

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 3/2018

10 May 2018

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; 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 35/7, 34/18, 34/5, 34/21, 33/1 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a recent court decision and the subsequent arrest warrant issued against human rights defender Mr. Andy Hall, imposing 10 million Thai Baht (approximately 320 000 USD) in civil damages for having given an interview to Al- Jazeera English on the precarious working conditions of migrant workers in Natural Fruit Company's pineapple processing factories in Thailand that he has been monitoring.** Mr. Andy Hall also advised and assisted 14 migrant workers who had reported exploitative working conditions prevailing at the poultry farms of Thammakaset 2 company. **In this regard, we have received information about the possible retaliation against migrant workers who seek redress against the confiscation of documents, restricted freedom of movement and long working hours.**

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

A communication concerning the sentencing of Mr. Hall in a criminal and civil lawsuit for defamation and computer crimes has been sent to Your Excellency's Government on 16 November 2016 (THA 7/2016). In this communication, concern was expressed over the sentence imposed on him for conducting legitimate and peaceful work as a human rights defender, including in relation to his work as a human rights defender in the "Natural Fruit Company" case. The mandate holders further expressed concern on the alleged exploitation of over 14 migrant workers by the owner of a poultry farms

named “Thammakaset Farm 2”, and the allegations that Thammakaset intended to take legal action against Mr. Andy Hall under the defamation law, for having assisted the 14 migrant workers who had reported the exploitative working conditions prevailing at the poultry farm of Thammakaset. Your Excellency’s Government replied in detail in January 2017.

Prior to the above-mentioned communication, Special Procedures mandate holders had brought to the attention of your Excellency’s Government concerns regarding several criminal and civil lawsuits filed against Mr. Hall as a result of his monitoring and reporting on the precarious conditions of workers in the food processing industry (communications THA 8/2015,¹ of 9 September 2015, and THA 4/2013,² of 26 April 2013). We thank your Excellency’s Government’s for its substantive responses, dated 17 November 2016, 15 September 2015, 6 August 2013, and 3 May 2013, respectively, but remain concerned at the recent court decision against Mr. Hall and the subsequent arrest warrant issued against him.

Concerns over violations of migrant workers’ rights in the food processing industry have been raised by Special Procedures mandate holders in communications sent to your Excellency’s Government on 25 February 2016 (THA 1/2016³), to which your Excellency’s Government replied on 24 August 2016.

In this context and with regards to continued allegations of human rights defenders’ and migrant workers’ rights, we wish to draw your Excellency’s Government’s attention to the following.

According to the new information received:

Lawsuit against Mr. Andy Hall in relation to the “Natural Fruit Company” case:

Since February 2013, the Natural Fruit Company has filed four criminal and civil lawsuits against Mr. Hall for alleged defamation and computer crimes in relation to Mr. Hall’s contribution to a report by the Finnish NGO Finnwatch that alleged serious labour rights abuses at the company’s factories in Prachuap Khiri Khan Province and in relation to an interview he gave to Al-Jazeera in which he described the findings of the same report.

¹ Please see A/HRC/31/79.

² Please see A/HRC/24/21.

³ Please see A/HRC 33/32.

The Court had previously dismissed this civil defamation case due to a lack of jurisdiction, but following an appeal by Natural Fruit, the Appeals Court ordered the Phra Khanong Provincial Court to hear the case in full.

On 26 March 2018, the Phra Khanong Provincial Court in Bangkok ordered Mr. Hall to pay 10 million baht (approximately 320 000 USD) in damages to the Thai pineapple processing company Natural Fruit, following a civil defamation suit filed by the company.

The Court also ordered Mr. Hall to pay 10,000 baht (approximately 320 USD) for the plaintiff's lawyer and the court fees, in addition to a 7.5% interest from the date of filing his case. Mr. Hall informed that he would appeal the sentence to the Supreme Court.

On 24 April 2018, the Bangkok South Criminal Court issued a warrant to bring Mr. Hall to hear the appeal court's verdict. The new date for the reading of the verdict is scheduled on 31 May 2018 at 9.00am. The court has the discretion to read the verdict in his absence on that day.

