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; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE: AL
THA 7/2016:

16 November 2016

Excellency,

We have the honour to address you in our capacities as 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; the Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences 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, 24/3 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 sentence issued against human rights defender **Mr. Andy Hall for monitoring and reporting on the precarious working conditions of migrant workers in the food processing industry in Thailand, as well as Ms. [redacted] and Mr. [redacted], two migrant workers facing theft charges after seeking to provide proof for human rights violations at a poultry farm.**

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

The indictment of Mr. Hall as a result of his monitoring and reporting on the precarious conditions of workers in the food processing industry 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 Special Rapporteur on trafficking in persons, especially women and children in a previous communication, on 9 September 2015 under case number AL THA 8/2015 see A/HRC/31/79 and on 26 April 2013, under case number THA 4/2013, see A/HRC/24/21. We note your Excellency's Government's responses received to these communications, dated 15 September 2015, and 3 May 2013 and 6 August 2013 respectively.

Concerns over violations of migrant workers' rights in the food processing industry have been raised by the Chairperson 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, including its causes and consequences; and Special Rapporteur on trafficking in persons, especially women and children in a previous communication, THA 1/2016, see A/HRC 33/32, sent on 25 February 2016, to which your Excellency's Government replied on 24 August 2016. The communication addressed serious concerns over human and labor rights violations in the poultry industry. In this context and with regards to continued allegations of migrant workers' rights, we wish to draw your Excellency's Government's attention to the following.

According to the information received:

The case of Mr. Andy Hall:

It has been alleged that in February 2013 the Thai pineapple processing company "Natural Fruit Company" filed four criminal and civil lawsuits against Mr. Hall for defamation and computer crimes. The lawsuits were filed after his contribution to a report titled "Cheap has a high price: Responsibility problems relating to international private label products and food production in Thailand". The report was published by the Finnish NGO Finnwatch and contained serious allegations of labour rights abuses by the Natural Fruit Company. Mr. Hall was the primary researcher collecting information in Thailand for the report. In this connection, he interviewed workers in order to document labour rights violations at the factory, including child labour, underpayment of wages, confiscation of migrant worker's travel and work documents, and failure to provide legally mandated paid sick leave days, holidays and leave. The report also addresses possible trafficking in persons for the purpose of labour exploitation in the National Fruit Company's factory located within the Prachuap Khiri Khan Province.

On 29 October 2014, the Phra Khanong Provincial Court dismissed the criminal defamation case related to an Al Jazeera Interview, due to the unlawful nature of the interrogation process used following Mr Hall's arrest. The decision was upheld by the Court of Appeal on 18 September 2015, after an appeal lodged by the Attorney General. In December 2015, the Natural Fruit Company and the Attorney General were given permission by the Attorney General to appeal to the Supreme Court. On 3 November 2016 the Supreme Court rejected the appeal.

With regards to the civil defamation lawsuit against Mr. Hall for the publication of the Finnwatch Report, negotiations between the two parties were started but subsequently failed on 30 October 2014. Following this breakdown of negotiations the Nakhon Pathom Court postponed consideration of this case until a verdict has been reached in the criminal defamation and computer crimes cases.

On 13 January 2016, the Bangkok South Criminal Court confiscated Mr. Hall's passport and issued a travel ban against him. On 20 September 2016 the Bangkok South Criminal Court handed down a four-year sentence against Mr. Andy Hall and a fine of 200,000 Thai Baht (about US$ 5700) , on "criminal defamation" and "computer crimes" charges. The court reduced the sentence to three years, with a two-year suspended term and a fine of about 150,000 Thai Baht (about US$ 4300). The court also lifted Mr. Hall's travel restriction and returned his passport.

As a result of the Court's decision and subsequent growing harassment from companies against Mr. Hall, he started to increasingly feel unsafe and decided on 7 November 2016 to temporarily leave the country.

The case of migrant workers in the food processing industry:

The recent decision of the Bangkok South Criminal Court on the complaint by the "Natural Fruit Company" against Andy Hall may encourage other food processing companies take legal action against other human rights defenders under the defamation law. For instance, it is alleged that the owner of a poultry farm named "Thammakaset 2" expressed his intention to take legal action against Andy Hall under the defamation law, for assisting 14 migrant workers reporting on the exploitative working conditions prevailing at the poultry farm. "Thammakaset 2" used to deliver chicken to "Betagro" chicken exporter. It has further been alleged that the owner accused two of the workers of theft for removing time cards that they intended to produce to the Labour inspectors as means of proof of the exploitative conditions and that they are now facing theft charges with up to seven years imprisonment.

