

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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14 August 2014

Mr. Nirut Ruplek
General Secretary
Thai Pineapple Industry Association
5/29 Soi Yakthanon Na Ranong Kloykoei,
Bangkok 10110 Thailand
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Dear Mr. Nirut Ruplek,

Re: TPIA responsibility to engage in dialogue about alleged human rights violations in Thailand's fruit industry

LRWC has received an English language translation of your 13 August 2014 letter to Mr. Komsan Tongsir, State Enterprises Workers' Relations Confederation (SERC) in response to a joint letter of 8 August 2014 (8 August letter) inviting TPIA to encourage Natural Fruit to withdraw their suits against Andy Hall and address allegations of labour rights violations by Natural Fruit.

Your 13 August letter characterizes the criminal and civil law suits brought by Mr. Wirat Piyapornpaiboon, president of Natural Fruit Co. Ltd. (Natural Fruit), against Mr. Andy Hall, as a "personal matter." Criminal prosecutions that result in State-sanctioned restrictions on liberty through bail requirements and which could result in a sentence of imprisonment are a public matter. It is our understanding that the complainant, Natural Fruit can, at this point in time, withdraw the criminal charges against Andy Hall that it initiated, and TPIA can certainly urge him to do so.

It is apparent that the criminal and civil law suits have been brought against Mr. Hall in retaliation for reports (by Finnwatch and others) of serious labour rights violations by Natural Fruit to deter other reporters. Rather than threaten further retaliatory court actions, it is hoped that TPIA will take action to promote adherence to the law by Natural Fruit and other TPIA members. Such action would include urging Natural Fruit to:

1. withdraw criminal and civil proceedings against Mr. Hall;
2. allow an full investigation of all allegations of unfair and/or illegal labour practices by competent investigators acting independently of Natural Fruit;
3. provide fair remediation of all violations identified by the investigation;
4. introduce effective measures, in consultation with workers and their advocates, to prevent future violations;
5. acknowledge the valuable role of Mr. Andy Hall in reporting on labour rights issues and identifying violations.

Announcement of such measures would be undoubtedly be good for business. An additional benefit of such an

Re: Thailand: TPIA responsibility to engage in dialogue about alleged human rights violations in the fruit industry

independent investigation would be a fair determination of the facts. LRWC invites the TPIA to state what investigation it conducted into the facts and which facts alleged in the 8 August letter or in *Cheap Has a High Price* TPIA believes to be incorrect.

TPIA's purposes include "representing the entire industry on national issues."¹ Allegations of serious ongoing labour rights violations identified in *Cheap Has a High Price* is a matter of concern to the entire pineapple industry. Allegations include:

- involvement in smuggling of undocumented migrant workers into the country ;
- child labour;
- payment below the minimum wage required by the law;
- forced overtime;
- confiscation of migrant workers' passports and work permits; and
- violence against migrant workers.

Such practices would constitute violations of both Thailand's domestic laws and international human rights law obligations. To our knowledge, neither Natural Fruit nor Thai authorities have yet conducted thorough and reliable investigations of the alleged violations. Thailand's inadequate response to reports of human trafficking and forced labour in several commercial sectors, including fruit manufacturing and fishing sectors, has resulted in Thailand's being downgraded to the lowest possible level in the United States (US) State Department's 2014 Trafficking in Persons report (TIP report).² The TIP report points out that Thailand "does not fully comply with the minimum standards for the elimination of trafficking" (p. 373). The TIP report recommends that the government of Thailand

cease prosecuting criminal defamation cases against researchers or journalists who report on human trafficking; recognizing the valuable role of NGOs and workers' organizations in uncovering the nature and scope of human trafficking in Thailand, work to establish an environment conducive to robust civil society participation in all facets of understanding and combating human trafficking...³

LRWC draws to TPIA members' attention the UN *Guiding Principles on Business and Human Rights (Guiding Principles)*,⁴ endorsed by the UN Human Rights Council on 6 June 2011. The *Guiding Principles* are grounded in the recognition of (among other things) "the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights..." One of the foundational *Guiding Principles* is that business enterprises "should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." According to the *Guiding Principles*, such responsibility "exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation." TPIA is duty bound to promote its members' compliance with Thailand's laws, including international laws, protecting human rights and to promote prevention and remediation of human rights abuses.

