

September 19, 2017

Gen. Prayut Chan-o-cha
Prime Minister
Royal Thai Government
Government House,
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Re: Criminal Defamation Complaints Brought against Myanmar Migrant Workers and Labor Rights Advocate.

Dear Prime Minister Prayut,

We write to express our deep concern regarding recent criminal defamation charges brought by Thammakaset Company Limited on October 6, 2016, against 14 poultry farm workers from Myanmar who alleged the company seriously violated their rights (Black Case Or (๐.) 2769/2559). We are likewise concerned that Thammakaset Co. Ltd. also filed criminal defamation and computer crimes charges on November 4, 2016 against British labor rights advocate Andy Hall for his commentary on social media concerning the abuse the workers alleged they suffered (Black Case Or (๐.) 3644/2559). On October 4, 2017, the Don Muang Magistrates Court is scheduled to hear the case against the 14 migrant workers. The Bangkok South Criminal Court will consider the merits of the complaint against Andy Hall on December 15, 2017.

We are also alarmed to learn that the Thammakaset Co. Ltd. farm manager informed the Court on August 16 at a preliminary hearing concerning the criminal defamation charges against the 14 workers that the company had revived theft charges against two workers for allegedly “stealing” their timecards (workers showed the cards to labor inspectors to prove claims of excessive working hours), despite the decision by the Lopburi provincial prosecutor on June 21, 2017 to drop these charges because they were deemed to be without merit.

We, the undersigned organizations, are concerned by the continued use of criminal defamation in Thailand, including the complaints brought by Thammakaset Co. Ltd., which infringes on the right to freedom of expression and obstructs the legitimate work of human rights defenders. We call on the Thai government to decriminalize defamation and immediately take pro-active steps to protect the rights of these 14 migrant workers, as well as the many other human rights defenders in Thailand who are being targeted with criminal defamation and 2007 Computer Crimes Act (CCA) charges.

We are deeply concerned about what appears to be a growing trend of Thai business enterprises using criminal lawsuits to intimidate and obstruct the activism of land and environmental defenders, journalists, workers and labor rights activists, and migrant laborers from neighboring countries. Criminal defamation and CCA offenses carry disproportionate sentences and have a severe chilling effect on legitimate human rights research and reporting in the country. For the sake of rule of law, and Thailand’s international reputation as a global

exporter, the Thai government should work now to halt this trend, and ensure that the rights of migrant workers and human rights defenders in Thailand are respected and protected in line with international law and standards.

Thammakaset Co. Ltd. alleged that the 14 migrant workers damaged the company's reputation by filing a complaint on July 7, 2016 to the National Human Rights Commission of Thailand (NHRCT), claiming that the Company paid less than minimum wage, failed to pay overtime wages, restricted workers freedom of movement and confiscated their identity documents, including passports, violating Thailand's Labor Protection Act. On August 31, 2016, the NHRCT found that Thammakaset Co. Ltd. failed to pay minimum and overtime wages as well as provide adequate leave to workers, but rejected allegations of forced labor and restrictions on the freedom of movement.

The 14 migrant workers now face [up to one and a half years' imprisonment and/or fines of up to 30,000 Thai baht \(US\\$900\) for criminal defamation and other charges brought by](#) Thammakaset Co. Ltd. Andy Hall is also facing potential imprisonment of up to 7 years and fines up to 300,000 Thai baht (US\$9,000) for alleged criminal defamation and violations under the CCA.

On December 19, 2016, the Region I Labor Court found that Thammakaset Ltd. Co. had violated Thailand's 1998 Labor Protection Act on the chicken farm where the 14 workers were employed. The Court ordered Thammakaset Co. Ltd. to pay the 14 workers a total of 1.7 million Thai baht (US\$51,000) in compensation. The company appealed the case to Thailand's Supreme Court, but on September 14, 2017, the Court dismissed that appeal and ruled the workers should be paid their due wages. The Supreme Court is also considering an appeal brought by the workers claiming 44 million Thai baht (US\$1,320,000) in compensation for the alleged labor rights abuses.

