers with free water supply. The workers and the company agreed that the workers were to pay for their own electricity use. The company charges electricity fee according to the types of electrical appliances each worker uses. All workers were fully aware that they were responsible for the electricity fee, and agreed to allow the company to deduct the electricity fee from their wage. However, there is no written document spelling out such an understanding.

- The company used to arrange free transportation for workers, incurring an expense for the company of 30 baht/worker/day. However, as of 1 January 2013, the company has discontinued the free transportation service. Transportation fee is now being deducted from the workers' wages, an arrangement arrived at following consultation with some workers and the transport company.

- The company requires each worker to pay for his own uniform in cash, including a shirt (158 baht), a hat (75 baht), and a hair net (22 baht). In the case that the workers are unable to pay in cash, workers would ask the company to deduct the amount from their wage. However, there is no written document stating such a request for deduction.

- The company issued and would replace a worker's ID card free of charge. However, workers had to pay for their own ID card holders at the cost of 10 baht per piece.

- Many workers regularly bought goods on credit from stores in the company's vicinity. The workers requested the company to deduct their wage to pay the stores. However, there is no written document spelling out such a request for deduction.

- The labour inspector informed the company of relevant laws regarding wage deduction according to the Labour Protection Act. For example, workers had to pay for the payments for which they are responsible out of pocket, and that wage deduction was prohibited. If the company had any welfare scheme for the employees' benefit and the employees requested the company to deduct their wages, such an arrangement must be made in writing. Any changes in employment terms and conditions must also be agreed in writing.

- At present, the company has already adjusted the system so that workers pay any necessary payments out of pocket. Payments are no longer deducted from workers' wage.

Allegation 5: Workers losing the whole day's pay when they are unable to work for the full day or when the company has no work for the workers

- In an event that no raw materials were available, the company would either assign the workers to other tasks or to another affiliated company, for which the workers would be paid their regular wage. If there is no other work for the workers, the company would send the workers home earlier than their regular hours, and pay the workers according to the number of hours they worked.

- In this regard, the labour inspector informed the company that, in case the workers were asked to finish work early because of the lack of raw materials, the company was still required to pay the workers their daily wage in the full amount.

Allegation 6: Forced overtime work exceeding 36 hours per week

- Both the company and the employees informed the labour inspector that there was no forced overtime work at the company. On the days which the company required overtime workers, the company would announce it on its notice board. Supervisors would then submit the names of the workers who voluntarily indicated their interest in working overtime to the Human Resource Department to calculate overtime compensation in advance.

- The company's record showed that some workers had more than 36 overtime hours per week. The company explained that these workers were assistant technicians who had to wait for the production line to stop before inspecting the machines.

- The labour inspector informed the company to issue an overtime work agreement in writing between the company and the workers. The overtime hour had to be limited to no more than 36 hours per week in accordance with the law. The company has already followed the mentioned instructions..

Allegation 7: Migrant workers do not possess social security card or health insurance in accordance with the law. Those who do are not allowed to choose hospitals of their choice.

- All workers with work permits had been registered for social security benefits. The company was in the process of filing requests for work permits for the remaining workers in accordance with the Cabinet Resolution of 15 January 2556, which extended the deadline for regularization of migrant workers to 14 April 2013. These workers with pending work permits had yet to receive social security cards.

- With regard to the hospital choice, the company recommended Pranburi Hospital because of its proximity to the factory. However, workers can seek health care services from the hospital of their choice. The workers may change their hospital choice once a year.

Allegation 8: Insufficient toilets and overtime pay deduction for extended toilet use

- The company had a total of 23 toilets (8 for men and 15 for women), and 6 urinals. The labour inspector urged the company to comply with the Thai Building Control Act of B.E. 2522 (1979).

- Per the labour inspector's suggestions, the company installed additional toilets and urinals to comply with the relevant regulations.

- The company allowed each worker 3 – 15 minute toilet breaks per day, except for workers whose health conditions required them to use the toilet for longer than the designated time period, in which case the supervisors are to be informed.

Allegation 9: Company does not provide compensation for work-related accidents in accordance with the law (compensation fund)

- In case of work-related accidents, the company in fact pays daily wage in full amount for all injured workers for the first 3 days off after the accident whether or not the workers possess a social security card. This payment is made despite the fact that the workers are already entitled to compensation payment from the compensation fund in case they take more than 3 days off from work.

- The labour inspector urged the company to comply with the Labour Protection Act in this regard.
