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

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1. What are all the prosecutions about?

Migrant rights defender 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 *Cheap Has a High Price* in January 2013[1].

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

In prosecution documents, Natural Fruit for example cited the presence of Andy Hall's name alongside others on the front page of an English Executive Summary of the report, as important evidence of Hall's authorship and responsibility for the report.

Natural Fruit also alleged Hall's involvement in uploading on to Finnwatch's website a confidential communication regarding the Finnwatch report. This communication was an attachment to an email that Finnwatch sent in December 2012 to Thai authorities and human rights organisations regarding the key findings of the report. The report was authored only by Finnwatch and Andy Hall has no administrative access to Finnwatch's website, where the report was uploaded. The confidential communication has never been published on www.finnwatch.org.

As outlined below in more detail, 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 allegations under the Computer Crimes Act. The cases are widely considered an example of judicial harassment by companies and governments and an attempt to silence a human rights defender.

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 S Group, Kesko and Tuko Logistics private label juices (produced by Finnish VIP-Juicemaker Oy).

The owner of Natural Fruit Mr. Wirat Piyapornpaiboon is the elder brother of Thailand's former labour minister and former 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 businesses in addition

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

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 36 year old British national and a resident of Thailand for over 11 years. He currently lives in Bangkok. During 2013 prior to the launch of criminal proceedings agaist him, Hall was a resident of Myanmar advising the Myanmar Government on migration issues and lived in Yangon.

Andy Hall is trained in law and a researcher 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 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 a project on social responsibility of private label products of Finnish supermarket chains. It was in this capacity that Andy Hall interviewed workers at Natural Fruit factory, with assistance from translators and fixers.

Finnwatch is a Finnish corporate social responsibility watchdog backed by a number of Finnish development aid organisations, trade unions and consumer rights' groups. The project on social responsibility of private label products was part of the Finnwatch Decent Work Research Programme.

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 a 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 as an immediate response to the publication of the Finnwatch report (see below).

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 a verdict dismissing the charges on the grounds that the prosecutor failed to participate in the investigation process as ordered by the Attorney General. The Court subsequently returned to Andy Hall his British passport which had been confiscated as a condition for bail once he was fornally prosecuted for the case in May 2014.

Thailand's Attorney General and Natural Fruit appealed the legality of the dismissal to the Appeals Court in January 2015. The Appeal Court's decision, likewise dismissing the appeal on legal grounds, was given on 18th September 2015. Natural Fruit and the Attorney General however continued to find means to appeal the case further. According to the Thai Criminal Procedure Code, a twice dismissed case can be appealed to the Supreme Court on the permission of either the Attorney General or the Court of First Instance. In this case, the request to appeal to the Supreme Court was made to the Attorney General, the same person who is prosecuting Andy Hall. The permission to appeal was granted at the end of 2015, and both the Attorney General and Natural Fruit have submitted their appeals on the case to Thailand's Supreme Court in January 2016. Andy Hall's legal team has responded to the appeal, and the appeal decision verdict by the Supreme Court remains pending.

The charges in this case carry a maximum penalty of one years' imprisonment and a fine if convicted.

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 to a criminal trial with the original criminal defamation and computer crimes prosecutions brought by Natural Fruit Company Ltd. against Andy Hall in February 2013. These prosecutions relate to the publication of the Finnwatch report *Cheap Has a High Price*.

Andy Hall was formally indicted for these prosecutions in a hearing at Bangkok South Criminal Court on 18 January 2016. Andy Hall attended the hearing and pleaded 'not guilty' to all charges. The charges carry a combined maximum penalty of 7 years' imprisonment.

Following the indictment hearing, Andy Hall's passport was confiscated and he was barred from leaving Thailand without first getting permission from the Court. Hall has since been able to leave Thailand several times after obtaining prior permission from the Court. The fact that he has promptly returned to Thailand and surrended his passport after each trip continues to show that he is not at flight risk.

During the preliminary hearings in this prosecution, Natural Fruit was able to produce its own witnesses to the Court to try to convince the Court to proceed with the case to a trial whereas the defense only had the opportunity to cross examine 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 full criminal trial in this case, which is the most serious of all four cases against Andy Hall, then commenced on 19 May 2016 with three days of prosecution witness hearings. The prosecution witnesses during the trial included Natural Fruit factory management, owners, migrant workers, academics and other concerned parties – like already during the preliminary hearing. Then, over the summer months of June and July, the total number of defence and prosecution witnesses heard in the case eventually reached 24, including Andy Hall himself. Both parties to the case submitted closing statements to the Court following the close of witness testimony on 26 August 2016. The Court is scheduled to issue its verdict in the case 9am local time on 20 September 2016.

