

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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 trafficking in persons, especially women and children.

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (106-10) Trafficking (2004-5)
THA 4/2013

26 April 2013

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 trafficking in persons, especially women and children pursuant to Human Rights Council resolution 17/4, 16/4, 16/5, 17/12, and 17/1.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged criminal charges brought against Mr. **Andy Hall**.

Mr. Andy Hall, a British citizen, is a defender of migrant and labour rights previously attached to Mahidol University as Associate Researcher and Foreign Expert in the Institute for Population and Social Research. Mr. Hall is reportedly based in Myanmar and Thailand and has been active as a researcher of migrant and labour rights in Thailand for over ten years, exposing numerous human rights violations in the process.

According to the information received:

On 21 January 2013, the Finnish non-governmental organisation Finnwatch, a watchdog focusing on corporate social responsibility in the global supply chain, reportedly published a report under the title "Cheap has a high price: Responsibility problems relating to international private label products and food production in Thailand". Mr. Hall was reportedly the principal Thailand-based

researcher contributing to this publication, which reportedly investigated the production process of fruit juices on sale in Finland.

Sources inform that one of the companies investigated for the report was the Natural Fruit Company, a Thai pineapple processing company based in Pranburi Prachuapkirikhan province.

The report was allegedly based in part on interviews with employees of the Natural Fruit Company at its plant in Pranburi. Sources inform that the interviews were held in November 2012 and conducted in secret as the workers feared acts of retaliation by the company against them. The researchers reportedly found evidence of numerous labour rights violations by the Natural Fruit Company against its employees, in particular migrant and irregular workers.

The findings in the report are alleged to include failure to pay employees the legal minimum wage, overtime declared to be 'compulsory' for inadequate compensation, dangerous workplace conditions putting the workers at considerable risk of illness or even death, and confiscation of identity documents. Of the plant's 800 workers, some 700 are reportedly migrant workers from Myanmar, many of them irregular migrants. It is also alleged that the exploitation, extreme labour conditions and other human rights violations these workers were subjected to at the Natural Fruit Company, may amount to human trafficking.

It is reported that during the course of the research, the company was approached several times by the researchers in order to participate in the research and contribute to it. The company allegedly refused any cooperation with the researchers both during the research period or subsequently.

Communications were reportedly sent by Finnwatch to Finnish, European Union and Thai authorities in December 2012, but no response was received before the date of publication of the report.

It is reported that on 14 February 2013, the Natural Fruit Company filed a defamation lawsuit against Mr. Hall at Nakhon Prathom Court for "broadcasting false statements to the media" and thus damaging and defaming the company. If Mr. Hall is found guilty this might reportedly result in a fine of 300 million Baht against him. Mr. Hall was reportedly made aware of the lawsuit on 22 February by a European journalist.

It is alleged that based on the complaint made by the Natural Fruit Company, criminal charges have also been brought against Mr. Hall. Reportedly, these are also charges of broadcasting false statements, based on Sections 90, 91, 326, 328 and 332 of the Criminal Code, Sections 3 and 4 of the Penal Code Amendment Act (No. 11), and Sections 3 and 4 of the Computer Crime Act. The maximum sentence for these charges is allegedly 2 years imprisonment and a fine of 200,000 Baht.

It is reported that Mr. Hall is in possession of detailed recordings, transcripts, receipts and other documentation of all research activities related to the report on the Natural Fruit Company.

Concern is expressed at the possibility that the criminal charges against Mr. Andy Hall may be the result of his legitimate and peaceful actions gathering and publishing evidence of facts which, if accurate, would amount to serious human rights violations that warrant investigation by the authorities without delay. Further concern is expressed at the possibility that the charges against Mr. Hall 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 non-State actors, including business enterprises.

While we do not wish to prejudge the accuracy of these allegations, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Regarding the allegations received indicating that the perpetrators of the violations reported are non-State actors, we would like to call to the attention of your Excellency's

Government the Human Rights Council Resolution A/HRC/RES/13/13 of 15 April 2010, which recognizes “the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence, and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all” as well as to adopt the necessary measures to prevent such acts. In this Resolution the Human Rights Council also “urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity”.

