

**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 Working Group on discrimination against women and girls**

REFERENCE:  
AL THA 3/2020

10 March 2020

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 Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 35/7, 34/18, 34/5, 34/21, 42/10 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continued judicial harassment by Thammakaset Co. Ltd (Thammakaset), of human rights defenders, migrant workers, journalists and academics for denouncing exploitative working conditions of migrant workers at the poultry farm of this Thai company.**

Thammakaset's misuse of judicial processes was the subject of previous communications sent to your Excellency's Government by Special Procedures mandate holders: ref. no AL THA 7/2016, AL THA 3/2018 and AL THA 1/2019. We note with appreciation that your Excellency's Government replied in detail on 19 January 2017 to communication AL THA 7/2016, and on 23 May 2019 to communications AL THA 3/2018 and AL THA 1/2019 respectively. In its report on the country visit to Thailand of 2018 (A/HRC/41/43/Add.1), the Working Group on business and human rights raised further concerns regarding Thammakaset misuse of judicial processes and recommended your Excellency's Government to "review the legal basis of all business related civil and criminal defamation cases to ensure that no strategic lawsuits against public participation are pending" and to "develop guidelines and other measures for the protection of human rights defenders who raise concerns about abusive business practices".

Concerns relating to violations of the rights of migrant workers in Thailand's poultry industry were also raised by Special Procedures mandate holders in the communication sent to your Excellency's Government on 25 February 2016 with 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, journalists, academics and migrant workers who exercise their legitimate right to defend the human rights of workers, as well as the alleged retaliations and complaints against them, we wish to draw your Excellency's Government attention to the following.

According to the new information received:

In addition to the judicial processes mentioned in previous communications to your Excellency's Government, Thammakaset has filed seven new criminal defamation complaints against ten human rights defenders, migrant workers, academics and journalists for disseminating information concerning serious human rights abuses and labour rights conditions on social media. Six of these cases are filed against women human rights defenders.

On 1 March 2019, Thammakaset filed a criminal defamation and libel complaint before the Lopburi Provincial Court against Ms **Suchanee Cloitre**, a Thai journalist, claiming that her comments on Twitter posted on 14 September 2017 regarding alleged labour rights abuses by Thammakaset damaged the company's reputation. During the pre-trial phase, on 17 June 2019, Ms. Suchanee's lawyer submitted a motion to the court to dismiss the case under Section 165/2 of the Criminal Procedure Code alleging that Thammakaset's criminal complaint lacked merit as it amounted to judicial harassment against the journalist and woman human right defender. This section stipulates that "during the preliminary hearing, the defendant may submit to the court a significant fact or law which may bring the court to the conclusion that the case before it lacks merit [...]". On 24 December 2019, Ms. Suchanee was found guilty by the Lopburi Provincial Court of "defamation" (art. 326 of the Thai criminal Code) and "libel" (art. 328) and sentenced to two years imprisonment. Ms. Suchanee was released on a 75,000 Baht (approximately USD 2,400) bail. She subsequently appealed the court's decision and is awaiting judgment by an appeal court.

On 1 May 2019, Thammakaset filed a criminal defamation suit before the Bangkok Criminal Court under sections 326 (defamation) and 328 (libel) of the Criminal Code against **Professor Ngamsuk Ruttanasatian**, an academic at Mahidol University's Institute for Human Rights and Peace (IHRP). Thammakaset claimed in the lawsuit that Ms. Ngamsuk Ruttanasatian damaged the company's reputation by sharing a news release from the non-governmental organization "Fortify Rights" on 12 March 2019 on the IHRP's Facebook page. Thammakaset alleged in the claim that Ms. Ngamsuk Ruttanasatian was the administrator of such Facebook page. After the preliminary hearings held on 1 July and on 5 August 2019, the Bangkok Criminal Court dismissed the complaint against Ms. Ngamsuk Ruttanasatian due to insufficient evidence.