Andy Hall's testimony to the Court in early June lasted three days. Other defence witnesses included Finnwatch Executive Director Sonja Vartiala, who in July told the Court that Finnwatch was solely responsible for analysing, writing and publishing online the report *Cheap Has a High Price*.

The Vice President of the Finnish retailer S Group, Jari Simolin, was also invited to give testimony. In his testimony, Simolin told the Court how Natural Fruit's refusal to allow independent, international social responsibility audits to its processing plant was the reason why S Group put purchases from Natural Fruit on hold in 2013 – and not the publication of the Finnwatch report.

The S Group has said that they took a stance on this case as civil society organisations produce information which is highly relevant to companies and the work that activists does increases transparency in supply chains and should not be punished.

Three former Natural Fruit employees, all migrant workers from Myanmar, also testified in defense of Andy Hall. One of the workers alleged being threatened in a Courthouse toilet by Wirat Piyapornpaiboon, owner of Natural Fruit, immediately following his testimony. The Court immediately convened a hearing to establish facts concerning this serious allegation.

Other defence witnesses during the criminal trial included, most importantly: Dr. Darian McBain, Sustainable Development Director at one of the world's largest tuna and sea food producers, the Thai Union Group; Dr. Chanintr Chalisarapong, Unicord Public Company Ltd. Advisor and Thai Tuna Industry Association (TTIA) President; Mr. Somneuk Chotiwattanaphan, CEO of tuna company Chotiwat Manufacturing Co Ltd; and Mrs. Attapan Masrangsan, Advisor to Thai Union and General Secretary of the TTIA. The 2013 Finnwatch report *Cheap Has a High Price* also exposed serious human rights violations at Thai Union, Unicord and in Thailand's tuna processing industry. Unlike Natural Fruit, Thai Union and Unicord have since the publication of the report engaged in extensive dialogue with migrant workers' organisations and taken corrective action. Finnwatch has published two follow-up reports detailing these improvements and remaining challenges at Thai Union and Unicord.

c) Civil Defamation and Damages Case – Finnwatch Report

A 300 million baht damages claim against Andy Hall was filed by Natural Fruit following the publication of the Finnwatch report in a case linked to the Bangkok South Criminal Court prosecution. Negotiations between the two parties failed on 30th October 2014 following which the Nakhon Pathom Court postponed consideration of this case until a verdict in the criminal defamation and computer crimes case (see case b above), which also concerns the Finnwatch report, is reached.

d) Civil Defamation and Damages Case – 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 (case a). The first hearing on this case took place on 21st November 2014 in Prakanong Court and Andy Hall has submitted his defence and further hearings followed in May/November 2015 and January/April 2016. This case was then also postponed pending a final decision in the appeal to the Supreme Court in the criminal defamation case (case a).

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 Ethical Guidelines for research[2], Natural Fruit was contacted several times during the investigation process by email, telephone and fax but the company refused to reply and discuss the interview findings with Finnwatch prior to the report's publication. Also in line with Finnwatch's Ethical Guidelines, 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 magazine *Apu* 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. More recently in November 2015, a Finnish broadcaster Yle produced a documentary on Andy Hall's prosecutions for which they too interviewed former Natural Fruit workers. Natural Fruit refused to given an interview to Yle.

In February 2013 after the release of the Finnwatch report, and some three months after Finnwatch's field research was complete and the findings had been shared with the Thai authorities and Natural Fruit Company Ltd., Thai labour authorities conducted an inspection in the Natural Fruit factory. The inspection report, referred to widely during Andy Hall's criminal trials, found several deficiencies in the factory including illegal deductions from salaries, illegally long over time hours, deficiencies in sanitation rooms and restriction of toilet visits. However, to date no one has been prosecuted for these alleged rights violations.

In 2014, Finnwatch published a follow-up report on 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 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.

During his criminal trials, Andy Hall has brought evidence to the 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 and S Group testified to the Courts that Finnwatch got the name and address of Natural Fruit from the Finnish retailer S Group as one of their suppliers 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 also to show that if Natural Fruit had suffered financial loss it was because of Natural Fruit's own actions.The first recommendation in the *Cheap Has a High Price* report urged companies to continue trading with Natural Fruit whilst using their leverage to work towards improvements in working conditions there. Finnish retailer S Group visited Thailand in 2013 and met with Natural Fruit. During the visit, outlined to the Bangkok South Criminal Court in July 2016, S Group requested Natural Fruit to agree to a third party social responsibility audit but Natural Fruit refused. An Israeli company Prodalim 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 ten million euros in damages (400 million baht), and the three criminal charges brought against Andy Hall carry a combined maximum sentence of eight years in prison.

