



Briefing Paper

Justice: Koh Tao Murder Case



May 2015

Justice: Koh Tao Murder Case

The Migrant Worker Rights Network (MWRN)

The Migrant Worker Rights Network (MWRN) represents all migrant workers in Thailand. MWRN aims to support and raise funds for the defense of Zaw Lin and Wai Phyo (Win Zaw Htun), two 21 year old Myanmar migrant workers, prosecuted for the rape and murder of Hannah Witheridge and murder of David Miller, both British tourists, which occurred on Koh Tao Island, Thailand in September 2014. The trial of Zaw Lin and Wai Phyo will begin at Koh Samui Court in just 2 months time on 8th July 2015 and will last for 18 days (6 x 3 day sessions) over 3 months.

MWRN's involvement in the Koh Tao murder case began in September 2014 amidst allegations widely reported, including across domestic and international media, regarding: arrest of 'scapegoats'; torture of Zaw Lin and Wai Phyo during detention prior to questioning by investigation officials; improper collection of forensic evidence during crime scene investigations; and intimidation or abuse of witnesses and suspects.

MWRN intends to contribute to a fair trial for Zaw Lin and Wai Phyo to prevent a potential miscarriage of justice that would impact negatively on families, communities and everyone deeply affected by this case. MWRN also wants to ensure that migrants, who contribute much through their work and presence to the prosperity of Koh Tao and to Thailand, will feel justice is achieved in this case. In addition to families and friends of all those concerned, Thailand's migrant community has been deeply impacted and moved by the tragic deaths of Hannah and David and the arrest and prosecution of Zaw Lin and Wei Phyo, their fellow nationals, for the crime.

"The truth is we are not really involved in this case. We want you to help us. So we write this letter to you from our imprisonment... We do not want to be in jail anymore... We think it is injustice that we are in the jail. We want justice and equality."

Zaw Lin and Wei Phyo's letter to Aung San Suu Kyi, Dec. 2014

Koh Tao Murder Case Investigation: Background

In the early morning of 15th September 2014, two young British tourists Hannah Witheridge (23) and David Miller (24) were murdered on Koh Tao, a popular tourist destination in the Gulf of Thailand. The two victim's bodies were reportedly found amongst rocks in a relatively secluded area of the popular Sairee Beach.

Two weeks into the murder investigation, police had yet to charge anyone with the murders. Amidst conflicting statements regarding evidence and suspects, the investigation appeared increasingly disorganized. Investigators of this case have been widely criticised for alleged mishandlings of forensic evidence, abuse of suspects and intimidation of witnesses, particularly migrant workers living on Koh Tao. A huge shadow of doubt has been cast, not only over safety of tourism, but also over the reliability of the criminal justice system in Thailand to hold the right people responsible for these high profile murders.

Whilst under pressure to make an arrest, Thai officials suggested that migrant workers committed these murders. For many, these statements reflected the historical and systematic discrimination long faced by migrant workers in Thailand. Migrant workers are still frequently victims of abuse and extortion by law enforcement officials. They are consistently treated like second-class citizens with little access to effective justice, remedies or complaint mechanisms.

Blanket DNA testing of the migrant community was then undertaken during the Koh Tao murder investigation amidst fears that the migrant community would be persecuted as ‘scapegoats’ for the murders, as a result of their powerlessness to fight back. Shortly after the murders, migrant workers on Koh Tao began to petition MWRN with video and photographic evidence alleging physical and verbal abuse by investigation officials during questionings. Migrant communities throughout Thailand also communicated to MWRN their concerns that Thai authorities would unfairly scapegoat Myanmar migrant workers for these horrific murders.



The Arrest of Zaw Lin and Wai Phyo

Thai police detained Zaw Lin and Wai Phyo, two young Myanmar migrant workers from the impoverished Rakhine State in the far West of Myanmar, on 2nd October 2014. Zaw Lin (21) worked at Brother Bar and Wai Phyo (21) worked at Safety Stop restaurant on Koh Tao at the time of the murders. Zaw Lin and Wai Phyo’s reported that their purpose of coming to Thailand was motivated by a strong desire to work in order to send money home to support their parents and siblings living in poverty in Myanmar. Both had been working on Koh Tao for several years prior to their arrests.