¹ TPIA. "What we do." TPIA website available at:

<http://www.thaipineapple.org/index.php?lay=show&ac=article&Id=538718932>

² US Department of State, *Trafficking in Persons Report 2014*, <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

³ US Department of State, "Country Narratives: Thailand," in *Trafficking in Persons Report 2014*, available online: <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226832.htm>

⁴ UN Human Rights Council, *UN Guiding Principles on Business and Human Rights Implementing: the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/RES/17/4

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

TPIA should promote respect for the work of human rights defenders

In a recent statement,⁵ LRWC expressed the opinion that the prosecution of Andy Hall by Natural Fruit is a misuse of the criminal law to punish the peaceful expression of views. LRWC pointed out that the criminal charges against Mr. Hall have been brought under defamation legislation that fails to measure up to international human rights standards. Thailand's criminal defamation laws provide opportunities for malicious prosecution by persons and corporations wishing to silence critics and thereby continue possibly unlawful activities with no accountability. This view is affirmed by the 2013 TIP report in which the USA states that use of Thailand's criminal defamation laws "to prosecute individuals for researching or reporting on human trafficking may have discouraged efforts to combat trafficking."⁶

On 26 April 2013, five UN Special Rapporteurs sent a communication to Thailand expressing concern 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.⁷

LRWC also wishes to draw TPIA's attention to the *Declaration on Human Rights Defenders*, adopted 9 December 1998 by consensus of the member States of the UN General Assembly⁸ which states that "everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels" (Article 12.1).

TPIA should engage in dialogue with Natural Fruit and civil society about compliance with international human rights standards by Natural Fruit and other TPIA members. The failure by Natural Fruit to investigate and remedy allegations of involvement in serious human rights violations stands in stark contrast to the responses of other industries identified in *Cheap Has a High Price* as attempting to address the concerns raised. For example, the Thai Frozen Foods Association (TFFA) and the Thai Tuna Industry Association (TTIA) have supported Mr. Hall's work and have committed to provide bail for him.

⁵ Lawyers' Rights Watch Canada, "Thailand: Judicial harassment of human rights defender, Mr. Andy Hall," Statement 29 June 2014, available online: <http://www.lrwc.org/thailand-judicial-harassment-of-human-rights-defender-mr-andy-hall-statement/>

⁶ US Department of State, Trafficking in Persons Report 2014, at p. 376, available online: <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

⁷ https://spdb.ohchr.org/hrdb/24th/public_-_AL_Thailand_26.04.13_%284.2013%29.pdf

⁸ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation. Both the UK and Thailand

In summary, LRWC calls on TPIA to:

- urge Natural Fruit to immediately cease all reprisals against Mr. Hall, including the withdrawal of all criminal charges and civil law suits against him;
- urge Natural Fruit to address and remedy all concerns raised in *Cheap Has a High Price*;
- urge Natural Fruit to allow a full investigation by independent and competent persons of all allegations of unfair and/or illegal labour practices;
- promote among TPIA members adherence to the UN Guiding Principles on Business and Human Rights⁹ by respecting and promoting international human rights law binding on Thailand as well as the UN *Declaration on Human Rights Defenders*;
- engage in dialogue with the human rights defenders and labour organizations that sent the 8 August letter to the TPIA about what constructive investigations and steps it will take to promote among its members full adherence to international human rights law and principles;
- provide fair remediation of all violations identified by the investigation;
- introduce effective measures, in consultation with workers and their advocates to prevent future violations;
- acknowledge the valuable role of Mr. Andy Hall in reporting on labour rights issues and identifying violations.

Sincerely,



Gail Davidson, Executive Director, LRWC

⁹ UN Human Rights Council, UN *Guiding Principles on Business and Human Rights Implementing: the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/RES/17/4
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf