

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on Contemporary forms of slavery, its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE: OL
OTH 7/2014:

15 July 2014

Dear Mr. Virat Piyapornpaiboon,

We have the honour to address you in our capacity as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; Special Rapporteur on Contemporary forms of slavery, its causes and consequences; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolutions 17/4, 17/12, 24/3, and 17/1.

In this connection, we would like to bring to your attention information we have received concerning **alleged human rights abuses, specifically concerning labour standards, related to the operations of National Fruit Company Ltd at its plant located at 179/12 Moo Tambon Nongtatam, Amphur Prانبuri, Prachuap Khiri Khan Province, Thailand**. In separate communications, we have also brought this information to the attention of the Government of Thailand.

According to the information received:

On 21 January 2013, the Finnish non-governmental organisation Finnwatch, a watchdog focusing on corporate social responsibility in the global supply chain, reportedly published a report under the title “Cheap has a high price: Responsibility problems relating to international private label products and food production in Thailand”. Mr. Andy Hall was reportedly the principal Thailand-based researcher contributing to this publication, which reportedly investigated the production process of fruit juices on sale in Finland.

One of the companies investigated for the report was Natural Fruit Company Ltd. and its plant in Prachuap Khiri Khan Province. The findings in the report included allegations that the factory’s workers included undocumented workers who had been smuggled into the country, as well as under aged children. The report included other allegations, such as the failure to pay employees the legal minimum wage, overtime declared to be ‘compulsory’ for inadequate

compensation, dangerous workplace conditions putting the workers at considerable risk of illness or even death, and confiscation of identity documents.

It is reported that during the course of the research, Natural Fruit Company Ltd. was approached several times by the researchers in order to participate in the research and contribute to it. The company allegedly declined to cooperate with the researchers both during the research period and subsequently.

Reportedly, on January 28 2013, following the publication of the Finnwatch report, the Ministry of Labour of Thailand conducted an inspection of the Natural Fruit Company plant in Prachuap Khiri Khan Province and made recommendations to the company.

It is reported that on 14 February 2013, the Natural Fruit Company filed a defamation lawsuit against Mr. Hall at Nakhon Prathom Court for “broadcasting false statements to the media” and thus damaging and defaming the company. If Mr. Hall is found guilty this might reportedly result in a fine of 300 million Baht against him.

It is alleged that based on the complaint made by the Natural Fruit Company, criminal charges have also been brought against Mr. Hall. Reportedly, these are also charges of broadcasting false statements, based on Sections 90, 91, 326, 328 and 332 of the Criminal Code, Sections 3 and 4 of the Penal Code Amendment Act (No. 11), and Sections 3 and 4 of the Computer Crime Act. The maximum sentence for these charges is allegedly 2 years imprisonment and a fine of 200,000 Baht.

While taking note of the inspection conducted by the Ministry of Labour of Thailand and the recommendations made, according to information received Natural Fruit Company Ltd. allegedly continues to act in breach of international human rights and labour law by failing to pay its employees the minimum legal wage following the deduction of daily transportation costs for workers whether they use the transportation service or not. Workers are reportedly not entitled to annual leave, they do not have any paid vacation and they work on national holidays and, on occasions, Sundays without appropriate compensation. When the factory closes down during the summer months (usually from July to September) workers do not receive any pay, which contravenes Thai law.

Working conditions are allegedly deplorable, with reports that workers are prohibited from taking sick leave and the factory limits toilet breaks. Employees also allegedly receive multiple salary deductions including for unauthorized sick leave and they are forced to purchase products at stores owned by Natural Fruit Company Ltd.

While reports indicate that in recent months Natural Fruit Company Ltd. returned passports to migrant workers employed by the company, it is alleged that some of the workers still have not received their work permits, which had also been

previously confiscated by the company. The company is also reportedly withholding the documents necessary for workers to change employment. In addition, 16 and 17-year-old children are allegedly working in the factory.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized accurate?
2. Have you heard of the norms, standards and guidance outlined in the Annex to this letter including the UN Guiding Principles on Business and Human Rights? In addition, have you heard of the benchmarks and indicators for ensuring trafficking-free supply chains developed by the Special Rapporteur on trafficking in persons, especially woman and children, the UN Global Compact principles, the Athens Ethical Principles and the accompanying Luxor Implementation Guidelines? If so, when and how did you hear about them?
3. Has the Government of Thailand provided any guidance to Natural Fruit Company Ltd. on its corporate responsibility to respect human rights, specifically on its expected due diligence process, in line with the UN Guiding Principles on Business and Human Rights?
4. Please provide detailed information on how Natural Fruit Company Ltd. is implementing the recommendations made following the Thai Ministry of Labour's inspection in January 2013, including on its policies and practices concerning the minimum wage, child labour, working conditions, paid holiday leave and overtime.
5. How is Natural Fruit Company Ltd. meeting its responsibility to respect human rights in a way that complies with international human rights standards? Does it have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?
6. Please explain what Natural Fruit Company Ltd. is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. How does the company track the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through consultation with affected stakeholders?
7. What operational-level grievance mechanisms has Natural Fruit Company Ltd. established or participated in to address the grievances identified above early

and remediate them directly? What is the company doing to ensure that the allegations raised in this letter are being addressed in a way that is compatible with human rights and puts the safety, concerns and rights of the workers first?