Zaw Lin and Wai Phyo's Claims of Innocence

Zaw Lin and Wai Phyo have strongly professed their innocence at every available opportunity amidst accusations that they were involved in the murders of Hannah Witheridge and David Miller. Both allege that on the night of the murders, after a long day at work, they were merely playing their guitar, singing, drinking and relaxing on Sairee Beach with one of their friends, Maung Maung. Wai Phyo claims that he found a mobile phone (allegedly belonging to David Miller) that evening by chance while walking around searching for his own lost property. Both Zaw Lin and Wai Phyo insist they returned home to sleep at their friend's house after their time relaxing on the beach, completely unaware of the murders.

"Before and during the case investigation we had no chance or right to speak out on our innocence or the truth. We are victims of influential people."

Zaw Lin and Wei Phyo's message written in court on 26th Dec. 2014

Alleged Abuse of Zaw Lin and Wai Phyo

During the initial weeks of detention in Koh Samui prison, Zaw Lin and Wai Phyo were permanently shackled and confined to a high security cell 24 hours a day, only being allowed out to meet with authorised visitors. Prison authorities allegedly justified this treatment based on suicide risks and the potential danger both supposedly posed to fellow prisoners. Following complaints by rights groups, Zaw Lin and Wai Phyo were eventually unshackled and allowed to join other prisoners outside of their cell during daytime hours.

Several days after being arrested, Zaw Lin and Wai Phyo told human rights monitors at Koh Samui prison that they were abused and tortured following detention, prior to being handed over to investigation officials. A week later, both pleaded innocent to rights lawyers organised for them. Both alleged their heads were covered with bags to imitate suffocation while they were threatened with electrocution, burning and execution to elicit confessions. Misconduct of translators assisting investigators was also alleged.

"We are poor, so we came to Thailand to work and save money...In the beginning when we arrived in Thailand we suffered many difficulties, we do not want to be suffering like poor people and we tried to work hard and sent money back to our parents regularly, we were happy so much for that. But now our hopes are broken. We are worried about our parents, who will support them? And we miss our parents every day, when we miss them we are crying..."

Zaw Lin and Wei Phyo's letter to Aung San Suu Kyi, Dec. 2014

The Formal Charges and Not Guilty Plea

Zaw Lin and Wai Phyo were officially arraigned on 4th and 8th December 2014 at Koh Samui Court by the Koh Samui prosecutor's office. The charges levied against them included: killing the two deceased intentionally; killing Hannah to cover up her rape and to avoid punishment; raping and assaulting Hannah with violent acts; being non-Thai nationals entering into Thailand

irregularly and remaining in Thailand irregularly; and Wai Phyo is charged alone with theft of a mobile phone and a pair of sunglasses, both allegedly belonging to David Miller. Both Zaw Lin and Wai Phyo pleaded not guilty to all the charges filed against them.

“We are not perfect and the best sons in our families, but we wish to remind everyone we did not commit this cunning and barbarian crime.”

Zaw Lin and Wei Phyo, Feb 2015

UK Government Case Investigation

Following intense media coverage of the murders and public concern which was expressed in the form of online campaigns regarding the reliability of the Thai police investigation and arrest of Zaw Lin and Wai Phyo, UK Prime Minister David Cameron and UK authorities engaged Thai officials. Officials from the UK sought to send a team of qualified British police to Thailand to investigate the murders and report back to the deceased’s families. Since this time, MWRN, alongside Zaw Lin and Wai Phyo’s defense team, have been working with Reprieve in London to explore the UK Government’s role in investigating this case. This led to disclosure of a Metropolitan Police letter dated 19th December 2014 that stated in summary:

- The Metropolitan police did not conduct any investigations into these murders in Thailand. Instead, during a visit to Thailand in November 2014, three UK police officials were granted observer status only to limited parts of the Thai police investigation, they did not provide any advice or assistance, and relied on the translation services of a Thai police translator. During their visit these officials did not take possession of any evidence, physical or forensic, and did not collect exhibits, interviews or statements.
- The Metropolitan police were preparing a report on observations from their visit to Thailand, to be completed in January 2015. This report was to be for internal use only and would not be shared with the Thai authorities or other persons. Furthermore, the request from the defense team to review this report was denied as, relying on an exemption under the UK data protection law, it would ‘clearly prejudice’ the criminal prosecution in question and undermine prevention and detection of crime.
- No other case information would be shared with Thai authorities or the defense team by UK authorities for use in a criminal process which lacks the necessary assurances regarding use of the death penalty.