On 25 October 2019, Thammakaset filed a criminal defamation suit before the Bangkok South Criminal Court under sections 326 (defamation) and 328 (libel) of

the Criminal Code against Ms. **Angkhana Neelapaijit**, a woman human rights defender, current chairperson for the Justice for Peace Foundation (JPF) and a former commissioner of the National Human Rights Commission of Thailand (2015-2019). Thammakaset claimed in the law suit that Ms. Neelapaijit shared on Twitter a hyperlink to a statement of 16 organizations calling on the company to “withdraw all criminal complaints and unsubstantiated civil complaints against other migrant workers and human rights defenders for their involvement in peaceful activities protected by international human rights law” and on the Government to “protect individuals and human rights defenders from abusive litigation aimed at curtailing the exercise of freedom of expression”. The tweet also contained a hyperlink to a short film, produced by the non-governmental organization “Fortify Rights”, referring to a previous defamation complaint brought by Thammakaset against 14 of its former migrant workers, and calling upon the authorities to decriminalize defamation in Thailand. On 11 July 2018, Don Muang Magistrates Court had ruled that the 14 migrant workers were not guilty of criminal defamation. Other cases of defamation complaints against human rights defenders and migrant workers related to the same short film have been shared in previous communications with your Excellency’s Government. On 3 December 2018 and 28 June 2019, during her tenure as commissioner of the National Human Rights Commission of Thailand, Ms. Neelapaijit issued two tweets to support an academic and a human rights defender facing alleged civil and criminal defamation cases filed by Thammakaset. The tweets included hyperlinks to the abovementioned statement of the 16 organizations and the ‘Fortify Rights’ video.

On 12 February 2020, Ms. Neelapaijit appeared in a mediation hearing scheduled by the Bangkok South Criminal Court. However, the mediation hearing failed as Thammakaset’s legal representative allegedly informed the Court’s mediator of its client refusal to participate. Ahead of the preliminary hearing on the lawsuit on 24 February 2020, Ms. Angkhana Neelapaijit submitted a motion of dismissal of the case to the court pursuant to Article 161/1 and Article 165/2. After the plaintiff’s objection to the motion, the court proceeded with the preliminary hearing for further deliberation and scheduled new hearings on 8 April and 20 May 2020.

Criminal defamation under section 326 of the Criminal Code carries a maximum sentence of one year of imprisonment, a fine of up to 20,000 Baht (approx. USD 640) or both. Section 328 criminalizes defamation “by means of publication” with up to two years’ imprisonment and a fine of up to 200,000 Baht (approx. USD 6,400). If found guilty, Ms. Neelapaijit could face up to two years in prison and a fine of up to 200,000 Thai baht (approx. USD 6,400).

On 6 December 2019, Thammakaset also filed a criminal defamation suit before the Bangkok South Criminal Court under sections 326 (defamation) and 328 (libel) of the Criminal Code against Ms. **Puttanee Kangkun**, a senior human rights specialist and employee of the non-governmental organization “Fortify

Rights”. Thammakaset claimed in the lawsuit that Ms. Kangkun’s 14 posts on her private accounts of Twitter and Facebook expressing support to human rights defenders involved in alleged civil and criminal defamation cases filed by Thammakaset, damaged the company’s reputation. According to information received, the defendant faces a potential prison sentence of up to 28 years. The preliminary hearing on the lawsuit was scheduled to be held on 2 March 2020, however due a procedural defect, the preliminary hearing has been postponed to take place in May 2020.

We reiterate our concern that these and previous actions on the part of Thammakaset appear to be aimed at hindering the legitimate and peaceful work of those who defend labour rights, in relation to their dissemination of information concerning serious human rights abuses and exploitative working conditions within Thailand’s poultry farm industries. We are particularly concerned that majority of the defendants in the new cases filed by Thammakaset are women human rights defenders. This may foster a climate of harassment and defamation against women human rights defenders in the country, who are at increased risk of having their work delegitimized on the basis of their gender. We would like to stress 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 misused to silence human rights defenders’ work which may have a “chilling effect” on the legitimate work of other human rights defenders, journalists and civil society actors in Thailand and elsewhere seeking to expose human rights abuses perpetrated by business enterprises. We remain concerned that such vexatious 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.

