

No. 52101/ 629



PERMANENT MISSION OF THAILAND
5, Rue Gustave-Moynier
1202 GENEVA

15 September B.E. 2558 (2015)

Sirs and Madams,

I wish to refer to your joint letter dated 9 September 2015 concerning the indictment of human rights defender Mr. Andy Hall.

In this connection, please find attached herewith the clarification prepared by the Ministry of Foreign Affairs on the lawsuit against Mr. Andrew Hall. I hope that this would help clarify the situation surrounding this case and address some of your concerns. I would also like to inform you that your joint letter has been duly forwarded to the relevant authorities for further consideration.

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

Yours sincerely,

OHCHR REGISTRY

17 SEP 2015

Recipients : *SPD*

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(Thani Thongphakdi)
Ambassador and Permanent Representative

Ms. Margaret Jungk,

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises,

Mr. David Kaye,

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

Mr. Michel Forst,

Special Rapporteur on the situation of human rights defenders,

Mr. François Crépeau,

Special Rapporteur on the human rights of migrants,

Ms. Maria Grazia Giammarinaro,

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

GENEVA.

Clarification on the lawsuit against Mr. Andrew Hall

Charges

- There are 4 legal cases against Mr. Hall; 2 criminal cases and 2 civil cases.
 1. The criminal defamation case initiated at Prakanong Court for Mr. Hall's interview with Al Jazeera [**DISMISSED** on 29 October 2014; The Public Prosecutor has appealed the verdict and a decision by the Court of Appeal is due on 25 September 2015]
 2. The civil defamation case initiated at Nakhon Pathom Court with a claim of US\$ 10 Million [**STRIKED - temporarily out of the court until the judgment of the criminal case is rendered**]
 3. The Computer Crime and Criminal Defamation cases initiated at Southern Bangkok Criminal Court for the launch of Finnwatch Report [**INDICTED** on 24 August 2015]
 4. The civil defamation case initiated at Prakanong Court for Mr. Hall's interview with Al Jazeera with a claim of US\$ 4 Million [**Settlement of Issues Conference scheduled on 16 November 2015** following the 2nd pretrial conference on 23 March 2015]. The purpose is to specify the issues to be considered in promulgating a decision. The Court will also issue an order delineating which party will carry the burden of proving each issue and which will first introduce witnesses and evidence at the trial.

Legal Basis

- Natural Fruit Company has filed two civil defamation lawsuits and two criminal lawsuits against Mr. Hall. The two criminal lawsuits are based on two main grounds, namely:
 - o The offence of defamation, in accordance with Section 328, supplemented by Section 326, of the Penal Code;
 - o 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.
- Mr. Hall has enjoyed the right to free and fair trial guaranteed under Thai law and the internationally accepted independence of Thai judicial system.

Complaints

- On the complaint that in September 2013 there was an attempt to get Mr. Hall to sign a Thai language document where he would have pleaded guilty to all charges against him, Thai authority attached importance to such complaint and promptly sought clarification from the Bang Na Police Station.
- The Bang Na Police Station conducted a thorough investigation on Mr. Hall's complaint and confirmed that the police station's inquiry officers had informed Mr. Hall of his charges and rights, through a rightfully sworn interpreter, in accordance with relevant Thai laws and judicial procedures. The officers reaffirmed that there was no act of coercion and/or abuse of rights in any ways that forced Mr. Hall to sign a confession; it is mandatory that the signature should be given by Mr. Hall's free will.

Inspection

- The Royal Thai Government adheres to the non-discriminatory basis and recognizes the utmost importance of protection and promotion of labour rights both for its own nationals or migrant workers. As soon as the report was published in January 2013, the Ministry of Labour has promptly inspected the Natural Fruit Company. Continued follow up on the treatment of migrant workers has been done through inspections in January, February, May and twice in July 2013. Our relevant embassies, mainly the Royal Thai Embassy in London and Finland, have continuously engaged with the parties concerned especially Finnwatch and have informed them of the findings.
- Apart from the frequent inspection as their mandate, the Ministry of Labour has continued inspections in cases when there is a filed complaint. The MOL is working closely and cooperatively with local NGOs and local network of migrant workers for information on possible violations of labour rights.
- The latest labour inspection of the Natural Fruit Company was conducted in March 2014 and the result indicates that there was no labour rights violation. The inspection focused on working conditions, welfare and labours' protection under the Thai Labour Protection Act (B.E.2541); the result indicates that the Company has abided by the law.