The validity of this Metropolitan Police response is now under question after further investigations by MWRN, the defense team and Reprieve has uncovered an acknowledgement by the Foreign and Commonwealth Office (FCO) that there may have been informal sharing of UK based witness statements by UK authorities with their Thai counterparts despite concerns over whether necessary assurances regarding the death penalty were first obtained by the concerned authorities.

Justice, Defense and a Fair Trial

A request from families of Hannah Witheridge and David Miller to minimise potentially inaccurate and sensationalistic reporting of the murders reflects concerns of a trial by public opinion for the accused and the Koh Tao murder investigation teams based only on information from media sources. As Zaw Lin and Wai Phyo were officially charged last December, judgement on the case is now for Koh Samui court in an 18 day trial that starts on 8th July 2015 however.

It is critical that a fair and transparent trial is carried out to ensure that genuine justice in this case be achieved for Hannah Witheridge and David Miller, Zaw Lin and Wai Phyo, their families and friends, Thailand's migrant community as well as for the reputation of Thailand's justice and law enforcement systems. The challenge is to achieve justice in this carefully monitored trial, whilst working within the boundaries of the Thai judicial system, with its pride and reputation at stake. There is also the challenge of the on-going situation of powerlessness, discrimination and exploitation faced by migrant workers in Thailand. Given all this, a fair and transparent trial is perhaps not a simple task.

Genuine justice is obtained through ensuring the equality of resources for both the prosecution and defense teams. It is essential that the defense team have the resources to prepare their case, witnesses and evidence and conduct the trial to the best of their ability, without being unfairly obstructed, to ensure that two innocent young men are not wrongly convicted and possibly executed for these murders. In this worse case scenario, there would be no justice for Hannah and David and those who loved them, but only two more innocent victims in this very disturbing and important trial.

The defense team, consisting of pro bono lawyers associated with the Lawyers Council of Thailand and assisted by rights activists, faces an exceptional challenge. There are more than a hundred witnesses and a thousand pages of statements/forensic case related evidence to be understood and contested. Much evidence may not be disclosed before the trial begins. Furthermore, difficulties are enhanced as the whole trial takes place on Koh Samui, an expensive and hard to reach island. All proceedings are conducted in the Thai language and must then be translated into the Burmese and English language. Even more financial and practical constraints are faced in identifying, reaching and protecting witnesses now residing outside of Thailand. The defense team for Zaw Lin and Wai Phyo clearly continues to be significantly challenged by an inequity in accessing resources which, if prolonged, could result in a potential miscarriage of justice.

MWRN Fundraising – Justice: Koh Tao Murder Case

In order to minimise the risk of a miscarriage of justice, MWRN continues to publicly seek financial and other practical support to contribute some of an estimated US\$70,000 needed to ensure a fair trial for Zaw Lin and Wai Phyo. Costs to be urgently supported by MWRN's fundraiser include: protection, relocation and visa costs for witnesses; ongoing case investigation and witness liaison work by MWRN and our investigation networks; flights for the pro-bono defense team to Koh Samui Island; island based travel and accommodation for the pro-bono defense team; travel and accommodation costs for expert witnesses and for internationally renowned forensics experts assisting the defense team with trial preparation; and prison support costs for Zaw Lin and Wai Phyo during their ongoing detention in Koh Samui prison.

“Now we have seen the light of hope for justice and truth as so many people have become involved in defending us and supporting our case.”

Zaw Lin and Wai Phyo, Feb. 2015

“A fair trial for Zaw Lin and Wai Phyo is essential to ensure, with more confidence, that those guilty of this crime are held accountable and that there is no punishment of the wrong people. It would be a double injustice if the lack of a legal defense team to carry out defense work effectively for Zaw Lin and Wai Phyo meant that the real killers went free whilst innocent people were jailed, even executed. If Zaw Lin and Wai Phyo are innocent, no-one wants such a situation to arise. That’s why MWRN has set up this fund, to support some significant defense related costs in this case.”

Ko Sein Htay, MWRN President/Fund Administrator

It is important to note that all those working on the defense case (including lawyers, assistants, investigators, prison visitors, translators and campaigners) are doing so pro-bono or free of charge. Fundraising only seeks to cover expenses. The Lawyers Council of Thailand is now also supporting some of the defense team by covering basic expenses for main practicing lawyers.