8. Why did Natural Fruit Company Ltd. decline to cooperate with Finnwatch researchers? How does its defamation lawsuit meet its responsibility to respect human rights?

We would appreciate a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged abuses and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged abuses.

Your response will be made available in a report to be presented to the United Nations Human Rights Council for its consideration.

Please accept, Mr. Piyapornpaiboon, the assurances of our highest consideration.

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

François Crépeau
Special Rapporteur on the human rights of migrants

Urmila Bhoola
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Joy Ezeilo
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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The UN Guiding Principles on Business and Human Rights;
- The Benchmarks and indicators for ensuring trafficking-free supply chains developed by the Special Rapporteur on trafficking in persons, especially woman and children (A/HRC/23/48/Add.4);
- The UN Global Compact principles;
- The Athens Ethical Principles and the accompanying Luxor Implementation Guidelines developed to end human trafficking now;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- General Recommendation 30 (2004) of the Committee on the Elimination of Racial Discrimination;
- International Labour Organization (ILO) standards on forced labour; and
- The Slavery Convention of 1926.

In particular, we would like to remind you that Natural Fruit Company Ltd., as a private actor and business enterprise, has certain responsibilities as outlined by the Guiding Principles on Business and Human Rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Following years of consultations that involved Governments, civil society and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31).

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- (a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;

- (c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The corporate responsibility to respect human rights covers the full range of rights listed in the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It also includes the respect of the eight International Labour Organization core conventions also envisaged in Principle 4 of the UN Global Compact, which states that business enterprises should uphold the elimination of all forms of forced and compulsory labour. The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

The Guiding Principles require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

Each of these is elaborated below, with regard to the context of this case.

Policy Commitment:

The first of these requirements, a policy commitment, must be approved by the company’s senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence:

The second major feature of the responsibility to respect is human rights due-diligence, the procedures for which have been deemed necessary to ‘identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships’ (Guiding Principle 18). Adequate human rights due diligence procedures must include ‘meaningful consultation with potentially affected groups and other relevant stakeholders, as

appropriate to the size of the business enterprise and the nature and context of the operation’ (Guiding Principle 18).

To prevent and mitigate against adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of National Fruit Company Ltd. (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts.

Any response by Natural Fruit Company Ltd. to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be based on appropriate qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally (Guiding Principle 21).

The benchmarks and indicators for ensuring trafficking-free supply chains developed by the Special Rapporteur on trafficking in persons, especially women and children are also valuable tools for businesses to exercise due diligence. This specific tool presented in the Special Rapporteur’s report to the Human Rights Council in March 2013 (A/HRC/23/48/Add.4) builds on and complements the Guiding Principles.

Remediation:

The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where Natural Fruit Company Ltd. identifies that it has “caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice. Guiding Principle 31 outlines that all non-judicial grievance mechanisms should be: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue.

Lastly, operational-level grievance mechanisms must not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).

In addition, other international human rights standards clarify the rights of migrant workers and non-citizens alike. We would like to highlight Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Thailand on 5 September 1999, which recognizes the “right of everyone to the enjoyment of just and favourable conditions of work”. Such conditions must ensure, inter alia, remuneration which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The rights in the Covenant apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation (Committee on Economic, Social and Cultural Rights, general comment no 20, para. 30).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also defines the term migrant worker and states the application of their rights.

We would also like to refer you to paragraph 33 of General Recommendation 30 relating to “Discrimination against Non-citizens,” in which the Committee on the Elimination of Racial Discrimination recommended that States “take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.” Furthermore, paragraph 35 unambiguously states that “all individuals are entitled to the enjoyment of labour and employment rights... once an employment relationship has been initiated until it is terminated.”

ILO standards on forced labour include the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and a new Protocol on Forced Labour adopted during a 2014 International Labour Conference. Meanwhile, the 1998 ILO Declaration on Fundamental Principles calls on all member States to promote and realize this right within their territories whether or not they have ratified Conventions 29 and 105. The 1998 Declaration and the Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration) call upon enterprises to help combat forced labour.

Finally, we would like to draw your attention to the Slavery Convention of 1926, which calls for the complete abolition of slavery and all its forms, as well as Article 1(a) of the 1956 Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which provides for the complete abolition or abandonment of debt bondage. We also wish to recall that Article 6 in conjunction with Article 1 of the Convention stipulates that any act of slavery shall be criminalized and perpetrators persecuted. As instruments against bonded labour as a widespread form of forced labour, we would also like to draw your attention to the report of the Special Rapporteur on contemporary forms of slavery and her recommendations made to the Human Rights Council (A/HRC/12/21) at its 12th session on the issue at hand.