

# Labour activists need greater protection for freedom of expression

Cases are reported of sincere human rights activists dragged through the courts and the advocacy of campaigners silenced by the threat of legal action

A critical part of the work of trade unionists and labour activists, and indeed human rights activists more generally, is to challenge a wide range of actors, both state and private, who have impacted on human rights, and to hold these actors to scrutiny and to account. Of concern to ICTUR are those cases reported to us in which activists undertake such work, in a context that appears to be genuine and sincere human rights advocacy, and yet in which they are subject to forms of legal retaliation that either seek to punish them for their advocacy or that bar them from speaking out further.

In recent years two cases stand out as examples of this kind of litigation, that of Andy Hall in Thailand, and of Wilson Sossion in Kenya. In both cases the plaintiffs are private corporate interests, claiming to have been damaged by the activists' human rights work.

The two cases have striking relevance for the question of transnational supply chain regulation and the growing demand for action around the intersection of transnational business and human rights generally. Hall is a British researcher, working for a Finnish NGO, examining the situation of migrant workers from Myanmar, working for a Thai company, supplying European markets. Sossion is a Kenyan union leader working with an international teachers' union in Belgium, looking at the impacts of a US company.

## Thailand: British activist hounded by defamation law

Migrant rights defender and researcher Andy Hall worked as a research coordinator for a Finnish NGO Finnwatch in 2012, which published his findings in the report *Cheap Has a High Price* in January 2013. The Natural Fruit Company Ltd. reacted to the report by pressing multiple criminal and civil charges against Hall. The company also cited an interview Hall gave to Aljazeera in Myanmar in response to his original prosecution as being defamatory. Natural Fruit also alleged Hall's involvement in uploading on to Finnwatch website a confidential communication regarding the Finnwatch report. Natural Fruit filed two cases against 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.

Natural Fruit Company Ltd. is a company that produces pineapple products. 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. Wirat Piyapornpaiboon is an important actor 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. Hall is a 37-year-old British national who lived in Thailand for 11 years working as an academic and promoting the rights of migrant workers in Thailand.

*Civil defamation case:* 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. The case charges carried a maximum penalty of 1 year imprisonment. The trial was heard from 2 to 10 September 2014 at Prakanong Court, Bangkok. ICTUR sent Australian barrister Mark Plunkett, to observe proceedings. On 29 October 2014, the Court delivered a verdict dismissing the charges. Following various attempts to reinstate the case the Appeals Court dismissed the challenge on 18 September 2015, and the Supreme Court also dismissed the case on 3 November 2016.

*Criminal Defamation and Computer Crimes Case – Finnwatch Report:* after seven preliminary hearings held between 17 November 2014 and 20 July 2015, the Bangkok South Criminal Court on 24 August 2015 decided to proceed to a criminal trial with the original criminal defamation and computer crimes prosecutions brought by Natural Fruit Company Ltd. The charges carried a combined maximum penalty of 7 years' imprisonment.

Following a complex process with several rounds of preliminary hearings, the Bangkok South Criminal Court issued its verdict in this case on 20 September 2016, finding Hall guilty of all charges levelled against him. He was subsequently sentenced to four years' imprisonment, reduced by one year and suspended by two years and ordered to pay a fine of 200,000 baht, reduced to 150,000 baht. The fine was paid to the Court immediately by Thai Union Group, the Thai Tuna Industry Association (TTIA) and Finnwatch.

Hall was released from temporary detention, his passport returned and restrictions on his freedom of movement removed. Hall's legal team submitted an appeal against his conviction in this case on 8 February

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2017. Natural Fruit had also previously appealed the verdict in December 2016 seeking an immediate custodial sentence against Hall. The ruling by the Appeals Court in this case is expected within 2017.

*Civil Defamation and Damages Case – Finnwatch Report:* a 300 million baht damages claim against Hall was filed by Natural Fruit in a case linked to the Bangkok South Criminal Court prosecution. Negotiations between the two parties failed on 30 October 2014 following which the Nakhon Pathom Court postponed consideration of this case until a final verdict in the criminal defamation and computer crimes case, which also concerns the Finnwatch report, is reached. Consideration of this case has yet to recommence given appeals on the first instance verdict by both Hall and the Natural Fruit Company Ltd.

