



No. 52101/ 98

PERMANENT MISSION OF THAILAND
GENEVA

/9 January B.E. 2560 (2017)

Dear Sirs and Madams,

With reference to your joint letter ref/ AL THA 7/2016 dated 16 November 2016 requesting the Royal Thai Government to provide information on the sentence issued against a human rights defender, Mr. Andy Hall, and two migrant workers, Ms. Ye Ye and Mr. Su Yong, and the Permanent Mission's letter No. 52101/910 dated 17 November B.E. 2559 (2016) providing initial clarification of the said case, I have the honour to transmit herewith a more detailed response, as received from the Ministry of Labour and other relevant agencies and compiled by the Ministry of Foreign Affairs of Thailand. I hope that the clarification provided will help address your concern on this matter.

In reassuring you of Thailand's continued commitment to cooperating with all Special Procedures under the Human Rights Council to promote and protect the human rights of all people, I remain,

Yours sincerely,

(Thani Thongphakdi)

Ambassador and Permanent Representative

- Mr. Michael Addo,
Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises;
- Mr. David Kaye,
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- Mr. Michel Forst,
Special Rapporteur on the situation of human rights defenders;
- Mr. François Crépeau,
Special Rapporteur on the human rights of migrants;
- Ms. Urmila Bhoola,
Special Rapporteur on contemporary forms of slavery, including its causes and consequences;
- Ms. Maria Grazia Giammarinaro,
Special Rapporteur on trafficking in persons, especially women and children,
Office of the United Nations High Commissioner for Human Rights,
GENEVA.

The response to the Special Procedures under the Human Rights Council concerning the sentence issued against a human rights defender, Mr. Andy Hall, and two migrant workers, Ms. Ye Ye and Mr. Su Yong

(1) Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations

(2) Please explain the legal basis of the conviction of Mr. Hall for “criminal defamation” and “computer crimes” and how these are compatible with international human rights instruments, including article 19 of the ICCPR.

(3) Please explain how the responsible Court justified the sentence of Mr. Hall for defamation and computer charges and how those are compatible with article 19 of the ICCPR.

(4) Please explain what measures your Excellency’s Government will take to ensure that Thailand’s defamation laws are compliant with the ICCPR?

(7) Please provide information about any investigation, judicial or otherwise, into the alleged human rights and labour rights violations of migrant workers employed by the Natural Fruit Company and Thammakaset 2 Poultry Farm, and their outcome, including any examples of the prosecution of perpetrators.

(9) Kindly explain what measures your Excellency’s Government intends to take in order to protect the two migrant workers charged with theft whose intention was to seek redress for the abusive conditions when they presented their time cards to labour inspectors as supporting evidence relating to the complaint filed at the Lopburi Department of Labour Protection and Welfare.

(11) Please describe the labour inspection system in place to regulate the poultry industry and indicate whether it has been used to identify victims of trafficking, debt bondage and other human rights and labour violations.

1. The Thai judicial system adheres to the principle of independence and non-discrimination. The Thai Government is not a party concerned in the cases between Mr. Hall and Natural Fruit Company Limited and is not in a position to intervene in the on-going judicial process.
2. The lawsuits against Mr. Hall were filed by a private company. The ground for the two criminal lawsuits are based on two main grounds, namely:
 - The offence of defamation, in accordance with Section 328, supplemented by Section 326, of the Thai Penal Code;
 - Section 14 of the Computer Crime Act (B.E. 2007).
3. The Supreme Court of Thailand on 3 November 2016 upheld the decisions made by the Court of First Instance and the Court of Appeal to dismiss criminal defamation case against Mr. Hall filed by Natural Fruit Company

Limited. Such decision by the Supreme Court's demonstrated the objectivity, the integrity and the independence of the Thai judicial system.