Thailand's Relationship with NGOs/Civil Society

With Mr. Hall

- Mr. Hall has long been working on this issue and is very well-known among Thai line agencies. He has always been welcomed in various venues as an activist on the promotion and protection of labour rights. His recommendations have been taken into consideration by relevant Thai authorities and private sectors.
- The bail by TFFA² and TTIA³ guarantee that Thai private sector sees the significance of Mr. Hall's fight against labour exploitation. And this is the reflection of willingness of Thai private sectors concerned to work cooperatively with civil society to address the problem as well as to protect rights defenders.

² Thai Frozen Foods Association

³ Thai Tuna Industry Association

With all civil society

- The Thai government does not have a policy to restrict civil society's participations; NGOs have been allowed to express their will freely as far as it does not create social division or incite hatred.
- We have open space for constructive participation by civil society, media and NGOs. More dialogues can be the way forward to build strong cooperation.
- Thailand values the partnership with NGOs as important elements to strengthen promotion and protection of rights of migrant workers. There are so many successful stories from partnerships between local NGOs and Thai authorities in addressing migrant workers' rights. With cooperation with civil society, Thailand continues to improve working conditions and providing extensive welfare for migrant workers and their families on non-discrimination basis.

Allegation on the independence of Thai Judicial System

- Thai judicial system adheres to the utmost integrity and its independence from political intervention.
- On Mr. Hall's case, while in hearings, representative from the Embassies of UK, Australia, Finland, and the EU Mission, along with representatives from ILO, IOM and International Centre for Trade Union Rights (ICTUR) were present as observers in court.
- The trials are between the private entities; therefore, the government authority is not in the position to intervene in the judicial process. Both sides will need to defend their facts and innocence and will have to prove to the court.
- A case in point about the independence of the Thai judicial system is Phuketwan. On 1 September 2015, the Phuket Provincial Court dismissed a criminal defamation case and a case involving a breach of the Computer Crime Act brought on by the Royal Thai Navy against 2 Phuketwan journalists.
- Regarding the Computer Crime Act, the Phuket Provincial Court stated, in its ruling, that the intention of the Act does not include offences related to defamation of character, for which there is a specific Penal Code dealing with the issue, and moved to dismiss the case against the 2 journalists.

Ongoing attempt to address the problem of child labour and forced labour in Thailand

- To prevent migrant workers from falling prey to exploitation, the systematic registration of migrant workers has been implemented and expedited to ensure that the migrant workers will be covered, protected and provided with welfare under Thai labour law. The Royal Thai Government is of the view that providing protection for migrant workers and minimizing labour trafficking should be implemented in an integrated manner.
- Thailand facilitates and expedites the nation-wide registration with the operating principles of (1) timeliness (2) affordable fees and (3) minimal red tape.
- The Royal Thai Government works in close consultation with line agencies and is compiling policy recommendations for future reform of the labour migration system,

relevant laws and regulations, and the national anti-human trafficking plan. All sectors, including the private sectors and CSO/NGOs, have constantly been engaged. The process of reforming laws and system has continued through the Policy Committee on Migrant Workers.

- The Royal Thai Government has publicly announced that it will not tolerate any government officials' involvement in people smuggling, human trafficking, and forced labour activities. Any official found to have been involved in such crimes will be brought to justice and punished according to law.
- Thailand ratified ILO Convention Number 182 on the Worst Forms of Child Labour on 16 February 2001 in order to eliminate the worst forms of child labour. We are firmly committed to the obligations and the full intentions of the convention.
- Thailand's draft National Plan to Eliminate the Worst Forms of Child Labour (2015 – 2020), which aims to be free from any worst forms of child by 2020, is now ready for the Cabinet's approval, after which the implementation could start.
