

Lawyers' Rights Watch Canada

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

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Thailand must halt prosecution of migrant labour rights researcher Andy Hall

Criminal defamation charges by Natural Fruit Co. Ltd are an effort to silence human rights advocacy and criminalize investigation and reporting of rights violations

Statement
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Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC calls upon Thai authorities and the Natural Fruit Co. Ltd (Natural Fruit) to drop all criminal charges against British human rights defender, Mr. Andy Hall, and urges Natural Fruit to discontinue its two civil lawsuits against him. On 20 July 2015, Mr. Hall faced the sixth preliminary hearing of a criminal defamation case that is part of a concerted campaign of judicial harassment against him initiated by Natural Fruit and facilitated by public prosecutors. The criminal prosecution relies on laws and court processes that fail to meet international human rights standards of fairness. On 24 August 2015, the Bangkok Criminal Court will decide whether to indict Mr. Hall. If indicted, he will be arrested and be entitled to apply for bail to secure his pre-trial release from jail. If convicted at trial, Mr. Hall faces a possible seven years imprisonment. The criminal and civil defamation cases against Mr. Hall have been brought in retaliation for his involvement in conducting research for the January 2013 report, *Cheap Has a High Price*,¹ published by Finnwatch, and for the illegitimate purpose of punishing the lawful exercise of freedom of expression and suppressing the public's right to freedom of information on a matter of public concern. Mr. Hall's case is specifically mentioned in the findings and recommendations of the 27 July 2015 United States Trafficking in Persons (TIP) Report, which maintain Thailand at the lowest "tier 3" ranking.² LRWC urges the immediate discontinuance of all criminal and civil proceedings against Andy Hall and calls upon Thailand and Natural Fruit to comply with Thailand's international human rights obligations under the *International Covenant on Civil and*

¹ Sonja Vartiala et al, Executive Summary, *Cheap Has a High Price* (Finland: Finnwatch, January 2013), <http://finnwatch.org/en/news/80-finnwatch-reveals-serious-human-rights-violations-behind-european-food-brands>; Sonja Vartiala, *Out of a Ditch, into a Pond: Follow-up Research on the Effects of the Finnwatch Report Cheap Comes with a High Price* (Finland: Finnwatch, February 2014), http://oppenheimer.mcgill.ca/IMG/pdf/Finnwatch_-_PLF_ENG.pdf.

² The TIP report refers to "ongoing cases against an anti-trafficking advocate, in retaliation for his research documenting alleged trafficking violations in a food processing factory in Thailand, [which] had the effect of silencing other human rights advocates." This is a reference to the cases against Andy Hall. The TIP report also mentions the "criminal defamation lawsuit filed by the Thai Navy against two journalists [referring to Chutima Sidasathian and Alan Morison] in 2013 for reporting on trafficking of ethnic Rohingya in Thailand continued in 2014." US Department of State, Trafficking in Persons Report 2015, Thailand Country Narrative, <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243547.htm>

Political Rights (ICCPR)³ the *Universal Declaration of Human Rights* (UDHR),⁴ the *UN Declaration on Human Rights Defenders*.⁵

Background

In early 2013, Natural Fruit initiated criminal defamation charges against Mr. Hall under section 328 of Thailand's *Criminal Code*⁶ and section 14(1) of *Computer Crime Act*.⁷ The case before the Bangkok Criminal Court on 20 July is one of four cases launched against Mr. Hall by Natural Fruit. Another charge of criminal defamation brought by Natural Fruit was dismissed by the Prakanong Court in Bangkok in October 2014, but Thailand's Attorney General and Natural Fruit have appealed the decision; the decision of the Appeals Court is expected in late 2015 or early 2016. Natural Fruit has also filed two civil defamation cases against Mr. Hall seeking damages of 400 million baht (US\$11.4 million). The criminal charges and civil lawsuits were all brought after publication of *Cheap Has a High Price*,⁸ an exposé of violations of the rights of migrant workers employed in Thailand's fruit export industry, including violations at the Natural Fruit factory. The January 2013 report was authored and published by Finnwatch, an independent international organization focused on global corporate responsibility. While Mr. Hall conducted research for the report, he is not its author or publisher. The criminal prosecutions are an attempt to punish the peaceful exercise of freedom of expression and to suppress the public's right to information and as such, contravene Thailand's domestic and international legal obligations to ensure that all persons within its territory can exercise their lawful rights including rights to collect and disseminate information about issues of public concern without risk of criminal sanctions.

