

# UPDATED 27<sup>th</sup> October 2014

## Q&A: Criminal and Civil Prosecutions - Natural Fruit vs. Andy Hall

### 1. What are all the prosecutions about?

Migration expert and researcher Andy Hall worked as a research coordinator for Finnwatch in 2012. He conducted worker interviews in Thailand for a Finnwatch report called *Cheap has a high price*, which, among other things, investigated Natural Fruit Company Ltd. factory located in Prachuap Khiri Khan Province in Southern Thailand. Natural Fruit was randomly investigated as it produced pineapple concentrate for Finnish supermarkets' private label products.

Finnwatch published the report in January 2013. Based on worker testimonies, the report alleged serious human rights violations in the Natural Fruit factory. Natural Fruit reacted to the critique by pressing criminal and civil charges against researcher Andy Hall, a private person, and not Finnwatch as the organisation that authored the report. Natural Fruit has filed two criminal charges against Hall relating to criminal defamation and the Computer Crime Act as well as two civil charges relating to civil defamation.

The first court case considered (criminal defamation) was heard in a trial held from 2<sup>nd</sup> to 10<sup>th</sup> September 2014 at Prakanong Court, Bangkok and dealt with an interview Andy Hall gave to Aljazeera regarding his criminal and civil prosecutions. According to Natural Fruit, Andy Hall intentionally harmed the reputation of the company by speaking and/or publishing false information. The second case, concerning publication of Finnwatch's report, is a US\$10m civil defamation case that will begin on 30<sup>th</sup> of October at Nakhon Pathom Court. The third case, containing 2 criminal charges under the Computer Crimes Act and criminal defamation will be considered on 17<sup>th</sup> of November at the Southern Bangkok Criminal Court. Dates for a fourth US\$4 million civil case have not yet been confirmed as the case remains subject to legal execution of summons and prosecution.

### 2. Who is Natural Fruit?

Natural Fruit Company Ltd. is a company that produces pineapple products and is part of Nat Group. Other companies belonging to the group are Prafic and Prafic 2005 which produce dried fruits and aloe vera products. In 2012, Natural Fruit supplied juice concentrate for Finnish retailers SOK, Kesko and Tuko Logistics private label juices (produced by Finnish VIP-Juicemaker Oy).

The Owner of Natural Fruit Wirat Piyapornpaiboon is the elder brother of the former labour minister and general secretary of the Democratic Party Chalermchai Sri-On. Natural Fruit is a powerful company in Thailand's pineapple industry as the owner is the President of the Thai Pineapple Industry Association TPIA. TPIA represent over 60 pineapple companies in Thailand.

### 3. What happened in the first trial 2<sup>nd</sup> to 10<sup>th</sup> September 2014 whose verdict will be released on 29<sup>th</sup> October 2014?

The trial in Prakanong court dealt with the interview Andy Hall gave for Aljazeera in Myanmar in 2013. The trial began on 2<sup>nd</sup> September and ended on 10<sup>th</sup> September.

During the first three days of the trial, Natural Fruit and the public prosecutor went through their evidence and witnesses. The defence had the opportunity to cross-examine the witnesses. Natural Fruit brought as witnesses Thai factory workers, academics, policeman and government officials whilst presenting documents from an auditing company SGS.

From 5<sup>th</sup> September, the defence Andy Hall presented their evidence including former Natural Fruit

workers who fled from the factory, researchers, company representatives, Aljazeera journalist Wayne Hay and Finnwatch's Executive Director Sonja Vartiainen. The prosecutor also had an opportunity for cross-examination of defence witnesses. All documents ordered by the court from the Thai government in support of Andy Hall's defence were not provided by the close of the trial although Andy Hall and lawyers agreed to allow the case to close that they didn't formally protest the failure to receive this information.

The embassies of Finland, United Kingdom, Australia and the EU attended the trial. The International Labour Association ILO mandated The International Centre for Trade Union Rights ICTUR to observe the trial. ILO and IOM officials also attended the trial for observation.

#### **4. Are the Finnwatch findings about Natural Fruit false?**

The findings of the report *Cheap has a high price*, published in 2013, are based on interviews of workers in the Natural Fruit factory. Following Finnwatch's Code of Conduct for research, Natural Fruit was contacted several times during the investigation by email, telephone and fax, but the company refused to reply and to discuss about the alleged working conditions in the factory. Natural Fruit has never asked to correct Finnwatch's 1<sup>st</sup> report and hasn't provided any information related to the Finnwatch's findings.