Furthermore, the Special Rapporteur on the situation of human rights defenders, in paragraphs 28 and 29 of her report to the General Assembly A/65/223 of 4 August 2010, stated that “the responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfil human rights, including those of human rights defenders. (...)” The Special Rapporteur argued that the State’s obligation to protect “first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State’s responsibility. Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment.”

We would also like to remind your Excellency’s Government of article 19 of the International Covenant on Civil and Political Rights (ICCPR), that Thailand acceded to on 29 October 1996, which provides that “Everyone 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.”

Concern is also expressed that most of Mr. Hall’s legitimate human rights activities aimed at exposing violations of the human rights of migrant workers a group that remains, generally, outside the protection remit of institutional and mainstream systems. There also exist serious concerns that such actions against Mr. Hall may constitute acts of reprisals for his collaboration with international human rights mechanisms.

We would like to draw the attention your Excellency’s Government to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by prescribed means for the purpose of exploitation, which includes, inter alia, forced labour or services. We would also like to refer your Excellency’s Government to article 8.3 a) of the ICCPR, which provides that “no one shall be required to perform forced or compulsory labour”. In addition, article 4 of the Convention concerning Forced or Compulsory Labour (ILO No. 29) (1930),

provides that the competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

Concerning the allegations of the human rights violations and exploitation of employees in the Natural Fruit Company that may be related to or may constitute trafficking in persons, we would like to refer your Excellency's Government to principle 2 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, launched by the Office of the United Nations High Commissioner for Human Rights in 2002, which provides that States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

Regarding the concerns expressed that in Thailand migrant workers remain extremely vulnerable to labour exploitation, physical and sexual violence, and trafficking, we would like to refer to the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children, in her report on her mission to Thailand (A/HRC/20/18/Add.2) that the Government should review its labour and migration laws to accommodate the demands for cheap, low-or semi-skilled labour and provide for safe migration options, as well as eliminate vulnerabilities of migrant workers and their families to all forms of human trafficking; extend protection under the Labour Protection Act to persons working in sectors known to often employ trafficked persons; and strengthen the role of labour inspectors in identifying trafficked persons in workplaces and preventing exploitative working conditions. Furthermore, in the same report, the Special Rapporteur commended the partnership between the Government and the civil society organizations working in the field of trafficking, particularly in the context of rescue operations for assisting trafficked victims, and recommended that such cooperation and partnership should be encouraged and extended to involve a broader spectrum of civil society actors, particularly in the context of investigating trafficking cases.

Furthermore, all States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. In this context we would like call your attention to the Guiding Principles on Business and Human rights, endorsed by the Human Rights Council in 2011 (A/HRC/17/31) which clarify States' duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises" (principle 1). As specified in the Guiding Principles, fulfilling this duty requires that States take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." This requires, inter alia, that States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (principle 3). The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights, including the right to freedom of expression (ICCPR article 19) and fundamental labour rights as set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require that States ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business

activities do occur. The Guiding Principles also state that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please explain the legal basis of the criminal charges brought against Mr. Hall and how these are compatible with international human rights instruments, including the International Covenant on Civil and Political Rights, particularly with regard to the freedom of opinion and expression.
5. Please explain what measures have been taken to ensure that human rights defenders in Thailand, in particular those working to protect the rights of migrant workers, are able to carry out their peaceful and legitimate activities without fear of judicial harassment or other restrictions.
6. What policies and measures have been put in place to ensure that the Natural Fruit Company and other business enterprises respect human rights, including the right to freedom of expression, the right to promote and strive for the protection and realization of human rights and fundamental freedoms, and fundamental labour rights?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Pavel Sulyandziga
Working Group on the issue of Human Rights and Transnational
corporations and other business enterprises

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

François Crépeau
Special Rapporteur on the human rights of migrants

Joy Ezeilo
Special Rapporteur on trafficking in persons, especially women and
children