

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:
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28 January 2019

Mr. Chanchai 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; 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.

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 information we have received concerning **the judicial harassment of a human rights defender Ms. Sutharree Wannasiri, and Mr. Nam Win, a migrant worker from Myanmar, for denouncing labor conditions of migrant workers in your company.** The use of criminal defamation charges to intimidate human rights defenders and migrant workers denouncing exploitative working conditions has allegedly been used by your company repeatedly.

Thammakaset's misuse of judicial processes was the subject of previous communication sent to your company by the Special Procedures mandates holders - ref. no AL THA 3/2018. Your company has allegedly used criminal defamation laws to

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

intimidate human rights defenders and workers who denounced exploitative working conditions prevailing at Thammakaset.

In this context and with regard to 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 retaliations and complaints against them when denouncing violations of these rights, we wish to draw your 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 furthermore reiterate our concern that defamation laws are used to silence the human rights activists' work and that filing lawsuits against them 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 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 provide further information on how filing criminal and civil lawsuits under defamation laws against human rights defenders and migrant workers denouncing exploitative conditions, which could amount to forced labour and labour exploitation, is in line with your company's responsibility to respect all human rights under the UN Guiding Principles on Business and Human Rights.
3. Please explain why your company does not consider – consistent with its 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.
4. Please provide further information on what measures Thammakaset has taken, or is considering to take, to align its business operations with international labour standards, ensuring respect and protection of labour rights of workers, including migrant workers.
5. Please provide information as to what human rights due diligence steps were undertaken by your company to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts, and indicate if this process included meaningful consultation with potentially affected stakeholders, as set forth in the UN Guiding Principles on Business and Human Rights.
6. 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,

7. Please provide information on steps taken by Thammakaset to establish any company-level grievance mechanisms to address adverse human rights impacts caused by your company, and how Thammakaset cooperates in the remediation of human rights abuses through legitimate processes.

This communication and any response received from your company will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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, Mr. Chanchai Permpol, 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 the attention of Thammakaset 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), all 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).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

The Guiding Principles 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.

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."

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.
- 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 favorable 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 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”. 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.