

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE: AL
THA 8/2015:

9 September 2015

Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolutions 26/22, 25/2, 25/18, 26/19, and 26/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the indictment of human rights defender **Mr. Andy Hall**.

Mr. Andy Hall, a British citizen, is a defender of migrant and labour rights previously attached to Mahidol University as Associate Researcher and Foreign Expert in the Institute for Population and Social Research. Mr. Hall is based in Myanmar and Thailand and has been active as a researcher of migrant and labour rights in Thailand for over ten years, exposing numerous human rights violations in the process.

Mr. Hall was the subject of a previous communication sent to your Excellency's Government by the mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on the trafficking in persons, especially women and children, on 26 April 2013, case number THA 4/2013, see A/HRC/24/21. We thank your Excellency's Government for the responses received to this communication, dated 3 May 2013 and 6 August 2013.

According to the information received:

On 24 August 2015, Mr. Hall was indicted by the Bangkok South Criminal Court under Article 14(1) of the Computer Crimes Act and Article 238 of the Thai Criminal Code. The indictment follows a complaint filed against Mr. Hall by the Thai pineapple processing company, Natural Fruit Company. The charges carry a maximum penalty of seven years' imprisonment.

Mr. Hall is now awaiting summons to reappear before the Court, at which time he will be remanded to pre-trial detention and provided the opportunity to seek bail.

The complaint upon which the indictment is based was made following the publication of a report by the Finnish NGO Finnwatch in 2013 titled "Cheap has a high price: Responsibility problems relating to international private label products and food production in Thailand". Mr. Hall was reportedly the primary researcher living in Thailand for the report, which alleged the occurrence of serious labour rights violations and possible trafficking in persons for the purpose of labour exploitation by the Natural Fruit Company's factory in Prachuap Khiri Khan Province.

A second criminal defamation case based on a further complaint made against Mr. Hall by the Natural Fruit Company was dismissed by Phra Khanong Provincial Court on 29 October 2014 due to a failure to adhere to Section 120 of the Criminal Procedure Code of Thailand in the course of Mr. Hall's interrogation. This decision was subsequently appealed by the Office of the Attorney General, and a decision on the appeal is expected on 25 September 2015. The Natural Fruit Company have also launched two actions for civil defamation against Mr. Hall and are requesting a compensation of 400 million Baht (approximately US\$ 11.2 million). These cases await scheduling for consideration by a court.

Concern is expressed that the indictment of Mr. Hall is based upon a complaint made in direct response to his legitimate and peaceful work as a human rights defender, in particular exercising his legitimate right to freedom of expression and the gathering and dissemination of facts concerning serious human rights violations within Thailand's fruit processing industry. Concern is also expressed at the use of criminal proceedings against Mr. Hall under defamation charges for reporting on alleged human rights violations perpetrated by the Natural Fruit Company. Judicial proceedings under defamation laws should not serve, in practice, to stifle the right to freedom of expression and, however unpleasant or inconvenient, the mere fact that forms of expression are considered to be offending is not sufficient to justify the imposition of criminal penalties. Moreover, further concern is expressed at the possibility the charges against Mr. Hall may have a "chilling effect" on other human rights defenders and civil society activists working in Thailand and elsewhere to expose human rights violations perpetrated by non-State actors, including business enterprises.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with 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. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the legal basis of the criminal charges brought against Mr. Hall and how these are compatible with international human rights instruments, including article 19 of the ICCPR.,
3. Please indicate what measures have been taken to ensure that the right to freedom of expression and opinion, including the legitimate right to collect and disseminate information is respected and guaranteed in Thailand.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of judicial harassment or other restrictions of any kind.
5. Please explain what policies and measures have been put in place to ensure that the Natural Fruit Company, and other business enterprises operating in Thailand, respect human rights.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations 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(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

François Crépeau
Special Rapporteur on the human rights of migrants

Maria Grazia Giammarinaro
Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Any restrictions to the exercise of this right to freedom of expression, in accordance with article 19(3) ICCPR, must be provided by law and necessary and proportionate.

In paragraph 23 of its General Comment No. 34, the Human Rights Committee has recognized that those "persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports", are "frequently subjected to threats, intimidation and attacks because of their activities." The Committee has urged States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression.

Furthermore, in paragraph 47 of the same General Comment, the Human Rights Committee has called upon States to "consider the decriminalization of defamation and, in any case, [has noted that] the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

Similarly, the Human Rights Council in its Resolution 12/16 has urged all States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law. We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and

- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

We would also like to refer to Human Rights Council Resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).

We would also like to remind your Excellency's Government of article 19 of the International Covenant on Civil and Political Rights (ICCPR), that Thailand acceded to on 29 October 1996, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Additionally, as the indictment of Mr. Hall is connected to his work as human rights defender, in particular his work documenting and dissemination instances of labour violations which include potential cases of human trafficking within Thailand's fruit processing industry, we would like to draw the attention of your Excellency's Government to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government on 17 October 2013. Article 3 calls for cooperation with 'non-governmental organizations, other relevant organizations and other elements of civil society' in Policies, programmes and other measures aimed to prevent and combat trafficking in persons. We would also like to refer your Excellency to Guideline 3, Paragraph 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, launched by the Office of the United Nations High Commissioner for Human Rights in 2002, which provides that States should recognize the central role that non-governmental organizations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons. Finally, we would like to refer to the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children, in her report on her mission to Thailand (A/HRC/20/18/Add.2) in which she commends the partnership between the Government and the civil society organizations working in the field of trafficking, particularly in the context of rescue operations for assisting trafficked victims, and recommends that such cooperation and partnership should be encouraged and extended to involve a broader spectrum of civil society actors.

We would also like to highlight that the Universal Declaration of Human Rights (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; and

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

The Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate and peaceful activities of human rights defenders are not obstructed.

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.