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Q&A: Criminal and Civil Prosecutions - Natural Fruit vs. Andy Hall

1. What are all the prosecutions about?

Migration expert and researcher Andy Hall worked as a research coordinator for a Finnish NGO Finnwatch in 2012. With assistance from a team of translators and fixers, Andy conducted worker interviews in Thailand. Finnwatch published the interview findings in a report called Cheap Has a High Price in January 2013¹.

Based on information provided by migrant workers from Myanmar, the report alleged serious human rights violations in the Natural Fruit factory in Prachuap Khiri Khan province in Southern Thailand. Natural Fruit reacted to the critique by pressing criminal and civil charges against Andy Hall, a private person, and not Finnwatch as the organisation that authored the report.

In its prosecution documents, Natural Fruit cites Andy Hall's name on the front page of an English Executive Summary of the report as sufficient evidence of Hall's authorship and responsibility for the report, as well as alleges his actual involvement in uploading and disseminating the report onto Finnwatch's website. The report however was authored only by Finnwatch and Andy Hall has no administrative access to Finnwatch's website.

Altogether Natural Fruit has filed two cases against Andy Hall under criminal defamation provisions in Thailand's Criminal Code as well as two civil defamation cases. One of the criminal defamation cases also includes an allegations under the Computer Crime Act. This kind of judicial harassment provides companies and governments an effective tool to silence human rights defenders.

2. Who is Natural Fruit? Who is its owner?

Natural Fruit Company Ltd. is a company that produces pineapple products and is part of Nat Group. Other companies belonging to the group are Prafic and Prafic 2005, which produce dried fruits and aloe vera products. In 2012, Natural Fruit supplied juice concentrate for Finnish retailers SOK, Kesko and Tuko Logistics private label juices (produced by Finnish VIP-Juicemaker Oy).

The owner of Natural Fruit Wirat Piyapornpaiboon is the elder brother of Thailand's former labour minister and general secretary of the Democratic Party Chalermchai Sri-On, who was also the senator of Prachuap Khiri Khan province for many years. Wirat Piyapornpaiboon has many other business in addition to those that are part of Nat Group, including Siam Aloe Vera Co. Ltd., a company that manufactures and exports canned aloe vera.

Wirat Piyapornpaiboon is a powerful actor also in Thailand's pineapple industry as he is the President of the Thai Pineapple Industry Association TPIA. TPIA represents over 60 pineapple companies in Thailand.

3. Who is Andy Hall? What is Finnwatch?

Andy Hall is a British national and has been a resident of Thailand for over 10 years. He currently lives in Bangkok. During 2013 and until Hall's passport was confiscated as part of his prosecutions, he was a resident of Myanmar advising the Myanmar Government on migration issues, and lived in Yangon.

Andy Hall is trained in law and an expert on migration issues in Southeast Asia. He studied for a PhD at Cardiff University and Melbourne University. His PhD thesis looked at proposals to develop

¹ The Executive Summary of the report Cheap Has a High Price is available in English at http://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf

occupational health and safety laws relating to organisational criminal responsibility for industrial deaths in Australia, Canada and the UK.

In 2012, Finnwatch hired Andy Hall as a consultant researcher to coordinate field research in Thailand for the organisation's project on social responsibility of private label products of Finnish supermarket chains. Andy Hall interviewed the workers at Natural Fruit factory in this capacity, with assistance from translators and fixers.

Finnwatch is a Finnish corporate social responsibility watchdog deeply rooted in Finnish civil society. The project on social responsibility of private label products was part of the organisation's Decent Work Research Programme, funded by several Finnish trade unions.

4. What is the current state of play with the four cases brought by Natural Fruit against Andy Hall?

a) Criminal Defamation Case – Aljazeera interview

The first of the four cases to reach a trial stage was the criminal defamation case which dealt with an interview Andy Hall gave to Aljazeera in Yangon, Myanmar in April 2013. Ironically, the interview was about the other two cases brought by Natural Fruit against Andy Hall earlier that year and following the publication of the Finnwatch report.

According to Natural Fruit, Andy Hall intentionally harmed the reputation of the company by speaking and/or publishing false information. The trial was heard from 2nd to 10th September 2014 at Prakanong Court, Bangkok. On 29th October 2014, the Court delivered its verdict, dismissing the charges on the grounds of flawed prosecution that was in breach of the Thai Criminal Procedure Code.

Thailand's Attorney General and Natural Fruit appealed the legality of the dismissal to an Appeal Court in January 2015. The Appeal Court's decision is expected on 18th September 2015.

Andy Hall is required to attend the hearing on Friday in person. The hearing has several possible outcomes.

First, the Appeal Court may reject the appeal. If not satisfied with the decision, the plaintiffs Natural Fruit or the Attorney General can then appeal the dismissal further to the Supreme Court.

