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Thailand: verdict in Andy Hall case underscores need for defamation to be decriminalized

The International Commission of Jurists (ICJ) expresses its disappointment with today's verdict criminalising the work of human rights defender, Andy Hall, and calls upon Thailand to decriminalise defamation and amend the Computer Crime Act in line with international standards protecting freedom of expression.

This morning, Thailand's Southern Bangkok Criminal Court found Andy Hall guilty of defaming a Thai fruit processing company under Article 328 of the Thai Criminal Code and violation of Article 14(1) of the Computer Crime Act, and sentenced him to a fine of THB 200,000 (USD\$ 5,700) reduced to THB 150,000 (USD \$4,300); and four years imprisonment, reduced to three years and suspended for two years. Andy Hall has said he will appeal the verdict.

"Human rights defenders such as Andy Hall have the right to exercise freedom of expression in advocating for the protection and realization of human rights – a right that Thailand has a duty to protect," said Kingsley Abbott, Senior International Legal Advisor at the International Commission of Jurists. "Unfortunately, there are numerous examples of criminal defamation and the Computer Crime Act being used against human rights defenders in Thailand, a practice that must end, including through a substantial reform of these laws."

The ICJ and Lawyers Rights Watch Canada submitted a [joint *amicus curiae* brief](#) in the proceedings, arguing that the imposition of harsh penalties such as imprisonment or large fines on a human rights defender risk having a 'chilling effect' on the exercise of freedom of expression, which Thailand is bound to protect pursuant to its international legal obligations.

The ICJ anticipates the arguments contained in the joint *amicus* will be considered on appeal.

"It is also disappointing that the Court did not appear to take into account the recent decision of the Phuket Provincial Court in the *Phuketwan* case, which found that the Computer Crime Act was not intended to be used in cases of alleged defamation," said Abbott.

On 1 September 2015, the Phuket Provincial Court [acquitted two journalists](#) of criminal defamation and violations of the Computer Crime Act after the Royal Thai Navy complained the journalists defamed it when, on 17 July 2013, the journalists reproduced a paragraph from a Pulitzer prize-winning *Reuters* article that alleged "Thai naval forces" were complicit in human trafficking.

The criminal defamation proceedings brought against Andy Hall are among several that have been brought against human rights defenders in Thailand in recent years. Others examples include the [charges laid against activists Pornpen Khongkachonkiet, Somchai Homloar and Anchana Heemina](#) in July 2016 for raising allegations of torture in the deep South; and those brought against activists protesting various development projects in Thailand [which are allegedly having an adverse impact on communities](#).

Background

Today's case is one of four criminal and civil proceedings (two criminal and two civil) a Thai fruit processing company, Natural Fruit Company Ltd., has brought against Andy Hall in relation to the report of a Finnish NGO, Finnwatch, published in January 2013, called *Cheap Has a High Price*. Andy Hall's research was included in the report which alleged that labour rights violations were taking place at Natural Fruit Company Ltd., whose employees included migrant workers from Myanmar.

In September 2015, a Thai Appeal Court upheld the dismissal of the other criminal defamation proceeding Natural Fruit Company Ltd. brought against Andy Hall. That proceeding is currently before the Supreme Court. Two civil proceedings are also before the Thai courts but have been suspended pending resolution of the two criminal proceedings.

The use of criminal defamation laws, carrying penalties of imprisonment, against human rights defenders reporting on alleged human violations, constitutes a violation of Thailand's obligations under the International Covenant on Civil and Political Rights (ICCPR), to which it is a state party.

Article 19 of the ICCPR, guarantees the right to freedom of expression, which includes the right to impart information.

The UN Human Rights Committee, which monitors State compliance with the ICCPR, has expressed its concern at the misuse of defamation laws to criminalize freedom of expression and has said that such laws should never be used when expression is made without malice and in the public interest.

It has also clarified that imprisonment is never an appropriate penalty for defamation.

The ICJ, the Human Rights Committee, the UN Special Rapporteur on freedom of opinion and expression and other international human rights authorities and an increasing number of governments have indicated that criminal defamation laws should be abolished. Such laws are incompatible with the right to freedom of expression.

Criminal penalties are a disproportionate means to protect against reputational harm and pose an impermissibly severe impediment to the exercise of free expression.

The UN Declaration on Human Rights Defenders also affirms that "Everyone has the right, individually and in association with others: freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms."

On 17 December 2015, Thailand joined 127 other states at the UN General Assembly in adopting a UN Resolution on human rights defenders.

The Resolution calls upon states to refrain from intimidation or reprisals against human rights defenders.

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