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Thailand: Protect human rights defenders from judicial harassment by public and private actors

Amnesty International is gravely concerned about the use of criminal defamation and other related criminal charges against human rights defenders and calls on Thai authorities to ensure that such charges are not used to restrict the right to freedom of expression. On 20 September 2016, the Bangkok South Criminal Court will hand down a verdict in the criminal defamation case against human rights defender Andy Hall, a leading advocate for the rights of migrant workers in Thailand.

The charges in the case against Andy Hall, a British national, stem from his contribution to a January 2013 report by Finnish NGO Finnwatch. The report, "Cheap Has a High Price," describes various labor rights violations by three companies in Thailand, including the Natural Fruit Company Ltd., a Thai fruit processing company. As a research consultant for Finnwatch, Andy Hall conducted interviews with workers from the Natural Fruit factory in Prachuap Khiri Khan Province in Southern Thailand. These individuals described dangerous working conditions, illegally low wages, compulsory overtime work, the confiscation of their passports, and discrimination along ethnic lines, among other labor rights violations.

The upcoming verdict from the Bangkok South Criminal Court pertains to a criminal case initiated by Natural Fruit Company Ltd. shortly after the publication of the Finnwatch report. Natural Fruit alleges that Andy Hall intentionally damaged the company's reputation and that the report contains false information regarding working conditions at its factory. Andy Hall faces charges under section 328 of the Penal Code, relating to criminal defamation, and section 14(1) of the Computer Crimes Act, which prohibits the sharing of "false computer data ... likely to cause damage to a third party or the public." Together, the two charges carry a penalty of up to seven years imprisonment, in addition to fines which could be substantial.

In October 2014, another trial court dismissed the charges in a separate criminal defamation case against Andy Hall initiated by Natural Fruit Company Ltd concerning statements he had made in an interview with Al Jazeera. That case is awaiting a decision on appeal. Natural Fruit Company Ltd. also filed two civil lawsuits against Andy Hall seeking combined damages of THB 400 million (approximately USD 11.5 million). The civil lawsuits have been postponed pending final resolution of the criminal cases.

The use of criminal defamation charges against human rights defenders violates Thailand's obligations to protect and respect the right to freedom of expression, for instance under Article 19 of the ICCPR, to which Thailand is a state party. Defamation should be treated as a matter for civil litigation by injured parties. The UN Human Rights Committee has stated that defamation laws must be "crafted with care to ensure that ... they do not serve, in practice, to stifle freedom of expression". The Committee has encouraged states to consider decriminalizing defamation altogether. The Committee has also stated that criminal law should, if at all, only be used in the most serious cases, should recognize truth and public interest as defences, and should not include excessively punitive penalties.

Andy Hall is one of many human rights defenders in Thailand facing charges under the Penal Code's criminal defamation provisions. For example, three human rights defenders – including the current and former chairpersons of Amnesty International Thailand – currently face criminal defamation

charges initiated by a military unit after publishing a report describing torture and other ill-treatment perpetrated by military personnel. A gold mining company has also initiated more than a dozen cases against activists, journalists, and community members—including a 15-year old girl—opposing its mining operations in northern Thailand.

Amnesty International urges the Thai Government to take all measures necessary to create an environment in which individual and groups can peacefully express their views and defend human rights without fear of harassment, prosecution or retaliation. In particular, Amnesty International calls on the Thai authorities to protect human rights defenders against arrest, prosecution and imprisonment by amending the Penal Code to remove criminal penalties for defamation.

Background

Article 19 of the International Covenant on Civil and Political Rights, to which Thailand is a state party, protects the right to freedom of expression, which includes the right to impart information. The Human Rights Committee has further clarified that the right to freedom of expression encompasses all forms of expression and includes the right to communicate information about human rights concerns. Any limits placed on the right to freedom of expression must be provided for by law; be necessary for the protection of the rights or reputations of others, national security or order, public health or morals; and involve the least restrictive and proportionate means of achieving the purported objective.

The UN Declaration on Human Rights Defenders affirms states' obligation to protect individuals and groups who are defending human rights from "any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action". In 2015, Thailand joined a UN General Assembly resolution calling on states to "take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly and association".

In May 2016, 12 human rights and community-based organizations released a statement raising concerns about a number of ongoing criminal defamation cases and calling for increased protections for human rights defenders.