4. The remaining cases against Mr. Hall are still pending and in accordance with the principle of neutrality and transparency, each side is allowed the opportunity to use facts and evidences that it deems relevant. Observers are also permitted access to these legal proceedings. In addition, both Mr. Hall and Natural Fruit Company Limited can at any time resort to any other mutually agreed upon method of dispute settlement.
5. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) duly recognizes that the right to freedom of expression is not without limits and carries with it special duties and responsibilities, and may be subject to certain restrictions as provided by law as necessary to uphold the rights or reputations of others. Equally important, Article 17 of the ICCPR also stipulated that everyone has the right to protect his or her honour and reputation. Each country has to strive to find the right balance of all these rights in line with international obligations while taking into account its domestic contexts and necessities.
6. The defamation law in Thailand is an example such an attempt. The aim of the law is to protect the rights and reputations of the general public from being misused, abused, or exploited, while at the same time maintain peace, stability and public order in the fast moving digital era. The law does not seek to limit or curb an individual's right to expression. Additionally, on 16 December 2016, the Thai National Legislative Assembly passed the Amendment to the Computer Crime Act B.E. 2550 (2007) and one of the salient points made in this amendment is Section 14 (1) which has been revised so that it can no longer be used in conjunction with the offence for defamation under the Thai Penal Code.
7. Business sector and media are important partners of the Government that contribute to the efforts to promote growth and development as well as address the challenges of the country. After Finnwatch's report "*Cheap has a high price: Responsibility problems relating to international private label products and food production in Thailand,*" in the same month (January 2013), the Ministry of Labour swiftly organized a thorough inspection of Natural Fruit Co., Ltd. with interpreters presented to ensure accuracy of the information collected.
8. Important results of the inspection includes (1) no child labour below the age of 18 and no illegal migrant workers were found, (2) workers' pay slips indicate that, from 1 January 2013, wages paid to all workers were no less than the minimum wage of 300 baht/day (approximately 9 USD/day), which is in compliance with Thai regulations, (3) overtime compensation pay were given to the workers at a rate of 1.5 times the hourly wage, (4) workers are

entitled to one day-off per week and 13 public holidays per year. During these public holidays, the workers are also paid at the rate of minimum wage.

9. The investigation into the allegation on the violation of human rights and labour rights at Natural Fruit Co, Ltd. is an administrative procedure. As the company was found to comply with instructions made by authorised labour inspectors, the case was concluded with no further judicial investigation. Regular follow-up inspections since, also showed no violation of labour rights according to the law.
10. With respect to Thammakaset 2 Poultry Farm, the investigation by authorised labour inspectors found some misconduct with respect to labour rights of the 14 migrant workers in the areas of minimum wage, overtime payment, payment for working on holidays and overtime payment for overtime work on holidays. However, there is no evidence of any detention and confinement facilities of the company, which would suggest possible use of forced labour. In accordance with the Labour Protection Act, the company was instructed to pay the 14 workers in total of 1,730,013 baht (USD 49,430) for unpaid wages, overtime payment, holiday payment and holiday overtime payment plus interests.
11. Since neither Thammakaset 2 Poultry Farm nor the migrant workers were satisfied with the decision, both parties have appealed the case. The Court of Appeal accepted the appeal petitions from both parties without discrimination and the case is now under its consideration.
12. Regarding the allegation of theft of the time record card against Ms. Ye Ye and Mr. Su Yong, the Office of the Attorney-General is currently considering the case and may decide not to file a lawsuit if it is found that the action was purely done in their good faith to provide solid supporting evidence. However, the case was initiated by a private entity against another private entity. The Thai Government is not a party in the case and does not have any influence over the judicial process, which adheres to the utmost neutrality and transparency, and the principle of non-discrimination, in line with international standards.
13. The 14 migrant workers terminated their employment contract with the poultry farm after the investigation. The Ministry of Labour (MOL), in collaboration with the Migrant Workers Human Rights, assisted the workers to obtain new jobs in an industrial zone in Samutsakorn province.

(8) Please provide information about protection and assistance measures available to victims of forced labour, including trafficking in persons for labour exploitation.

(10) Please outline measures being taken by your Government to implement the 2011 UN Guiding Principles on Business and Human Rights.

(12) Please explain how your Excellency's Government ensures that the human and labour rights of all workers, including migrant workers, are respected.

(13) Please indicate whether your Excellency's Government plans to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and indicate when such ratification will take place.

(14) Please indicate when Thailand intends on ratifying (1) the 1949 ILO Convention 98 on the Right to Organise and Collective Bargaining (No.98) (2) the 1947 Labour Inspection Convention (No.81) (3) the 1969 ILO Convention on Labour Inspection (Agriculture) Convention (No.129) (4) the 1976 ILO Convention on Tripartite Consultation (International Labour Standards) (No.144)

(15) Please explain how the ILO Convention 187 on Promotion Framework for Occupational Safety and Health (No.187) has been implemented.