Make a donation

To make a donation to MWRN’s ‘Justice: Koh Tao Murder Case’ defense fund, please go to www.indiegogo.com/projects/Justice-Koh-Tao-Murder-Case or contact MWRN.

All funds raised will be deposited into a Thai bank account specifically and jointly opened for the case by Andy Hall and Nakhon Chompuchat, the two main advisors to MWRN’s fund:

Account Name: Mr. Andrew Hall and Mr. Nakhon Chompuchat;

Account Number: 405-870484-8;

Bank: Siam Commercial Bank Public Company Ltd; Bank Branch: 5280 Terminal 21;

Bank SWIFT code: SICOTHBK.

Summary reports of spending and case assistance updates will be reviewable by all, also available on request and will be published regularly on MWRN’s Facebook site and other social media.

For further enquiries on means to donate to MWRN’s fund or any other information, please contact:

1. Fund Administrator Ko Sein Htay, MWRN President:
mwrnorg@gmail.com +95(0)949278500
2. Fund Advisor Mr. Andy Hall, MWRN International Affairs Advisor:
andyjhall1979@gmail.com +66(0)846 119209
3. Fund Advisor Mr. Nakhon Chompuchat, Head Koh Tao Case Defense Team Lawyer:
nakhonct@gmail.com +66(0)818 473086

The Migrant Workers Rights Network (MWRN) is a membership based organisation of workers from Myanmar working across the world. MWRN was founded in March 2009 by 9 Myanmar migrant leaders in Thailand who strongly believed empowerment of migrants was the best way to protect themselves in their vulnerable situation as migrant workers. The founders’ goal for MWRN is to promote and strengthen Myanmar migrant’s rights by raising awareness, promoting access to justice and negotiation with employers and officials and advocating for sustainable migration policy change.

Annex: Summary Koh Tao Murder Case Timeline 2014

Deceased Arrive Separately with Friends to Koh Tao

- 12th Sept: Hannah Witheridge, David Miller and friends arrive on Koh Tao. Stay at Ocean View Bungalows, Sairee Beach.

Deceased's Final Moments/Crime Scene Activity

- 14th Sept pm to 15th Sept 2am: selective CCTV footage released by the prosecution captures Hannah Witheridge and David Miller at Sairee Beach, both at Choppers Bar and entering (separately) into AC Bar.
- 14th Sept 11pm to 15th Sept 1am: selective CCTV footage released by the prosecution captures Zaw Lin and Wai Phyo and one friend purchasing cigarettes on Sairee Beach, close to where Hannah and David's bodies were found.
- 15th Sept 345am to 5am: selective CCTV footage released by the prosecution captures unclear movements and a person running close to where Hannah and David's bodies were discovered.
- 15th Sept 6am: prosecution documents suggest Hannah and David's bodies are found by beach cleaners at rocks on Sairee Beach close to the Ocean View Bungalows where both of them were allegedly staying.

Crime Scene Investigation Process

- 15th Sept 630am: according to prosecution documents, police officers are formally notified of the discovery of two bodies by rocks near Ocean View Bungalows on Sairee Beach.
- 15th Sept 730am: according to prosecution documents, crime scene investigators are formally notified of the discovery of two bodies by rocks near Ocean View Bungalows on Sairee Beach.
- 15th Sept 11am: according to prosecution documents, investigators arrive at the crime scene which, according to allegations from numerous sources, was not properly sealed and was disturbed following discovery of the bodies.

Case Investigation Process and Migrant Abuse Allegations

- **15th Sept to 2nd Oct:** murder case investigations are conducted publicly in a chaotic manner. Conflicting disorganised police statements are given whereby key suspects change frequently from non-Thai friends of the deceased, Thai island based residents, speed boat drivers, influential Thai persons and Myanmar migrants. Police allege DNA testing on cigarettes found nearby the bodies of the Hannah and David and semen found in/on the body of Hannah was crucial in finding those responsible. DNA samples taken from hundreds of persons, mostly migrants, living on Koh Tao or suspected of involvement in the murders.
- **18th Sept to 2nd Oct:** migrant workers on Koh Tao Island petition MWRN alleging physical and verbal abuse at the hands of Koh Tao case investigation officials. Migrant communities alleged in fear that Thai authorities were seeking to scapegoat Myanmar migrant workers. Photographs and video evidence of this abuse is gathered by MWRN.