As you are aware, Thailand's 1998 Labor Protection Act provides comprehensive rights and standards for workers, including legally registered migrant workers from other countries, guaranteeing a minimum wage and setting limits on the number of working hours. The bilateral Memorandum of Understanding between Thailand and Myanmar governing the formal recruitment and management of Myanmar migrant workers also explicitly requires the protection of Myanmar migrant workers under Thailand's domestic laws. We note that a number of months after these legal cases were filed, the government felt seriously enough about the problem of employers seizing migrant workers' identification documents that it decided to criminalize such acts. Article 131 of the Management of the Work of Migrant Workers Act 2017—promulgated in July 2017 and therefore not applicable to the cases raised in this letter, which were filed before the law took effect—makes it a criminal offense to seize migrant workers' documents, setting out penalties of imprisonment up to six months and/or a fine of up to 100,000 Thai baht (US\$3,000).

As a party to several international instruments, including the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), Thailand is obligated to require protection for all workers, including migrant workers, without discrimination. Article 7 of the ICESCR guarantees the right to just and favorable conditions of work and requires states to ensure: "fair wages" and "equal pay for equal work," a "decent living" for all workers and their families, "safe and healthy working conditions" as well as "reasonable limitation of working hours and periodic holidays with pay." In addition, Thailand is a party to 16 International Labor Organization (ILO) conventions that *inter alia* protect workers against forced labor (No. 29) and guarantee equal remuneration (No. 100), weekly rest (No. 14), equality of treatment (No. 19),

and safe working conditions (No. 187). In this context, workers also have the right to seek just redress for any violations or abuses of their fundamental rights.

Thailand also has an obligation to protect the right to freedom of expression as guaranteed under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is also a state party. Under international law, restrictions on freedom of expression are permissible only when provided by law, proportional, and necessary to accomplish a legitimate aim. Imprisonment is a disproportionate and inappropriate punishment for defamation, according to the United Nations Human Rights Committee—the expert body charged with overseeing the implementation of the ICCPR—and the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Both the Human Rights Committee and the Special Rapporteur recommend that states decriminalize defamation. U.N. Human Rights Council special mandate holders have also sent communications to the Thai government concerning the cases filed by Thammakaset Co. Ltd. against the 14 workers and Andy Hall.

As you noted at a major seminar at the United Nations Conference Centre in Bangkok on May 31, 2017, Thailand's business sector should prioritize respecting labor rights because workers fundamentally contribute to the success and sustainability of business enterprises. Thai authorities have an obligation to respect, protect, and fulfill human rights, and business enterprises have a responsibility to respect them. We commend your recent public commitment to implement the U.N. Guiding Principles on Business and Human Rights (the "Guiding Principles"), noting that the Guiding Principles elaborate on the states' duty under international law to "protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." The Guiding Principles also make clear that business enterprises have a "responsibility to respect human rights" and must have policies and processes in place to avoid causing or contributing to adverse human rights impacts. If companies identify that they have nevertheless "caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes," per the Guiding Principles.

By trying to punish the 14 migrant workers for using Thailand's legal system and National Human Rights Commission to seek remediation, Thammakaset Co. Ltd.'s actions are inconsistent with the company's responsibility to respect human rights. If Thailand wishes to convey its commitment to international corporations and governments that it is a responsible actor in monitoring supply chains and ensuring compliance with international labor standards, it should act more decisively to protect the ability of all workers to exercise their fundamental rights and seek just redress for any violations or abuses without fear of retaliation or reprisals.

We also call on your government to uphold Thailand's commitments to protect human rights defenders. As noted in the U.N. Declaration on Human Rights Defenders, states should protect human rights defenders from "threats, retaliation, de facto or de jure adverse discrimination, pressure, or any other arbitrary action" for engaging in legitimate activities.

In line with Thailand's obligations under international law, we call on your office to ensure workers' rights and the right to freedom of expression are protected in Thailand and that all persons in Thailand may exercise their rights without discrimination or fear of retaliation or arbitrary action. The 14 migrant workers previously employed by Thammakaset Co. Ltd. and Andy Hall should not face potential imprisonment for exercising their rights to free expression. Thailand should decriminalize defamation without delay and ensure protection for migrant workers and human rights defenders.