Secondly, if the Appeal Court accepts the appeal, it can also rule on the facts of the case immediately based on the previous 2014 trial. The Appeals Court can find Andy Hall either guilty or not guilty of criminal defamation. If Andy Hall is found guilty, he can be imprisoned, asked to pay a fine and/or detained pending a bail request and filing of an appeal.

Thirdly, the Appeals Court can also accept the appeal but order the Prakanong Court to look anew at the case again. In this case, the Prakanong Court will have to rule on the facts of the case as per the information presented during the trial in September 2014. No further hearings will be held and no new information considered. Andy Hall can be detained pending the ruling. If detained, he can seek release on bail.

The charge carries a maximum penalty of one year's imprisonment.

b) Criminal Defamation and Computer Crimes Case – Finnwatch report

After seven preliminary hearings, held between 17th November 2014 and 20th July 2015, the Bangkok South Criminal Court on 24th August 2015 decided to proceed with the original criminal defamation and computer crimes case which relates to the publication of the Finnwatch report Cheap Has a High Price.

Andy Hall will now be formally indicted in a separate hearing on 19th October 2015. Andy Hall will

attend the hearing, and plead 'not guilty'. He is then likely to be detained, and can apply for bail dependent on the court's discretion. His trial is expected to commence in 2016.

The charges carry a maximum penalty of 7 years' imprisonment.

During the preliminary hearings, Natural Fruit was able to produce its own witnesses to the Court to try to convince them to proceed with the case to a trial whereas the defense only had the opportunity to cross examine the prosecution witnesses. Andy Hall was not in attendance at the preliminary hearings but was represented through his lawyers who cross-examined the prosecution witnesses on his behalf. The prosecution witnesses were Natural Fruit factory management, owners, migrant workers, academics and other concerned parties.

c) Civil defamation / damages – Finnwatch report

A 300 million baht damages claim against Andy Hall was filed by Natural Fruit following the publication of the Finnwatch report.

Negotiations between the two parties failed on 30th October 2014 following which the Nakhon Pathom Civil Court postponed consideration of the case until a verdict in the criminal defamation and computer crimes case, which also concerns the Finnwatch report, is reached.

d) Civil defamation / damages – Aljazeera interview

Natural Fruit has also filed a 100 million baht damages claim against Andy Hall, related to the Aljazeera interview which he gave in Yangon, Myanmar. In this case, the summons documents have not been successfully served to date as they would need to be served to Andy Hall in Myanmar.

The first hearing on this case took place on 21st November 2014 in Prakanong Court; the second on 23rd May 2015. During the second hearing, the prosecution reportedly informed the court that the summons documents had still not been successfully served to Andy Hall in Myanmar. A third hearing is scheduled for 16th November 2015 to allow adequate time for the summons to be served to Andy Hall in Myanmar.

5. Are the Finnwatch findings about Natural Fruit false?

The report Cheap Has a High Price, published in 2013, is based on interviews with Natural Fruit factory workers. In line with Finnwatch's Code of Conduct for research, Natural Fruit was contacted several times during the investigation by email, telephone and fax but the company refused to reply and to discuss the interview findings with Finnwatch prior to the report's publication. Also in line with Finnwatch's Code of Conduct, Natural Fruit could have issued its response to the report on Finnwatch's website after it was published, but it never asked to do so.

Finnwatch is not the only organisation that has investigated the working conditions in Natural Fruit. An award winning Finnish reporter Hanna Nikkanen independently interviewed Natural Fruit's former factory workers and Finnish Apu magazine published Nikkanen's article on the same day with the Finnwatch report in 2013. Aljazeera has also interviewed a worker who escaped from Natural Fruit.

In February 2013 after the release of the Finnwatch report, and some three months after Finnwatch's field research was complete and findings had been informed to Thai authorities and Natural Fruit Company Ltd., Thai labour authorities also conducted an inspection in the Natural Fruit factory. The inspection report, referred to widely during Andy Hall's first trial in September 2014, found several deficiencies in the factory including different kinds of illegal deductions from the salaries, illegally long over time hours, deficiencies in sanitation rooms and restrictions of toilet visits. However, to date no one has been brought to justice for the alleged human rights violations at the Natural Fruit factory.

In 2014, Finnwatch published a follow-up report on the working conditions in Natural Fruit. According to the report, there were still labour rights issues in the factory. Due to the ongoing court proceedings,

Andy Hall did not take part in this particular research project. Natural Fruit has commented on the follow up report briefly by denying all alleged illegalities.

6. Are the accusations of Natural Fruit true?

Natural Fruit is accusing Andy Hall of intentionally harming Natural Fruit and for causing financial loss through accusations that are without basis and false.

During the September 2014 trial, Andy Hall brought evidence to court to show he had no personal interest or intention to harm Natural Fruit. The researcher had never met the owners or management of Natural Fruit and had never been in any contact or conflict with the factory before conducting the field study for Finnwatch. Finnwatch got the name and address of Natural Fruit from the Finnish retailer SOK when initiating the investigation on the social responsibility of randomly chosen private label products sold in supermarkets in Finland.