The human rights situation of migrant workers in the Thammakaset Farm 2

According to the information received, on 2 September 2016, 14 migrant workers filed a lawsuit at a labour court in Saiburi province, southern Thailand, against Betagro, seeking compensation and civil damages for alleged labour rights violations and forced labour suffered at Thammakaset Farm 2. Betagro is an agro-industrial company to which Thammakaset is a supplier. Alleged labour exploitation included work up to 20 hours per day without a day off during 40 or more days, payment of less than the minimum wage, no overtime compensation, restriction of freedom of movement and confiscation of identity documents. Allegedly, Mr. Andy Hall advised and assisted the 14 migrant workers who had reported the exploitative working conditions prevailing at the poultry farm.

It has been alleged that in response to the claim, the owner of Thammakaset Farm 2 filed a defamation lawsuit against the workers and Andy Hall in October 2016 under sections 137 and 326 of the Criminal Code, stating that the allegations' caused damage to the company. The case against Mr. Andy Hall concerns a Facebook post accusing the factory/company of engaging in forced labour. Thammakaset allegedly argued that the post defamed them and led to financial loss. The lawsuit further includes an additional criminal charge against the 14 migrant workers on giving false information to public officials.

In August 2017, the Don Muang Court accepted Thammakaset's criminal defamation case for full trial. The workers were indicted on 4 October 2017. The 14 workers pleaded not guilty to the defamation charges and were released temporarily on bail without any deposit placed at the Court. However, each worker allegedly has been requested through a bail contract from the Court to

attend trial, with a fine of 20,000 baht in case of absence. Any migrant worker wanting to leave Thailand must request the Court's permission first.

In addition, two of the workers have been prosecuted for criminal theft in relation to alleged theft of their time cards from their employer in order to substantiate the claim that they were made to work excessive hours. The public prosecutor in August 2017 allegedly decided that the theft case had no merit to proceed to a trial, but Thammakaset allegedly initiated private criminal prosecution at the Lopburi Court, which was allegedly heard on 2 May 2018.

As per information received on 9 April 2018, it is likely that Thammakaset will launch other two criminal prosecutions against migrant workers in relation to a TPBS news program showing time card that damaged the company's reputation and an apparently missing memory card from CCTV camera in the farm.

In a separate case, in August 2016, the Lopburi Department of Labour Protection and Welfare ordered Thammakaset Farm 2, as a result of a labour inspection that identified several labour violations regarding withholding of wages, to pay 14 workers for an amount of 1.7 million baht (about USD 52,000) for unpaid wages, overtime payment, holiday payment and holiday overtime payment plus interest. Thammakaset Farm 2 appealed and the Region 1 Labour Court rejected its first appeal. The Appeals Court on 17 September 2017 supported this ruling. However, Thammakaset requested to appeal this decision in the Supreme Court on 10 October 2017, a decision from the Supreme Court is allegedly still pending. This means that workers are still waiting to receive their compensation. In addition, the migrant workers await a ruling from the Appeal Court, after their 44 million baht forced labour compensation claim against Betagro and Thammakaset has been rejected by the Region 1 Labour Court.

While there is no dispute that in general, defamation laws do serve a legitimate purpose, they need to be formulated and implemented in a way that prevents abuse, allows proper defense and sets reasonable limits on damages. We express concern that the Court decision in the Natural Fruit Company case against Mr. Hall and the large amount of damages awarded have the consequence of stifling freedom of expression, as well as the work of human rights defenders and investigative journalism in general.

We reiterate our concern that these actions appear to be related to Mr. Hall's legitimate and peaceful work as a human rights defender, and to his gathering and dissemination of allegations concerning serious human rights violations within Thailand's and poultry farm industries.

We furthermore reiterate our concern that the court decision in the Natural Fruit Company case contributes to the "chilling effect" on other human rights defenders and civil society activists working in Thailand and elsewhere to expose human rights violations perpetrated by business enterprises. In light of the number of previous cases in Thailand where human rights defenders are subject to civil lawsuits by companies involving high amount of damages, we are concerned that the Court decision in the

present case may contribute to a climate where allegations about wrongdoings by companies are not exposed in fear of civil lawsuits. We are concerned that the Court decision may contribute to encourage other companies to press charges against human rights defenders reporting about human rights abuses in their operations or supporting workers' access to justice.

Further concern is expressed about the exploitation of migrant workers in the poultry industry and possible retaliation against those who seek redress against the confiscation of documents, restricted freedom of movement and long working hours.