Finnwatch is not the only organisation that has investigated the working conditions in Natural Fruit. An award winning reporter Hanna Nikkanen independently interviewed Natural Fruit's former factory workers and Finnish *Apu* magazine published Nikkanen's article on the same day with the Finnwatch report. Aljazeera has interviewed a worker who escaped from Natural Fruit. In 2013, Finnwatch also published a short video documentary where a worker of Natural Fruit was interviewed on their poor experiences of working in the factory.

In January 2013, Thai labour authorities conducted an inspection in the Natural Fruit factory. The inspection report, referred to widely during the 2<sup>nd</sup> to 10<sup>th</sup> September trial, found several deficiencies in the factory: different kinds of illegal deductions from the salaries, illegally long overtime hours, deficiencies in sanitation rooms and restrictions of toilet visits. The report however did not inspect the salaries paid in 2012 and it is unclear whether Natural Fruit was warned about the inspection prior to the visit. Finnwatch and The Finnish League for Human Rights have criticised the inspection report for its serious deficiencies and asked for additional information. Thai authorities haven't replied to these enquiries.

In 2014, Finnwatch published a follow-up report on the working conditions in Natural Fruit. According to the report, there were still labour rights issues in the factory. Due to the ongoing court proceedings, Andy Hall did not take part in this particular research project. Natural Fruit has commented on the follow up report briefly by denying all illegalities.

#### **5. Are the accusations of Natural Fruit true?**

Natural Fruit is accusing Andy Hall for intentionally harming Natural Fruit and for causing financial loss through accusations that are without basis and false.

Hall brought evidence to court to show he has no personal interest or intention to harm Natural Fruit. The researcher had never met the owners or management of Natural Fruit and had never been in any contact or conflict with the factory before conducting the field study for Finnwatch. Finnwatch got the name and address of Natural Fruit from Finnish retailer SOK when initiating the investigation on the responsibility of randomly chosen private label products sold in Finland.

Hall brought evidence to court to show how Finnwatch's report was not the reason for financial loss of Natural Fruit. The first recommendation in the *Cheap has a high price* report urges companies to continue trading with Natural Fruit. Finnish trade group SOK visited Thailand in 2013 and met with Natural Fruit. During the visit, SOK requested Natural Fruit to agree to a third party responsibility audit. Natural Fruit refused.

An Israeli company Prodalim has informed that it stopped buying from Natural Fruit as Natural Fruit wouldn't agree to a third party audit.

Evidence was brought to court by Hall to show that if Natural Fruit has suffered financial loss it is because of Natural Fruit's own actions.

## **6. Could similar charges be raised in Finland?**

According to the Finnish law, a company cannot sue individuals for defamation in Finland. Also, Finland doesn't have a law corresponding to the Thai Computer Crime Act.

The above mentioned laws in Thailand have been internationally criticised as they result in restrictions in freedom of speech. Human rights defenders and journalists have been brought to court through false charges. This kind of judicial harassment provides companies and government an effective tool to silence human rights defenders.

In Finland, a person being interviewed may have the right for protection as a source in cases where his/her occupation or safety is in danger. The purpose for the protection of source is to protect the freedom of press in that this way the press can reveal societal problems without informing the name of the source. In Thailand, there is no such thing as protection of source. This is highly problematic in situations where, as in Andy Hall's criminal prosecution trial, the court requested the defence to bring workers who attended the Finnwatch interview sessions to be witnesses. This is a breach of researcher ethics. In Hall's case, he brought to court former workers of Natural Fruit instead of workers he interviewed. However, there have been reports that this witness has been followed and other workers at Natural Fruit factory alleged there has been threats made to get to this witness.

## **7. What would follow if Hall was found guilty of the charges against him?**

Hall could end up paying compensation and penalty fees as well as being sent to prison. Hall has been requested by Natural Fruit to pay over seven million Euros as compensation. If he is found guilty he could also face up to eight years in prison.

The punishment stemming from defamation charges heard during the first trial which verdict will be issued on 29<sup>th</sup> October is a maximum of one year imprisonment and a fine of 20, 000 Thai Baht.