We call on the Prime Minister's Office to:

- Issue a public statement clearly stating that the government supports the decision of the Lopburi prosecutor's office to drop 'theft' charges against two of the migrant workers as being without merit, and directly question whether Thammakaset Co. Ltd.'s decision to re-file those charges constitutes an inappropriate waste of the court's time and resources.
- Ensure the right to freedom of expression for workers, activists and others who report on human rights and labor rights abuses allegedly committed by companies during their business operations.
- Publicly discourage employer federations and national-level employer congresses from bringing criminal defamation and other unwarranted legal proceedings against migrant workers and human rights activists working to promote and protect human rights in the context of business operations.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which guarantees fundamental rights and freedoms of migrant workers and their families.
- De-criminalize defamation by amending the Section 326-328 of the Thai Criminal Code, and the 2007 Computer Crimes Act.
- Amend Sections 88 and 101 of the 1975 Labor Relations Act to permit registered migrant workers to exercise the right to establish and register a union, and to be a member of the union committee, from which the individuals are chosen to lead the union.

We further call on the Ministry of Labor, Ministry of Justice, and NHRCT to:

- Impartially investigate all allegations of labor rights abuses and take appropriate legal action, including seeking compensation from responsible companies, for workers who have been harmed.
- Ensure migrants have access to legal status and adequate documentation.
- Enforce labor protections to ensure that all workers, including migrants, are paid the minimum wage, granted adequate leave time, and are able to retain their identification documents.
- Encourage Thai companies to develop, implement, and publish human rights policies and practices (including those concerning labor rights) appropriate to their size and circumstances and in line with international standards on business and human rights, including:
 - Specific commitments to meet the responsibility to respect human rights, including labor rights; and
 - A human rights due-diligence process to identify, prevent, mitigate, and account for how the company addresses their impacts on human rights, in particular their labor rights.

Signatories:

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Cathy Feingold, Director of International Affairs

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ALTSEAN-Burma
Debbie Stothard, coordinator

- 3  **Amnesty International**
- 4  **Anti-Slavery International**
Aidan McQuade, Director
- 5  **Asia Pacific Mission for Migrants (APMM)**
- 6  **Australia Asia Worker Links**
Pier Moro, Secretary
- 7  **Australian Council of Trade Unions**
Ged Kearney, President
- 8  **Axfood**
Åsa Domeij, Head of Environmental & Social Affairs
- 9  **Axfoundation**
Carolina Sachs, Secretary General
- 10  **Building and Woodworkers International**
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- 11  **Burma Campaign UK**
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- 12  **Business & Human Rights Resource Centre**
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- 23  **Diakonia Thailand**
- 24  **Electronics Watch**
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- 47  **Human Rights Watch**
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Jolovan Wham, Executive Director
- 50  **IndustriALL Global Union**
Valter Sanches, General Secretary
- 51  **Interfaith Network for the Rights of Migrants (INFORM)**
- 52  **Interfaith Worker Justice**
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- 53  **FIDH / International Federation for Human Rights**
Andrea Giorgetta, Director of Asia Desk
- 54  **International Labor Rights Forum**
Judy Gearhart, Executive Director
- 55  **International Trade Union Confederation**
Sharan Burrow, General Secretary
- 56  **International Transport Workers' Federation**
Stephen Cotton, General Secretary

- 57  **International Union of Food, Agricultural, Hotel, Restaurant, Catering Workers' Associations (IUF)**
Sue Longley, General Secretary
- 58  **Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia**
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- 59  **La Strada International**
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- 60  **Labor Safe Screen and Sustainability Incubator**
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- 61  **Labour Behind the Label**
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- 62  **Liberty Asia**
Archana Kotecha, Head Of Legal Department
- 63  **LawAid International Chambers**
Craig Tuck, Founder and Director
- 64  **Lawyers' Rights Watch Canada**
Gail Davidson, Executive Director
- 65  **MAP Foundation**
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- 75  **Olof Palme International Center**
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- 76  **Oxfam International**
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- 81  **Svensk Cater**
Lars Carlsson, CEO
- 82  **Swedwatch**
Alice Blondel, Director

- 83  **Trades Union Congress**
Frances O’Grady, General Secretary
- 84  **Transient Workers Count Too**
John Gee, Chair, Research Sub-Committee
- 85  **Unil**
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- 86  **Union to Union**
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CC:
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Minister of Justice
Minister of Foreign Affairs
Chairperson of the National Human Rights Commission of Thailand