Rights violations by Natural Fruit exposed by *Cheap Has a High Price* include: child labour; payment below the minimum wage required by the law; forced and excessive overtime; confiscation of migrant workers' passports and work permits; smuggling of undocumented migrant workers; deductions from wages for accommodation and work clothing resulting in debt bondage; and violence against migrant workers. Despite these serious allegations, Thai authorities have failed to adequately investigate or otherwise remedy the alleged violations of the law by Natural Fruit. International concern with Thailand's inadequate response to reports of human trafficking and forced labour in several commercial sectors, including fruit and fishing sectors, as well as concern about criminal defamation cases against human rights researchers and journalists, has resulted in Thailand being downgraded to the lowest possible level in the United States (US) State Department's 2014 and 2015 Trafficking in Persons (TIP) reports.⁹

³ *International Covenant on Civil and Political Rights*, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁴ *Universal Declaration of Human Rights*, , available at: <http://www.un.org/en/documents/udhr/>

⁵ *Declaration on Human Rights Defenders*, adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>.

⁶ Thailand *Criminal Code*, s. 328, available at: https://www.unodc.org/tldb/pdf/Thailand/THA_Pena_CodeEN.pdf. In Thailand, a person who claims to be defamed may file a criminal case, a civil case, or both. For explanation, see Article 19, *Impact of Defamation Law on Freedom of Expression in Thailand*, Article 19 and National Press Council of Thailand, July 2009, available at: <https://www.article19.org/pdfs/analysis/thailand-impact-of-defamation-law-on-freedom-of-expression.pdf>.

⁷ *Computer Crimes Act*, B.E 2550 (2007), unofficial translation by Prachatai, 24 July 2007, available at: <http://www.prachatai.com/english/node/117>.

⁸ Sonja Vartiala et al, Executive Summary, *Cheap Has a High Price* (Finland: Finnwatch, January 2013), <http://finnwatch.org/en/news/80-finnwatch-reveals-serious-human-rights-violations-behind-european-food-brands>; Sonja Vartiala, *Out of a Ditch, into a Pond: Follow-up Research on the Effects of the Finnwatch Report Cheap Comes with a High Price* (Finland: Finnwatch, February 2014), http://openheimer.mcgill.ca/IMG/pdf/Finnwatch_-_PLF_ENG.pdf.

⁹ US Department of State, Trafficking in Persons Report 2014, <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>; US

International human rights law

Both the criminal defamation law and the processes by which Mr. Hall is being prosecuted fall short of Thailand's international obligations. The prosecution contravenes Thailand's duty to ensure and the defendant's rights to enjoy freedom of expression and the fair trial rights guaranteed by the ICCPR and the UDHR. The charges contravene Thailand's international legal obligations to ensure that all persons within its territory can exercise their lawful right to freedom of expression without risk of criminal sanctions. In 2005, the UN Human Rights Committee expressed concern about intimidation and restrictions on freedom of expression through defamation law suits in a number of countries.¹⁰ In the year 2000, the UN Special Rapporteur on access to information, criminal libel and defamation, the police and the criminal justice system, and new technologies stated that:

Criminal defamation laws represent a potentially serious threat to freedom of expression because of the very sanctions that often accompany conviction. It will be recalled that a number of international bodies have condemned the threat of custodial sanctions, both specifically for defamatory statements and more generally for the peaceful expression of views...¹¹

The Special Rapporteur stated that criminal defamation laws “should be repealed in favour of civil laws as the latter are able to provide sufficient protection for reputations.”¹² Also, the charges under the *Computer Crimes Act* are vague and broad and fail to comply with internationally accepted standards of certainty and impose disproportionately harsh criminal sanctions. In addition, Thailand's judicial system is not currently capable of guaranteeing fair trial rights, namely a “hearing by a competent, independent and impartial tribunal” as required by the ICCPR (Article 14) and the UDHR (Article 10).¹³ Finally, Mr. Hall is being denied protection due to him as a human rights defender pursuant to the UN *Declaration on Human Rights Defenders*, which recognizes the legitimacy and importance of the activities of human rights defenders, including their right to expose violations of rights, and calls on all States, including Thailand, to ensure that human rights defenders can carry out their activities without fear of reprisals. In particular, Article 12 of the *Declaration on Human Rights Defenders*¹⁴ states:

Department of State, Trafficking in Persons Report 2015, <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm> .