Andy Hall's passport was confiscated by Prakanong Court from May to September 2014 as a condition of bail and during consideration of his case prior to judgement. Since he was first prosecuted, an order was issued to prevent Hall's departure from Thailand such that he was forced to stay as a resident in Thailand since that time. Andy Hall's residential base is currently in Myanmar but he could not return home.

In September 2014, Hall requested the British Embassy in Bangkok to ensure the return of his passport as the Government of the UK is the official owner of that passport. Prakanong Court then willingly returned the passport to the Embassy official who then returned the passport to Hall. However, Andy was still prevented through an immigration block from leaving Thailand unless given specific permission on a case by case basis and unless additional bail money was provided to the court. Hall's recent request to travel to Myanmar was refused by Prakanong Court as being a

request to close to the verdict date such that Hall is currently prevented from leaving Thailand until the verdict in his first trial is released.

### **8. Will Andy Hall have a fair trial in Thailand?**

After the military coup in Thailand, the constitution has been nullified. The press freedom index rate for Thailand is 130. The corruption index rate for Thailand is 102. For comparison, similar index ratings for Finland are 1 and 3.

There has already been problems in the court proceeding preceding this trial. In September 2013, an attempt was made to get Andy Hall to sign a Thai language document where he would have pleaded guilty to all charges against him. Andy speaks some Thai language and understands some Thai but he refused to sign the confession document. In addition, there were concerns about the jurisdiction of the investigation processes in Hall's case as the allegedly unlawful act occurred outside of Thailand such that he complained about inappropriate treatment to the national police authorities, Thailand's national human rights committee, the Minister of Justice and the British Government. In addition, regarding prosecution stage of Hall's case, the Attorney General was the investigator and there was a very rapid prosecution without adequate investigation of the case file resulting in several errors in the case prosecution document.

During Andy's first trial, proceedings were once halted due to translation ineffectiveness and many of the court documents were only provided in Thai language with inadequate time for translation for Hall's proper and sufficient understanding.

In July/August Channel 3, Thailand's most watched domestic TV channel, released a 3 part character assassination of Andy Hall that was then used during the first trial against him. Andy is now finalising a complaint to the National Broadcasting Telecommunications Commission regarding this issue as he considers this behaviour to be in breach of the court rules.

It takes a huge effort as a private person to fight a court case against a big and politically influential company. Finnwatch has committed to support Andy Hall in every possible manner and has spent tens of thousands of Euros for the court proceedings already, even before starting the first trial. A trial in Thailand can continue years. Natural Fruit has already filed four different cases against Hall. The influence of the trial on Andy Hall's personal and work life and to Finnwatch's work is tremendous.

The Finnish Foreign Ministry has granted Finnwatch 2 000 Euros support from funds dedicated to human rights organisations to support the trial.

### **9. What kind of reactions the charges against Hall have raised in Finland and internationally?**

Finnwatch considers the court cases raised against Andy Hall as harassment of a human rights defender. The cases have raised international attention and the trial has been criticised widely by international organisations and labour rights associations.

Human rights organisations and trade unions have expressed globally wide support for Andy Hall. Several actors have demanded Natural Fruit to drop charges and called for an objective investigation on Natural Fruit's labour conditions.

United Nordic, Business and Social Compliance Initiative (BSCI) and the Ethical Trading Initiative (ETI) have called on the Thai food industry and Natural Fruit Company Ltd. to withdraw all charges against Andy Hall.

The United Nations Office of the High Commission for Human Rights OHCHR has demanded twice for an investigation on the issues. One of two letters signed by five human rights special rapporteurs for instance demanded a report from the Thai authorities on the working conditions of the factory as well as protection of Andy Hall's rights and freedom of speech.

In August 2014, over hundred international organisations initiated a campaign which demanded Natural Fruit to drop the charges against Andy Hall. The main target for the pressure was the pineapple producers' association TPIA. Natural Fruit is a member and the chairman of TPIA

On 29<sup>th</sup> October 2014, the day of the verdict of the first case against Andy Hall and a day before his 35<sup>th</sup> birthday, international demonstrations will be held in Finland, Netherlands, UK and the United States to support Andy Hall and again request Natural Fruit to drop all the charges against him.