In this regard, while we appreciate Your Government's action in organizing, through the Ministry of Labour, labour inspections in "Thammakaset Poultry Farm 2", we would like to remind Your Excellency Government that lack of evidence of detention and confinement facilities does not *per se* constitute a sufficient reason to exclude forced labour or trafficking in persons for the purpose of labour exploitation, as stated in Your reply to our previous communication. Indeed, excessive overtime, withholding of wages, restriction of movement and retention of identity documents all represent indicators of forced labour or trafficking for labour exploitation. Some of such indicators were indeed also confirmed by your labour inspectors and need to be taken into account when assessing the alleged exploitative status of migrant workers in the Thammakaset Poultry Farm 2 case and in similar cases. Moreover, we are particularly concerned about the existing legislation, which allows admission of defamation charges against migrant workers who exercised their legitimate right to press charges against abusive and exploitative employers. These charges may have an intimidating effect on other migrant workers suffering abuse and exploitation.

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.

As 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 provide details on the Court decision of 26 March 2018. In particular, please provide details about the court's justification for awarding 10 million Thai baht damages, and about how, under the current legislation, courts generally take into account public interest considerations, including that human rights defenders are able to raise legitimate concerns about human rights abuses.
3. Please indicate what measures have been taken to ensure that human rights defenders in Thailand are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation

and harassment of any sort, including from civil and criminal defamation cases.

4. Please indicate what additional measures the Government of your Excellency has taken in order to implement its duty to protect human rights and to ensure availability of an access to effective remedy, as outlined, inter alia, in article 2, para. 3 (a), of the International Covenant on Civil and Political Rights (ICCPR) and in the UN Guiding Principles on Business and Human Rights.
5. In particular, please highlight the steps that the Government has taken, or is considering to take, to ensure that migrant workers are able to seek effective remedies for violations of their rights without any fear of intimidation.
6. Please highlight the steps that the Government has taken, or is considering to take, to ensure that existing legislation are not misused by businesses to obstruct legitimate and peaceful activities of human rights defenders, including by filing civil and criminal defamation cases.
7. Please highlight the steps that the Government has taken, or is considering to take to ensure (i) that all businesses respect human rights throughout their operations, (ii) the effectiveness of domestic judicial mechanisms with respect to business-related human rights abuses, and (iii) that the legitimate and peaceful activities of human rights defenders are not obstructed.
8. Please provide information about protection and assistance measures available to victims of trafficking, including victims of forced labour and labour exploitation including in relation to the status of implementation of the compensation order in the Tammakaset case.
9. Kindly explain what measures your Excellency's Government has taken to ensure that the defamation charges such as against the 14 migrant workers are compliant with Thailand's international human rights obligations, particularly under article 19 of the ICCPR?
10. Please provide information on how migrant workers who make use of their right to seek remedies are protected from any form of retaliation, such as defamation charges?
11. Kindly explain what measures your Excellency's Government intends to take in order to protect the two migrant workers charged with theft, taking into account that their intention was to seek redress for the abusive conditions by presenting their time cards to labour inspectors as supporting evidence relating to the complaint filed at the Lopburi Department of Labor Protection and Welfare.

12. 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 and what are the indicators used to identify cases of forced labour and labour exploitation.
13. Please explain how your Excellency's Government ensures that the human and labour rights of all workers, including migrant workers, are respected.
14. Please provide any update on the status of ratification of the ILO Convention on the Right to Organise and Collective Bargaining (No. 98), the Labour Inspection Convention (No. 81), the Labour Inspection (Agriculture) Convention (no. 129), the 1976 ILO Convention on Tripartite Consultation (International Labour Standards) (No. 144) and the ILO Protocol of 2014 to the Forced Labour Convention No. 29, that Your Excellency claimed to be in the pipeline for 2017. Please also provide any update on the status of implementation of the 'Guidelines to Enhance Efficiency of Human Trafficking Victim Identification' – which Your Excellency Government claimed to take effect in 2017 - and on the related number of cases of forced labour and labour exploitation identified so far thanks to this instrument.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We may also publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that letters on the same subject have also been sent to the concerned companies.

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.

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

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Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Urmila Bhoola
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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.

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).

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 No. 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".

We would also like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the ICCPR are not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

Furthermore, we would like to draw the attention of your Excellency's Government to 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". 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. In particular, according to article 2, forced or compulsory labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. 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, which protects the right to just and favourable conditions of work.

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". Criteria and indicators of trafficking in persons for the purpose of labour exploitation should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37).

We would finally bring your attention to the United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, which notes that States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. They also recognise the important and valuable role played by independent civil society organisations 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 activities of human rights defenders are not obstructed.