*Civil Defamation and Damages Case – Aljazeera Interview:* Natural Fruit also filed a 100 million baht damages claim against Hall, related to an *Al Jazeera* interview, which he gave in Yangon, Myanmar, which was the subject of the first civil defamation case. The first hearing on this related case took place on 21 November 2014 in Prakanong Court. Further hearings followed in May/November 2015 and January/April 2016 when consideration of the case was postponed. Following the Supreme Court's dismissal of the criminal case, consideration of this case was to commence but the Prakanong Court then dismissed the case on the basis of jurisdiction of the court to legally try the case given that the alleged defamatory comments were made overseas and the defendant Andy Hall had a residence that was not within the jurisdiction of the Court. Natural Fruit appealed the dismissal of this case by the Prakanong Court to the Appeals Court which on 22 August 2017 ruled that Prakanong Court had jurisdiction over the case and ordered the Court to begin to hear the case in full from 29 August.

Four years on from the publication of his report, Hall is still fighting ongoing defamation claims in both civil and criminal proceedings.

### Kenya: teachers' leader prevented from criticising private school chain

Bridge International Academies Limited ('Bridge') has sued Kenya National Union of Teachers (KNUT) and secretary-general Wilson Sossion for defamation, arguing that they published offensive and untrue information about the company's chain of for-profit schools. Bridge petitioned the court seeking compensation. Pending a final decision on merits, the court has issued an injunction against Sossion and the KNUT, which bars the defendants from making any public statements, defamatory or otherwise, regarding Bridge. Founded in the US, Bridge is now the world's largest private chain of nursery and primary schools, seeking to provide 'affordable' private schooling across the developing

world. Bridge currently claims 405 operational academies with approximately 70,000 pupils and over 6,000 staff<sup>1</sup>.

In December 2016 Education International and the KNUT issued a report setting out concerns with Bridge's approach to education, expressing concerns about the quality of teaching, the construction of buildings, and the design and content of the curriculum. The 82-page report *Bridge vs. Reality* certainly seems rigorous enough, and appears to back up its assertions, but the response from Bridge claimed the report was 'riddled with both factual inaccuracies as well as research bias'<sup>2</sup>. Indeed, Bridge went on to describe EI's researchers as using 'illegal' and 'unethical' methods and pursuing 'treacherous' aims. Bridge also described the work of a previous EI researcher as 'biased, inaccurate and unethical'<sup>3</sup>, though EI has rejected all of these claims, calling them 'desperate'<sup>4</sup>.

Sossion has claimed that his remarks were 'justified comment ... made fairly' and were not intended to disparage the private education provider. Meanwhile, the EI board has unanimously adopted a resolution against BIA, accusing it of intimidation towards the Kenyan teaching union and Sossion. The injunction currently prevents Sossion from speaking out further on the matter.

### Conclusions

These cases, and others profiled in this edition of IUR, demonstrate a requirement for greater protection of the freedom of expression rights of trade unionists and labour activists. Often these cases do not even proceed to a hearing (see Celia Mather's article, at p18). Yet the vast costs of employing legal experts to defend a case, and the greater risk of losing a case, means that critics can sometimes be effectively silenced even without a court ruling against them.

There must be greater recognition and protection in international and domestic law for the role of activists as human rights defenders within this context. Protection must be established for those involved in sincere human rights advocacy from the blunt instrument of libel litigation. The fact that such actions are repeatedly linked with transnational corporate actors further suggests that such protections might usefully be outlined under the proposed UN Treaty on business and human rights, negotiations around which are due to begin in their first detailed phase in October 2017. In a new report produced for that process I have urged the commissioning organisations ITUC, ITF and a coalition of NGOs to propose such a step<sup>5</sup>.

### Notes

- 1 *Bridge Response to Bridge vs. Reality*, at: <http://www.bridgeinternationalacademies.com/wp-content/uploads/2017/01/BridgeresponsetoEIBridgevs.RealityFinal.docx.pdf>
- 2 *Bridge Response*, p2
- 3 *Bridge Response*, p19
- 4 *EI circular to affiliates*, 11 April 2017
- 5 Blackburn, D., 2017, *Removing Barriers to Justice*, SOMO, at: [www.somo.nl/removing-barriers-justice](http://www.somo.nl/removing-barriers-justice)

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The update on Hall's case is edited from text provided by FINNWATCH, see [www.finnwatch.org](http://www.finnwatch.org)