14. Thailand places high importance on the prevention and the handling of possible violations of labour's rights. The number of labour inspectors has been increased by 260 in January 2017 to better respond to the increasing needs and challenges related to possible labour abuse, forced labour and labour trafficking in the country. These labour inspectors are required to receive adequate training in order to be capable, effective, and sensitive to the needs of migrant workers. During their inspections, they are usually accompanied by interpreters and language coordinators to ensure that the voice of migrant workers is well taken into account.

15. In 2016, there were 37,128 inspections. From 2015 to 2016, there was 23% increase in the number of orders and 47% increase in establishments prosecuted. This signifies the efforts made by the Government to strengthen implementation and enhance effectiveness and efficiency of labour inspection. Increased collaborations with the NGOs has also been encouraged as the presence of NGOs during labour inspection have helped ensure greater transparency and more effectiveness in the follow-up.

16. Thailand attaches priority to providing protection to all workers in Thailand, regardless of nationalities and legal status. Registered migrants who entered the country under the bilateral MOUs have access to the Social Security Scheme similar to those of Thai nationals. The registered migrants

through the One-Stop Service Centers (OSSC) who are holding temporary permits pending their nationality verification will be able to purchase affordable health insurance. Undocumented migrants are also provided with necessary care based on humanitarian considerations, including access to universal health coverage.

17. The Government has also strived to improve and provide greater protection for all workers in line with international labour standards. The Royal Ordinance on Bringing Migrant Workers to work with Employers in Thailand entered into force on 16 August 2016. The law prescribes rules that regulate actions of the employer that employs foreigners under the Thai Immigration Law. Under the law, employers who operate or import migrant workers into the Kingdom illegally will be subjected to a fine and/or imprisonment. The law also specifies that employers have to respect and protect rights of workers, for instance, through monetary guarantee. On 16 January 2017, a new regulation was adopted by the Committee on Management of Migrant Worker Issues and Human Trafficking (chaired by Deputy Prime Minister Pravit Wongsuwan) allowing migrant workers to change jobs and work with new employers if it is found that their work conditions are dangerous or not sanitary. Moreover, a new Sub-committee will be set up by February 2017 to consider and oversee appropriate accommodation, as well as the provision of education and health, for migrant workers.
18. The protection of all victims of human trafficking is one of the priority of Thailand's actions to combat trafficking, which is a top national agenda. Thailand has used a human rights-based and victim centered approach, regardless of the legal status of the victims. To enhance protection for victims, Thailand drafted the Guidelines to Enhance Efficiency of Human Trafficking Victim Identification in 2016 and it will be implemented and take effect this year (2017). The Guidelines will help ensure that victims awaiting identification will not be put in jail, but instead will be placed in an appropriate location where they will receive protection, as well as permitted to stay and work in Thailand in accordance with the law. Those that are identified as victims of trafficking will be provided with medical care, legal assistance, and social services such as access to education, skills training and job opportunities.
19. After careful consideration of the Cabinet Resolution approved on 15 March 2016, permitting migrants who are trafficking victims and witnesses to stay in Thailand for up to 1 year (previously six months), on 13 December 2016 the Cabinet decided to extend the duration of stay from 1 year to 2 years. This extension exemplifies the government's efforts in encouraging victims to voluntarily assist in the investigation and prosecution of trafficking cases, which not only grants legal employment status, but also temporary residency status to victims who wish to stay and

work in Thailand after their witness examination process has concluded. This Cabinet Resolution also expands the scope of work of victims and witnesses by permitting them to work in all sectors depending on the need of employers. Furthermore, this Cabinet Resolution also enhances victims' and witnesses' access to health insurance equivalent to those of migrant workers, but with additional benefits granted by the Ministry of Public Health.

