

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 OTH 10/2020

10 March 2020

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 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 company information we have received concerning Thammakaset's continued **judicial harassment of human rights defenders, migrant workers, journalists and academics for denouncing exploitative conditions of migrant workers in your company**. Your company allegedly continues to use criminal defamation laws to intimidate individuals by repeatedly denouncing exploitative working conditions at your poultry farm.

Thammakaset's misuse of judicial processes was the subject of previous communications sent to your company by Special Procedures mandate holders: ref. no AL OTH 15/2018 and AL OTH 1/2019. Your company's reply to these communications has not yet been received. 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 your company's misuse of judicial processes and recommended the Government of Thailand 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". The Working Group on business and human rights reiterated these concerns in a meeting with you during its session in Geneva on 14 May 2019.

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 attention to the following.

Thammakaset Co. Ltd

According to the new information received:

In addition to the judicial processes mentioned in previous communications to your company, 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 statements 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 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 company. 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 law suit 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 your company 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 furthermore continue to 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, academics, migrant workers, 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 continue to express concern about the reported exploitation of migrant workers in the poultry industry and possible retaliation against migrant workers who have denounced the exploitative working 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 comments that you may have on the above-mentioned allegations.
2. Please provide further information on the factual and legal grounds your company consider to repeatedly file new criminal and civil lawsuits under defamation laws against human rights defenders, migrant workers, journalist and academics denouncing exploitative conditions or alleged judicial harassment, and therefore continues to be in breach of your company's responsibility to respect all human rights under the UN Guiding Principles on Business and human Rights (UNGPs).

3. Please explain why your company does not consider – in line with its responsibility to respect all human rights under the UNGPs – withdrawing charges and ending all legal proceedings against individuals, such as human rights defenders, academics, migrant workers and journalists, facing investigation, charges, or prosecution for engaging in legitimate activities protected by international human rights law.
4. Please provide information on the steps taken by your company, in line with discussion held during your meeting with the Working Group on business and human rights in Geneva on 14 May 2019, to withdraw all legal proceedings against human rights defenders.
5. Please provide detailed 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 workers, including migrant workers.
6. 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 stakeholder, as set forth in the UNGPs.
7. As requested in previous communications to your company, 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 reports of the Special Rapporteur on trafficking in persons A/HRC/23/48/Add.4 appendix I and A/HRC/35/37.
8. 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.

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 company 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, Mr. Permpol, 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 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.

We would like to recall 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;*

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.

As noted by the Committee on Economic, Social, and Cultural Rights, in its General Comment No. 24, 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.'

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 company 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 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.