

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 contemporary forms of slavery, including its causes and consequences

REFERENCE:
AL THA 1/2019

30 January 2019

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; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 35/7, 34/18, 34/5, 34/21 and 33/1.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the judicial harassment of human rights defender Ms. Sutharree Wannasiri and Mr. Nam Win, a migrant worker from Myanmar, for denouncing labor conditions of migrant workers in a Thai company, Thammakaset Co. Ltd (Thammakaset)**. The use of criminal defamation charges to intimidate human rights defenders and migrant workers denouncing exploitative working conditions has allegedly been used by Thammakaset repeatedly.

Thammakaset's misuse of judicial processes was the subject of previous communications sent to your Excellency's Government by Special Procedures mandates holders: ref. no AL THA 7/2016 and AL THA 3/2018. Thammakaset allegedly used the criminal defamation laws to intimidate human rights defenders and workers who denounced exploitative working conditions prevailing at the poultry farm of Thammakaset. We note with appreciation that your Excellency's Government replied in detail on 19 January 2017 to communication AL THA 7/2016. Your Excellency's Government's reply to communication AL 3/2018 has not yet been received.

Concerns relating to violations of the rights of migrant workers in Thailand's poultry industry were raised by Special Procedure mandate holders in the communication sent to your Excellency's Government on 25 February 2016 (ref. no THA 1/2016), to which a reply was received on 24 August 2016.

In this context and in light of the continued allegations of misuse of judicial processes to harass human rights defenders and migrant workers who defend the human rights of workers, as well as the alleged retaliations and complaints against them, we wish to draw your Excellency's Government's attention to the following.

According to the information received:

On 12 October 2018, Thammakaset filed a criminal defamation complaint before the criminal court of Bangkok against **Ms. Sutharee Wannasiri**, a Thai human rights defender and former employee of the NGO Fortify Rights, claiming that her comments on Twitter on a short film by Fortify Rights on alleged labour rights abuses of fourteen migrant workers from Myanmar by Thammakaset damages the company's reputation. She is charged with section 326 and 328 of the Thai Criminal Code for which she could face up to six years of imprisonment and/or a fine of up to 600,000 Thai Baht (USD 20,000). Thammakaset has also filed a civil defamation lawsuit against her, demanding 5,000,000 Thai Baht (USD 161,000) in compensation.

On 26 October 2018, Thammakaset also filed a criminal defamation complaint against **Mr. Nam Win**, one of the 14 migrant workers from Myanmar, claiming that the elements he provided in two interviews to Fortify Rights containing details of alleged labour rights abuses at Thammakaset Farm damaged the company's reputation.

Fourteen migrant workers from Myanmar have already faced judicial complaints for reporting alleged abuses of labour rights in Thammakaset to the National Human Rights Commission on 6 July 2014, and to the Labour Court in Saiburi Province. They reported on the company's failure to pay minimum wage and overtime wages, as well as for confiscating their identity documents, restricting their freedom of movement and forcing them to work excessive hours. Thammakaset filed a criminal lawsuit against these workers for defamation, giving false information to public officials. On 11 July 2018, Don Muang Magistrates Court ruled that the fourteen migrant workers from Myanmar were not guilty of criminal defamation. On 15 January 2019, Thailand's Supreme Court ordered compensation be paid to the fourteen migrant workers from Myanmar exploited by Thammakaset.

We reiterate our concern that these actions on the part of Thammakaset appear to be related to the legitimate and peaceful work done by Ms. Sutharee and Mr. Nam as human rights defenders, and to their dissemination of information concerning serious human rights violations and labour conditions within Thailand's poultry farm industries. We reiterate that your Excellency's Government has an obligation to ensure that its domestic legal framework includes safeguards against human rights abuses by corporations.

We furthermore reiterate our concern that criminal defamation laws are used to silence human rights defenders' work which may have a "chilling effect" on the legitimate work of other human rights defenders and civil society actors in Thailand and elsewhere seeking to expose human rights violations perpetrated by business enterprises. We are concerned that such judicial proceedings may also 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 migrant workers who denounce the exploitative conditions that may amount to trafficking for the purpose of forced labour or labour 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 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 indicate what measures have been taken to ensure that human rights defenders, including labour 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 charges.
3. Please provide detailed information on any measures your Excellency's Government has undertaken to promptly identify migrant workers who are victims or potential victims of trafficking for the purpose of forced labour or labour exploitation, 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
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 and access to effective remedy, as outlined in the UN Guiding Principles on Business and Human Rights. In particular, please highlight the steps that the Government has taken, or is considering to take, to ensure (i) that migrant workers are able to seek effective remedies for violations of their rights without any fear of intimidation, and (ii) 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.
5. Please outline steps the Government of your Excellency has taken, or is considering to take, to set out clearly the expectation that all businesses respect human rights throughout their operations, including conducting human rights due diligence.

6. Please explain what measures your Excellency's Government has taken to ensure that the defamation laws are in line with Thailand's international human rights obligations, particularly under the ICCPR.
7. Please provide information on how migrant workers who make use of their right to access to justice and seek remedies are protected from any form of retaliation, such as civil and criminal defamation charges.
8. Based on the Supreme Court's order of 15 January 2019 to pay compensation to the fourteen migrant workers from Myanmar exploited by the Thammakaset farm, please indicate the timeframe for the payment.
9. 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, what the indicators used to identify cases of forced labour and labour exploitation are, and if as a result of labour inspection, any prosecutions for forced labour, trafficking for the purposes of labour exploitation or similar crimes have taken place.
10. Please provide information regarding the progress in the development of a National Action Plan on Business and Human Rights by your Excellency's Government and the adoption of measures, including a specific law, to protect against strategic lawsuits against public participation (anti-SWAPP measures), that would contribute to the non-repetition of similar instances.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a copy of this letter has been sent to the Government of Myanmar, and that a letter on the same subject has also been sent to the concerned company.

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.

Surya Deva
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

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.
- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

We also wish to draw the attention of your Excellency's Government to the UN General Assembly Resolution 68/181 as well as Human Rights Council Resolution 31/32, in which States pledged to take all necessary measures to ensure the protection of women human rights defenders.

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 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 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. 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, 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". 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 note 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. Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

We would also like to recall the paragraph 14 of the General Assembly resolution 62/156 which “requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association”.

We would also like to recall to Your Excellency’s Government the thematic report of the Special Rapporteur on the human rights of migrants on labour exploitation of migrants (ref. A/HRC/26/35), in which the Special Rapporteur recommends States to:

82. Make sure that passports and other identity documents are not confiscated, and make the withholding of such documents an offence, with appropriate penalties, and effectively prosecute violations.

83. Guarantee that all migrants have the right to accept and to leave employment voluntarily, without the threat of a penalty. Migrants who choose to leave an abusive employer should not lose their residence permit. Instead, they should receive adequate support, for example by providing them with a long enough grace period in order to find a new job. Allowing migrants to change employers when they wish would render them far less vulnerable to exploitation.