¹⁰ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Thailand*, 8 July 2005, CCPR/CO/84/THA, available at: <http://www.refworld.org/docid/43f2ff76a.html>

¹¹ UN Human Rights Council, *Report of the Special Rapporteur on access to information, criminal libel and defamation, the police and the criminal justice system, and new technologies*, E/CN.4/2000/632000, para. 48, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2000/63&Lang=E>

¹² UN Human Rights Council, *Report of the Special Rapporteur on access to information, criminal libel and defamation, the police and the criminal justice system, and new technologies*, E/CN.4/2000/632000, para. 52, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2000/63&Lang=E>

¹³ The National Council for Peace and Order (NCPO) ordered that courts must hear and adjudicate cases in accordance with NCPO Order No. 11/2557, 22 May 2014. The NCPO has also ordered the courts to avoid expressing opinions that could affect the functioning of NCPO. NCPO Order No. 33/2557, 24 May 2014. These orders effectively strip courts of the independence and impartiality required by the ICCPR. The interim constitution promulgated by the NCPO on 22 July 2014 purports to subordinate international human rights obligations to the interim constitution (Article 3) and puts legislative, executive and judicial branches of government under NCPO control. While section 26 of the interim constitution states that judges are independent, Sections 44, 47 and 48 place the NCPO's policies, practices and actions beyond the scrutiny of the courts. NCPO Orders 11/2557 and 33/2557 do not appear to have been withdrawn.

¹⁴ The 1999 *Declaration on Human Rights Defenders*, while not in itself a binding instrument, is based on human rights

(1) Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

(2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

Recommendations

LRWC urges Thailand to ensure the immediate discontinuance of all criminal and civil proceedings against Andy Hall including the appeal launched against his acquittal in October 2014. LRWC also calls on Thailand to take all steps necessary to:

- comply with the ICCPR, UDHR and the *Declaration on Human Rights Defenders*, and in particular to ensure that criminal defamation offences, the *Computer Crimes Act* and civil defamation laws are not used to punish lawful freedom of expression;
- “cease prosecuting criminal defamation cases against researchers or journalists who report on human trafficking; establish an environment conducive to robust civil society participation in all facets of human trafficking” as recommended in the US 2015 TIP report;¹⁵
- restore full independence of prosecutors and judges; and
- restore and ensure the protection of all other international human rights binding on Thailand including immediate restoration of democratic rule through free and fair elections.

LRWC calls upon the Natural Fruit Co. Ltd to:

- withdraw the criminal complaints against Mr. Hall in Black Case Number A 517/2556;
- to discontinue its appeal of the 29 October 2014 dismissal of criminal defamation charges against Mr. Hall in Black Case Number: No. 2051/2557; and
- to discontinue its civil actions against Mr. Hall.

LRWC calls upon the members of the Thailand Pineapple Industry Association (TPIA), of which Natural Fruit is a member, to urge Natural Fruit to drop all criminal and civil actions against Mr. Hall.¹⁶

standards enshrined in other legally binding international instruments including the ICCPR. The Declaration was adopted by consensus (without a vote) of the General Assembly and thus represents a unanimous commitment by States to its implementation.

¹⁵ *Supra* Note 1.

¹⁶ See “Thai Pineapple Industry Association (TPIA) action requested in case of Natural Fruit v. Andy Hall,” Joint Letter with 108 signatures including LRWC to TPIA, 8 August 2014. available at: <http://www.lrwc.org/?p=8378>; Also see “Thai Pineapple Industry Association (TPIA) responsibility to engage in dialogue about alleged human rights violations in Thailand’s fruit industry,” LRWC letter to TPIA 14 August 2014, available at <http://www.lrwc.org/?p=8408>