Arrest, Detention and Prosecution of Defendants

- **2nd Oct:** Zaw Lin and Wai Phyo are arrested. Zaw Lin is arrested on Koh Tao and Wai Phyo at a ferry terminal in Muang district, Surat Thani province. Prior to formal investigation, both are allegedly held in an undisclosed location. Police subsequently report that both Zaw Lin and Wai Phyo confess to the murders and that DNA forensic evidence links them to the crime scene and DNA on Hannah's body.
- **3rd Oct:** Zaw Lin and Wai Phyo are made to publicly re-enact the crime scene on Sairee Beach.
- **7th Oct:** a Commissioner from the National Human Rights Commission of Thailand (NHRC) visits Zaw Lin and Wai Phyo in Koh Samui prison. He reports to media that they both confessed to the crimes but alleged physical abuse and torture during interrogation. Rights groups protest against potentially prejudicial information or statements publicly being made by the NHRC Commissioner without an adequate investigation and without lawyers present.
- **14th Oct:** Koh Samui Court holds a preliminary witness hearing for 3 Myanmar prosecution witnesses at risk of disappearing. Zaw Lin and Wai Phyo attend and are represented by lawyers from the Lawyers Council of Thailand (LCT). The witnesses testify: (1) Zaw Lin and Wai Phyo were on Sairee Beach on 14th Sept. night close to the place where the bodies of Hannah and David were found; (2) Wai Phyo came across a mobile phone he said he found that may have belonged to David but passed it onto his friend. No other evidence presented at this hearing linked Zaw Lin and Wai Phyo to the murders.
- **21st Oct:** Zaw Lin and Wai Phyo retract their confessions to lawyers from the Lawyers Council of Thailand (LCT) at Koh Samui prison. Both allege beatings and torture in order to elicit the confessions and assert innocence against all charges. Both allege that on the night of the killings, they were merely playing their guitar, singing, drinking and relaxing on Sairee beach. Wai Phyo reported that he simply came across possessions allegedly belonging to the deceased that evening whilst searching for his own lost property. Zaw Lin and Wai Phyo petition Koh Samui Prosecutors Office and the Attorney General calling for reconsideration of their prosecution.
- **6th Nov:** Zaw Lin and Wai Phyo retract their confessions to case investigation officials at Koh Samui prison, in presence of their lawyers, alleging beating and torture in order to elicit the confessions and asserting their innocence against all charges.
- **26th Nov:** Koh Samui Court rejects a first bail application by Zaw Lin and Wai Phyo. The application is guaranteed by the Myanmar embassy but Embassy officials present no surety to the court.
- **2nd Dec:** a 6th detention extension request by the prosecution, for a 4th time contested by lawyers for Zaw Lin and Wai Phyo, is approved by Koh Samui Court. Zaw Lin and Wai Phyo insist to the court judge that they are innocent of all the charges against them and have nothing to do with the murders.
- **4th Dec:** Multiple criminal charges filed against Zaw Lin and Wai Phyo by Koh Samui Prosecutors Office at Koh Samui Court.
- **8th Dec:** Zaw Lin and Wai Phyo are charged at Koh Samui Court. Both maintain their innocence against all the charges.

Court Proceedings Begin

- **26th Dec:** at a preliminary case hearing, 18 full days for witness testimony over 3 months

are agreed upon, starting from 8th July 2015. Defense lawyers request some witness testimony at a Bangkok Court. The court disallows this but leaves open a possibility of witness testimony given via video link from overseas or from Bangkok. When asked by the judge to again plead in relation to the charges, Zaw Lin and Wai Phyo insist they are innocent of all the charges. When asked by the judge whether they know who was involved in the murders, both Zaw Lin and Wai Phyo say they know nothing about the murders and who was responsible as they were merely relaxing on Sairee beach that night and didn't see or hear anything. The defense team presents to the court the valid passport of Zaw Lin to rebut charges of illegal entry into Thailand.

- **30th Apr 2015:** Koh Samui court holds a preliminary case hearing with the prosecution and defense lawyers appointed to explain progress regarding preparation of case witnesses. The court rules to allow two important requests by the accused's defense team that: (1) several items of the prosecution's physical evidence are sent to the Ministry of Justice's Central Institute of Forensic Science for re-examination; and (2) the Royal Thai Police should provide additional information to the court and defence concerning details of analysis of case DNA evidence.