Evidence was also brought to court by Andy Hall to show that if Natural Fruit has suffered financial loss it is because of Natural Fruit's own actions. The first recommendation in the Cheap Has a High Price report urges companies to continue trading with Natural Fruit whilst using their leverage to work towards improvements to working conditions there. Finnish retailer SOK visited Thailand in 2013 and met with Natural Fruit. During the visit, SOK requested Natural Fruit to agree to a third party social responsibility audit but Natural Fruit refused. An Israeli company Prodalim has also informed Finnwatch that it stopped buying from Natural Fruit as Natural Fruit didn't agree to a third party audit.

7. What would follow if Hall was found guilty of the charges against him?

If found guilty, Andy Hall could end up paying compensation and penalty fees as well as being sent to prison. Natural Fruit is claiming over seven million euros in damages, and the criminal charges brought against Andy Hall carry a combined maximum sentence of eight years in prison.

8. Will Andy Hall have a fair trial in Thailand?

There are several reasons to suspect that Andy Hall will not receive a fair trial in Thailand.

The already concluded trial on criminal defamation charges related to the Aljazeera interview was riddled with problems, so much so that the Court ended up dismissing the case on the grounds of procedural shortcomings. In addition to the breaches of Thailand Criminal Procedure Code cited in the Court decision², the defense was not given sufficient time to prepare its case as some of the documents that the Court had asked from the Thai government were not provided in time with many documents summonsed never appearing at all. Also during the trial hearing itself, proceedings were once halted due to translation ineffectiveness and many of the court documents were only provided in Thai language with inadequate time for translation for Andy Hall's proper and sufficient understanding. A defence witness, a former Natural Fruit factory employee and a migrant worker, officially reported harassment following his testimony in Court.

The International Labour Association IUF mandated the International Centre for Trade Union Rights ICTUR to observe the trial in September, and the ICTUR trial observer and lawyer Mark Plunkett, concluded in his report that Andy Hall had a complete defence to the charges and deserved to be acquitted on merits. The report also found the laws that allowed for Andy Hall's prosecution in the first place unfair.³ In this case, the Thai Courts had no jurisdiction as the Aljazeera interview was given in another country and not in Thailand.

² For more information please see International Centre for Trade Unions Rights, Independent Trial Observer Report, available at <http://www.ictur.org/pdf/Plunkett.pdf>

³ For more information please see International Centre for Trade Unions Rights, Independent Trial Observer Report, available at <http://www.ictur.org/pdf/Plunkett.pdf>

Furthermore, the provisions in Thailand's Criminal Code that allow for deprivation of liberty as punishment for defamation have been criticised internationally as they restrict freedom of speech. Independent UN experts have expressed concern that the criminal charges against Andy Hall may be the result of his legitimate and peaceful actions and have a chilling effect on other human rights defenders and activists working in Thailand and elsewhere to expose human rights violations perpetrated by non-State actors, including business enterprises.⁴

9. What kind of reactions have the charges against Hall raised in Finland and internationally?

Finnwatch considers the court cases raised against Andy Hall as harassment of a human rights defender. The cases have raised international attention and the trial has been criticised widely by international organisations and labour rights associations.

More than one hundred human rights organisations and trade unions globally have expressed their support for Andy Hall.⁵ Online petitions on Andy Hall's behalf by Walk Free and Sum Of Us have attracted more than 100,000 signatures.

United Nordic, Business and Social Compliance Initiative (BSCI) and the Ethical Trading Initiative (ETI) have called on the Thai food industry and Natural Fruit Company Ltd. to withdraw all charges against Andy Hall.

The United Nations Office of the High Commission for Human Rights OHCHR has demanded twice for an investigation on the issues.

The governments of the UK and Finland among others have sent their observers to court hearings against Andy Hall. The EU Delegation to Thailand has issued a statement in his support.⁶

For more information please see

Andy Hall's blog
<https://andyjhall.wordpress.com/>

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4 For more information please see Special Procedures of the Human Rights Council, available at http://burmacampaign.org.uk/media/public_-_AL_Thailand_26.04.13_4.2013.pdf

5 For recent examples, see Human Rights Watch, 19 July 2015, Thailand: End Case Against Migrant Worker Activist Andy Hall, available at <https://www.hrw.org/news/2015/07/19/thailand-end-case-against-migrant-worker-activist>; Coalition of 44 NGOS, 19 August 2015, Letter to Thai Prime Minister Prayuth Chan-ocha regarding prosecution of Andy Hall, available at <http://www.laborrights.org/publications/letter-thai-prime-minister-prayuth-chan-ocha-regarding-prosecution-andy-hall>

6 Local EU Statement on the increasing misuse of criminal defamation laws in Thailand, 14 November 2014, available at http://eeas.europa.eu/delegations/thailand/documents/news/141114_eu_homs_statement_on_misuse_of_criminal_defamation_laws_en.pdf