8. Have the proceedings against Andy Hall been in accordance with fair trial principles?

The already concluded initial trial in September 2014 on criminal defamation charges related to the Aljazeera interview was riddled with problems during the investigation stage, so much so that the Court ended up dismissing the case on the grounds of an unlawful investigation and prosecution. In addition to the investigation problems[3], the defense was not given sufficient time to prepare its case at trial as some of the

2 Finnwatch's Ethical Guidelines are available at http://www.finnwatch.org/en/what-we-do/ethical-guidelines

3 For more information please see International Centre for Trade Unions Rights, Independent Trial Observer Report,

documents that the Court had asked from the Thai government were not provided in time with many documents summonsed never appearing at all. 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 and the Ministry of Justice investigated allegations of threats against him.

Global trade unions mandated the International Centre for Trade Union Rights ICTUR to observe Hall's first criminal trial in September 2014. 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 aquitted on merits. The report also concluded that the laws that allowed for Hall's prosecution in the first place were unfair. In this case, the Thai Courts had no jurisdiction as the Aljazeera interview was given in another country and not in Thailand.[4]

During Andy Hall's trial from May to July 2016, challenges concerning adequacy and capability of translators both for Hall and defense witnesses arose frequently. Two non-Thai witnesses had their testimony cancelled on their planned day of testimony as a translator was incapable of translating the content of their testimony for the the Court hearing to proceed. Scheduling challenges didn't allow these two witnessed to return to Court to give testimony at a later date. Also, overseas witnesses did not at times have their testimony translated adequately and likewise Hall himself found the translators assigned to him at times unable to adequately communicate in English language.

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 and the International Commission of Jurists (ICJ), as well as Lawyers Rights Watch Canada (LRWC) have expressed concern that the criminal charges against Andy Hall may be the result of his legitimate and peaceful actions as a human rights defender 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 companies.[5]

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

Finnwatch considers the court cases raised against Andy Hall 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.[6] Online petitions on Andy Hall's behalf by Walk Free and Sum Of Us have attracted 100,000s of signatures.[7]

United Nordic, Business and Social Compliance Initiative (BSCI)[8] and the Ethical Trading Initiative (ETI)[9] have called on the Thai food industry and Natural Fruit Company Ltd. to ensure the withdrawal of all charges against Andy Hall.

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available at http://www.ictur.org/pdf/Plunkett.pdf

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

5 For more infomation 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 and ICJ, Thailand: Amicus in criminal defamation proceedings against human rights defender Andy Hall at http://www.icj.org/thailand-amicus-in-criminal-defamation-proceedings-against-human-rights-defender-andy-hall/

6 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

7 Walk Free, Drop the Charges Against Andy Hall Now (petition), available at https://www.walkfree.org/drop-the-charges-against-andy-hall-now/

8 BSCI, BSCI and its Participants Take Action in Support of Andy Hall, available at http://www.bsci-intl.org/news/bsci-and-its-participants-take-action-support-andy-hall

9 Ethical Trading Initiative, 29 August 2014, Calling on Thai pineapply industry to drop charges against Hall, available at http://www.ethicaltrade.org/blog/calling-thai-pineapple-industry-drop-charges-against-hall

The United Nations Office of the High Commission for Human Rights OHCHR has demanded twice for an investigation on the issues.[10]

The governments of the UK, Finland, Denmark, Austria and Germany among others have sent observers to court hearings concerning Andy Hall's case. The EU Delegation to Thailand has issued a statement in his support, attended all court hearings and this case was debated during an EU Parliament hearing on Thailand in Brussels.[11] Several members of the EU Parliament have shown their full support to Andy Hall.

10 See at http://burmacampaign.org.uk/media/public_-_AL_Thailand_26.04.13_4.2013.pdf and http://www.andyjhall.wordpress.com/2016/02/29/5-un-human-rights-mandates-at-ohchr-geneva-and-thai-government-engage-allegationresponse-natural-fruit-vs-andy-hall-saga/

11 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 Motion for a resolution, 6 October 2015, available at http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2015-1015&language=EN