20. In an effort to provide appropriate protection to children, the Children Advocacy Center (ACT) was established in Chiang Mai and Chonburi (Pattaya) Provinces in 2015 to serve as a child day-care center, as well as a shelter that aims to assist child victims through every step of the judicial process while providing rehabilitation and counseling programs. The ACT was a collaboration between Thailand, international law enforcement agencies such as the Federal Bureau of Investigation of the United States of America (FBI), and several NGOs.
21. The Government continues to foster partnership with all relevant stakeholders in providing protection services to victims of trafficking. In 2016, a total of 61 NGOs registered with the Government to continue the fight against human trafficking. Relevant agencies have been cooperating closely with NGOs and international organizations, such as the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), Resettlement Support Center (RSC) and Stella Maris in this regard. Protection services range from providing health check-up and vaccination, education and skills training, child witness protection program, to facilitating voluntary return and resettlement in third countries.
22. Awareness-raising on labour protection is one of the most effective approaches to provide long-term and sustainable solutions to the problems of trafficking in persons and forced labour. The Government works closely with other relevant stakeholders to promote knowledge and practices of labour protection in accordance with the law to employers, employees, government officials and all concerned agencies through trainings, seminars, and campaign on a regular basis.
23. Thailand is committed to its international obligations related to labour rights' and continues to do its utmost to ratify relevant international instruments' such as the ILO Convention on the Right to Organise and Collective Bargaining (No.98) which is in the process of ratification. We are still considering the feasibility to ratify other Conventions, No. 81 Labour Inspection Convention, No.129 Labour Inspection (Agriculture) Convention and No. 144 Tripartite Consultation (International Labour Standards) Convention. ILO Convention No. 188 concerning Work in Fishing Convention, No. 87 regarding the freedom of association, and the

Protocol to Convention 29 concerning forced labour, are in our policy pipeline for 2017. In this connection, the Committee on Management of Migrant Worker Issues and Human Trafficking approved on 16 January 2017 to create a Sub-Committee to consider ratification of the Protocol to Convention 29, as well as a Sub-committee to draft a law in accordance with such Protocol.

24. To comply with ILO's Occupational Safety and Health Convention No. 187, the Thai Ministry of Labour has drafted the National Agenda on Occupation Safety, Health and Environment Phase II (2017 – 2026) and the Second Master Plan on Occupation Safety, Health and Environment (OSHE) (2017 – 2021), and established Thailand Institute of Occupational Safety and Health (TOSH) as an administrative and management center on OSHE in Thailand. The Thai Government is confident that these developments will lead to even more robust and stringent occupational safety standards which can changes in safety behaviors that will assist the government in promoting its safety campaign.
25. The Government sees the business sector as an important partner that contributes to the promotion and protection of human rights in the country. During the 2nd Cycle Universal Periodic Review (UPR), Thailand accepted a recommendation from Sweden to develop, enact and implement a national action plan on business and human rights in order to implement the UN Guiding Principles on Business and Human Rights as it coincides with Thailand's voluntary pledge to promote Business and Human Rights Principles in our country. This year, the Ministry of Justice has a plan to conduct a baseline study and hold consultations with relevant agencies as well as civil society organisations with an aim to develop a national action plan on business and human rights.

(5) Please indicate what measures have been taken to ensure that the right to freedom of expression and opinion, including the legitimate rights to collect and disseminate information, is respected and guaranteed in Thailand.

(6) Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of judicial harassment or other restrictions of any kind.

26. The Thai Government attaches great importance to the promotion of freedom of expression and public participation as they are crucial in the development of democratic society.

27. Human rights defenders are protected under Thai law without discrimination, like all persons in Thailand. Thailand is committed and has undertaken measures to ensure that human rights defenders are able to carry out their work in a safe and enabling environment.
28. As a part of the Government's efforts, the Ministry of Justice in 2014 have established a "Working Committee on development of measures to protect human rights defenders who are at risk of being violated." This committee is currently working on developing a guideline for all Thai authorities, in particular law enforcement agencies, that is based on international standards for the protection of human rights defenders including the UN Declaration on Human Rights Defenders and best practices from different countries. It is hoped that once completed, the guideline will provide concrete and practical measures that will ensure that rights of human rights defenders are protected and not violated.
29. In 2015, the said Committee has also identified 3 work goals to be further expedited including (1) Create a list of criteria and name list of human rights defenders who is deemed eligible to receive special protection; (2) Issuing Ministerial Regulation prescribing means and measures that shall be taken to protect human rights defenders; and (3) Amending relevant Ministerial Regulations and legislation that form the legal basis for the protection of human rights defenders.
30. Furthermore, as testament to Thailand's untiring commitment to the betterment of working environment and protection of human right defenders, the draft 4th National Human Rights Plan (2019 – 2023) will include human rights defenders as their target groups. In this regard, The Thai Government will also do its utmost to pass the Act on Prevention and Suppression of Torture and Enforced Disappearance B.E. ... which shall further strengthen the prevention of possible violation and increase protection for human rights defenders.

Ministry of Foreign Affairs of Thailand
January 2017