

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:
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10 May 2018

Mr. Permpol,

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.

We are sending this letter under the communications procedure of the special procedures of the United Nations Human Rights Council to seek clarification on the information that we have received.¹ Special procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals and other communications. The intervention can relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company the **information that we have received concerning possible retaliation against 14 migrant workers who have sought redress against the confiscation of documents, restricted freedom of movement and long working hours and who currently face criminal defamation charges filed by your company. According to the information received, criminal defamation charges were also filed by your company against Mr. Andy Hall, who advised and assisted the 14 migrant workers in raising concern about exploitative working conditions prevailing at the poultry farms of Thammakaset 2 company.**

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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.

In this context, we wish to draw your attention to the following.

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 the company Betagro, to which Thammakaset 2 serves as a supplier, seeking compensation and civil damages for alleged labour rights violations and forced labour suffered at the Thammakaset 2 Farm. Alleged labour exploitation included work up to 20 hours per day without a day off for 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 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 of the 14 migrant workers 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. In August 2017, the public prosecutor allegedly decided that the theft case had no merit to proceed to a trial, but Thammakaset 2 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 2 will launch other two criminal prosecutions against migrant workers in relation to a TPBS news program showing one time card and an apparently missing memory from CCTV camera in the farm.

In a separate case, in August 2016, the Lopburi Department of Labour Protection and Welfare ordered Thammakaset 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. Reportedly, Thammakaset 2 appealed and the Region 1 Labour Court rejected its first appeal. The Appeals Court, on 17 September 2017, supported this ruling. However, Thammakaset 2 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 2 was rejected by the Region 1 Labour Court.

We express concern at the alleged exploitation of migrant workers in the poultry industry and possible retaliation against migrant workers who seek redress against the confiscation of their documents, restricted freedom of movement and long working hours. Moreover, we are particularly worried over the filing of claims for defamation charges against migrant workers who exerted their legitimate right to press charges against abusive and exploitative employers, which may have an intimidating effect on other migrant workers suffering abuse and exploitation.

We express concern that these actions are also related to the legitimate and peaceful work of a human rights defender who has been monitoring human rights abuses within Thailand's food processing industry.

We furthermore reiterate our concern that filing these cases contributes to a "chilling effect" on other human rights defenders and workers in Thailand and elsewhere and their ability to expose human rights abuses 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 such cases may also encourage other companies to press charges against human rights defenders and workers who report about human rights abuses in their operations or support workers' access to justice.

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 further information as to why you should not consider – consistent with your responsibility to respect all human rights - ending all legal proceedings against individuals, such as human rights defenders or migrant workers, facing investigation, charges, or prosecution for engaging in legitimate activities protected by international human rights law?
3. Please provide further information on what measures have been taken to align business operations with international labour standards, ensuring respect and protection of labour rights of your workers, including migrant workers?
4. Please provide information as to what human rights due diligence steps have been undertaken by your company to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts and indicate if this process has involved meaningful consultation with potentially affected stakeholders, including workers and their representatives, as set forth in the UN Guiding Principles on Business and Human Rights.
5. Please provide concrete information on what measures have been implemented to address risks of trafficking in persons for labour exploitation and forced labour, as per indicators highlighted in the Special Rapporteur on trafficking in persons reports A/HRC/23/48/Add.4, appendix I and A/HRC/35/37,
6. Please provide information on steps taken by Thammakaset 2 to establish any company-level grievance mechanisms to address adverse human rights impacts caused by your company, Please indicate how related potential barriers faced by migrants to use the established mechanism have been identified and addressed, and how Thammakaset 2 cooperates in the remediation of human rights abuses through legitimate processes.

We would appreciate receiving a response within 60 days. Your 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 you to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to the Government of Thailand.

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

Anita Ramasastry
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

Felipe González Morales
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 the attention of Thammakaset 2 to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. 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. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Principles 11 to 24 and Principles 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 cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which 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).

Finally, the Guiding Principles 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.

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 you 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 your attention to 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 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 attention to 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 you 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 your attention 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 the Government of Thailand 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 your attention article 8 of the International Covenant on Civil and Political Rights, which prohibits slavery, 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.

We also would like to draw your attention 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 the Government of Thailand on 17 October 2013 through which the 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).