We note that protecting human rights defenders is one of the priority areas in the National Action Plan on Business and Human Rights launched by the Thai Government in December 2019 and that the Government has taken certain measures – including amendments to the Criminal Procedure Code – to protect human rights defenders. However, these measures seem to be having little or no impact on Thammakaset, as it continues to harass human rights defenders through SLAPP (Strategic Lawsuit Against Public Participation) cases.

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) that you may have to the above-mentioned allegations.
2. Please indicate what measures since our previous communications have been taken by your Excellency's Government 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 indicate the actions taken, or being planned, by your Government to implement the relevant provisions in the 2019 National Action Plan on Business and Human Rights (NAP) to protect human rights defenders. In particular, please provide detailed information on the steps taken, or being considered, to "push review, amendment and abolition of laws, as well as relevant mechanisms to facilitate the protection of human rights defenders". In addition, we would appreciate an update on the progress made regarding your Government's commitment in the NAP to "study the guidelines for development of laws, regulations or measures to prevent Strategic Litigation Against Public Participation (SLAPP)".
4. Please provide updated information on the current status of all law suits filed by Thammakaset against individuals and human rights defenders, including those cases which were raised with your Excellency's Government in this and in previous communications related to Thammakaset.
5. Please provide detailed information on how courts have so far applied the 'anti-SLAPP provision' under Section 161/1 of the Criminal Procedure Code, which was passed by the National Legislative Assembly (NLA) on 4 December 2018. In particular, please provide information about the number of cases where this provision has been used by courts to dismiss defamation law suits and in turn protect human rights defenders.
6. Please provide information whether any steps have been taken to train judges and prosecutors about international standards concerning human rights defenders and whether they have been made aware of legislative intent behind anti-SLAPP provisions of the Criminal Procedure Code.
7. Please outline any special measures that your Excellency's Government is considering to take to protect women human rights defenders, as they face additional risks and threats, as apparent even in the context of SLAPP cases filed by Thammakaset.

8. Please provide information whether the Government has conducted, or is considering to conduct, any independent assessment of the effectiveness of the measures envisaged under the NAP to protect human rights defenders.
9. Please outline any additional steps your Excellency's Government is considering to take, as part of its duty to protect human rights and to ensure access to effective remedy, to set out clearly the expectation that all business enterprises respect human rights throughout their operations, including by conducting human rights due diligence and providing remediation in line with the UN Guiding Principles on Business and Human Rights.

This communication and any response received from your Excellency's Government 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.

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.

We may 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 accept, Excellency, the assurances of our highest consideration.

Githu Muigai  
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

Meskerem Techane  
Chair-Rapporteur of the Working Group on discrimination against women and girls

**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.

In this context, we also recall that the Committee on Economic, Social, and Cultural Rights, in its General Comment No. 24, noted that the 'introduction by corporations of [civil] actions to discourage individuals or groups from exercising remedies, for instance by alleging damage to a corporation's reputation, should not be abused to create a chilling effect on the legitimate exercise of such remedies.'

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. In addition, we wish to draw attention to the 2019 report of the Special Rapporteur on the situation of human rights defenders, which highlighted the situation of women human rights defenders. In his report, the Special Rapporteur makes specific reference to women human rights defenders being specifically vulnerable to subjection to strategic lawsuits by businesses, which aim to intimidate and silence them. Furthermore, we refer to the thematic report of the Working Group on Discrimination against Women and Girls on eliminating discrimination against women in political and public life (A/HRC/23/50), where the Working Group pointed out that women defenders are often the target of gender-specific violence, such as intimidation, attacks and death threats, which are sometimes condoned or perpetrated by State actors.

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...".

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 like to recall to Your Excellency's Government the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' country visit to Thailand (ref. A/HRC/41/43/add.1), in which the Working Group recommends the Government to:

*(e) Continue and enhance the implementation of policies and programmes that aim to provide migrant workers with information regarding their rights and the complaint procedures available; this information should be made available in their native languages on their arrival in Thailand and through hotlines;*

*(f) Review the legal basis of all business-related civil and criminal defamation cases to ensure that no strategic lawsuits against public participation are pending;*

*(g) Develop guidelines and other measures for the protection of human rights defenders who raise concerns about abusive business practices;*

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)