The 14 migrant workers who managed to escape from the Thammakaset poultry farm report having been requested to work up to 20 hours a day, being forced to work overtime and to sleep in hot and small accommodation, which did not provide adequate shelter from rainfall and was located next to chicken rearing areas overnight. On average, one worker took care of 24'000-30'000 chicken on their own. Further, they have seen unlawful deductions in their salaries for rent, drinking water, electricity but also for perceived errors made during the course of their work. Confiscation of identity documents and limited freedom of movement by the employer prevented them from leaving. Workers were reportedly allowed to leave the isolated farm for a maximum of two hours a week for an accompanied visit to the market. The management allegedly withheld vital paperwork, which made it impossible for them to seek other sources of employment. Identification documents were withheld by the management and requests to receive identity documents had to be lodged one month in advance.

On 14 June 2016, the 14 workers reportedly resigned from the Thammakaset Farm 2 and filed litigation at the Department of Labour Protection and Welfare (DLPW). On 1 August 2016, the DLPW ordered a compensation of 1.7 million Bhat (about US$ 48'615) for the 14 migrant workers. On 3 August 2016, the

Director of the DLPW issued a press statement saying that according to an investigation, allegations of trafficking in persons, document confiscation and overworking had to be denied, referring to breaches of labour protection law on wage payment level so that DLPW ordered the employer to pay 1.7 million Baht (around US$48'630) to workers. On 2 September 2016, the 14 workers brought the case to Labour Courts of the Saraburi Province, considering the compensation payment attributed to them as insufficient.

Two of the 14 workers have produced time cards to the DLPW to prove the long working hours, following which they have been charged with multiple counts of theft, due to a complaint to police by the farm owner. The complaint alleges that worker time cards were removed from the employer's possession and handed over to Lopburi DLPW officials as evidence of rights violations.

On 28 May 2016, the Tambon Koketum police presented an arrest warrant from the Lopburi Court to Ms. [redacted], one of the migrant workers, and she was subsequently arrested and detained. She was only released after questioning and following "Betagro's" provision of 75, 000 baht bail (about US$ 2150). On 29 June 2016, Ms. [redacted] reported back to the police as part of her conditional release and was additionally charged with "taking part in theft from an employer during the night time and receiving stolen goods and taking documents in a way that could cause another person to suffer loss". A second worker, Mr. [redacted], was questioned in August and then also charged as being involved in the theft incident but released without needing to provide a bail surety.

Concern is expressed that the sentence imposed on Mr. Hall is related to his legitimate and peaceful work as a human rights defender. The sentencing also represents criminalization of 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 defamation laws 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. However unpleasant, inconvenient or offensive forms of expression are considered to be, this is not sufficient to justify the imposition of criminal penalties. Particular concerns are also expressed with regards to the right of a fair trial, the right to due process and the independence of the judiciary.

Further concern is expressed that the conviction and sentencing of Mr. Hall and his recent decision to leave the country because of security concerns 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. We are concerned that support by Courts may encourage other food processing companies to press charges against human rights defenders reporting about conditions in their companies or supporting workers to access justice.

Concern is also expressed with regards to the exploitation of migrant workers in the poultry industry. While we welcome some progress achieved in combating exploitation of migrant workers, such as reinforcing the labor inspection system, drafting legislation over labor agencies, introducing measures to prevent debt bondage and trafficking in human beings and creating stronger sanctions for labor abuse, we remain concerned over the continuation of abusive working conditions migrant workers face in the food processing industry. The confiscation of identity documents and the restricted freedom of movement make migrant workers particularly vulnerable to becoming victims of exploitations at the hands of their employer. We are particularly concerned that these exploitative working conditions may amount to forced labor. We are further concerned about the filing of criminal charges against migrant workers who are providing important supporting evidence. Such reactions, may severely reduce migrants confidence in Your Excellency's Governments judicial system.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 conviction of Mr. Hall for "criminal defamation" and "computer crimes" and how these are compatible with international human rights instruments, including article 19 of the ICCPR.

3. Please explain how the responsible Court justifies the sentence of Mr. Hall for defamation and computer charges and how those are compatible with article 19 of the ICCPR.

4. Please explain what measures your Excellency's Government will take to ensure that Thailand's defamation laws are compliant with the ICCPR?

5. 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.

6. 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.

7. Please provide information about any investigation, judicial or otherwise, into the alleged human rights and labour rights violations of migrant workers employed by the Natural Fruit Company and Thammakaset 2 Poultry Farm, and their outcome, including any examples of the prosecution of perpetrators.

8. Please provide information about protection and assistance measures available to victims of forced labour, including trafficking in persons for labour exploitation.

9. Kindly explain what measures your Excellency's Government intends to take in order to protect the two migrant workers charged with theft whose intention was to seek redress for the abusive conditions when they presented their time cards to labour inspectors as supporting evidence relating to the complaint filed at the Lopburi Department of Labor Protection and Welfare.

10. Please outline measures being taken by your Government to implement the 2011 UN Guiding Principles on Business and Human Rights.

11. Please describe the labour inspection system in place to regulate the poultry industry and indicate whether it has been used to identify victims of trafficking, debt bondage and other human rights and labour rights violations.

12. Please explain how your Excellency's Government ensures that the human and labour rights of all workers, including migrant workers, are respected.

13. Please indicate whether your Excellency's Government plans to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and indicate when such ratification will take place.

14. Please indicate when Thailand intends on ratifying the 1949 ILO Convention 98 on the Right to Organise and Collective Bargaining (No.98); the 1947 Labour Inspection Convention (No. 81); the 1969 ILO Convention on Labour Inspection (Agriculture) Convention (No. 129); and the 1976 ILO Convention on Tripartite Consultation (International Labour Standards) (No,144))?

15. Please explain how the ILO Convention 187 on Promotional Framework for Occupational Safety and Health (No. 187) has been implemented.

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.

It is our intention to publicly express our concerns in the near future as, in our view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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.

Pavel Sulyandziga
Chair-Rapporteur 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

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

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).

Furthermore, we would like to draw the attention of your Excellency's Government to the Slavery Convention of 1926, which calls for the complete abolition of slavery and all its forms, and article 4 of the Universal Declaration of Human Rights, which states that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". We would also like to recall article 5 of the Slavery Convention that calls on States to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery. The ILO Forced Labour Convention, 1930 (No. 29), ratified by your Excellency's Government on 26 February 1969, in addition calls for suppression of the use of forced or compulsory labour in all its forms within the shortest possible period. A new protocol to Convention No.29 passed by the International Labour Conference ILC in 2014, also provides specific guidelines to governments and businesses on steps to end forced labour.

We would also like to bring to the attention of your Excellency's Government article 8 of the International Covenant on Civil and Political Rights, which prohibits slavery, the slave trade, servitude and forced labour and article 7 of the International Covenant of Economic, Social and Cultural Rights, acceded by Thailand in 1999, which protects the right to just and favourable conditions of work. Furthermore, we wish to make reference to article 1 of the 1956 Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery that prohibits debt bondage and provides that States Parties shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of debt bondage.

We also would like to draw the attention of your Excellency's Government to the United Nations 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 through which your Excellency's Government is obliged to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, which include "[t]o prevent and combat trafficking in persons...". In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking ("Recommended Principles and Guidelines"), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that "States shall effectively

investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors". In light of information suggesting that brokers and recruitment agencies actively recruit migrant workers in Myanmar and Cambodia, we would also like to highlight guideline 11, paragraph 6, which recommends States to consider "establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation". Paragraph 7 of the same guideline also recommends "developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States. In recognition of the value of direct contacts, provision should be made for direct transmission of requests for assistance between locally competent authorities in order to ensure that such requests are rapidly dealt with and to foster the development of cooperative relations at the working level". We would also like to refer to the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children, in her visit report to Thailand (A/HRC/20/18/Add.2), including the one on strengthening cooperation with neighbouring countries, in particular (...)Cambodia (...) and Myanmar, in preventing and eliminating clandestine movements that result in or contribute to trafficking in migrant workers and their families, while at the same time ensuring options for safe migration. The Government should ensure the effective implementation of any bilateral and regional memorandums of understanding that provide migrants with proper protection, prevent trafficking and ensure the recovery and reintegration of trafficked persons, including having specific targets, performance indicators and timelines to monitor implementation (A/HRC/20/18/Add.2 para 77 z.)

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).

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."

We would like to draw your Excellency's Government's attention on article 13 of the International Covenant on Economic, Social and Cultural Rights, which states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent".

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.

In addition, we would also like to draw the attention of your Excellency's Government to the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. 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 apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." As specified in the Guiding Principles, fulfilling this duty requires that a State take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication". In addition, this requires, inter alia, that a State should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.

The Guiding Principles state that business enterprises have an independent responsibility to respect human rights. Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25). In addition, the Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. 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.