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## **Koh Tao Murder Case Accused and Legal Defense Team Awaits Koh Samui Court Verdict on 24<sup>th</sup> December 2015**

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**A team of pro-bono lawyers working under the Lawyers Council of Thailand (LCT) to defend two Myanmar migrant workers accused of the rape and murder of a female British tourist and the murder of a British male tourist on Koh Tao Island, Thailand in September 2014 together with the accused themselves await the upcoming verdict of Koh Samui Court on the case. The court made an appointment for both parties in the case to hear the verdict, to be read at 9am on 24<sup>th</sup> December 2015. This hearing is the final part of a one year effort in court by a core team of 7 Thai lawyers supported by Burmese, Australian and British translators, assistants and advisors to ensure a fair trial and adequate defense for the accused. Case witness testimony that ended 11th October 2015 after 21 days of witness hearings involving 34 witnesses and thousands of pages of evidence has already been widely publicised by media. The court in October then appointed both parties to the case to hear the verdict on 24<sup>th</sup> December 2015.**

Hannah Witheridge (23) and David Miller (24) were murdered on 15<sup>th</sup> September 2014 on Koh Tao, a tourist island in the Gulf of Thailand. The murder investigation was widely criticised both domestically and internationally due to alleged mishandling of forensic evidence and alleged torture both of the two accused and migrant workers living on Koh Tao Island. The challenges faced to Thailand's law enforcement and justice systems in this case also cast a serious shadow over the safety of tourism in Thailand.

On 2<sup>nd</sup> October 2014, Zaw Lin and Wai Phy (Win Zaw Htun), 22 year old migrant workers from Rakhine state in Myanmar, were arrested for immigration offences. Additional charges were then laid against them during questioning for rape, murder and theft related to the killings of Hannah Witheridge and David Miller. The two accused signed confessions during interrogation and also publicly and during questioning re-enacted the crimes.

On 14<sup>th</sup> October 2014, at a first advance witness hearing in the case, both accused then retracted their confessions to LCT lawyers. Later on defense lawyers received information that the two accused alleged beatings and torture were used during their detention, prior to sending on for questioning by investigation officials, to elicit their confessions made involuntarily. The Migrant Worker Rights Network (MWRN) and rights groups called on the LCT to provide trained lawyers for the accused to ensure they could adequately defend themselves against all the charges so as to ensure a fair trial and also importantly to guard against a potential miscarriage of justice in such a highly publicised and tragic case.

Two month's delay in prosecuting the accused resulted from extensive media and diplomatic attention towards the case in addition to calls for justice by the accused, their families and the wider public. This resulted in further questioning of the accused that confirmed both maintained complete innocence and insisted their confessions came about involuntary as a result of torture. Multiple criminal charges were then filed against Zaw Lin and Wai Phy on 4<sup>th</sup> December 2014 by the Koh Samui prosecutor at Koh Samui Court. The judges heeded



calls for adequate time to prepare a thorough defense for the accused and, after preliminary evidence exchange hearings, a 21-day trial eventually commenced on 8<sup>th</sup> July 2015, with 3 days extension granted in the hearings.

A closing statement submitted in October 2015 to Koh Samui Court outlined in detail key planks of the defense team's arguments, presented during testimony of its 13 witnesses in court, concerning to what extent the defense witnesses should be seen as credible by the court. The closing statement considered the testimony of the prosecution witnesses so as to compare the reliability of this witness testimony alongside that of the defense witnesses also for the court's benefit in issuing a judgement on the case. The statement highlighted as follows:

*(1) The case questioning and charging of the accused prior to prosecution was unlawful. The accused questioning after arrest and the process of notifying them of the charges against them were incorrect. The accused were questioned as 'witnesses' but it turned out as a confession that stated they confessed to murder and rape. The accused were questioned without lawyers or trusted persons present. The accused were not read their rights as criminal suspects or explained the nature of offences they were charged with. Neither were the accused provided adequate translation and legal representation as required by law and as was reasonable in the circumstances. The accused's DNA samples were taken from them involuntarily and are hence inadmissible as evidence in court.*

*(2) The accused's original confessions during questioning cited by the prosecution in court came about involuntarily from torture or abuse that made them fear for their lives and safety in the context of a wider case investigation when migrant workers reported systematic abuse on Koh Tao Island. These written confessions, even if they had been signed, shouldn't be considered by the Court. Other documents that were also written for the accused and which they involuntarily signed not even understanding what they were signing likewise shouldn't be considered by the court. The videoed or staged re-enactments undertaken by the accused and submitted by the prosecution to the Court were likewise involuntary, staged under threat of violence and shouldn't be considered or should be inadmissible as evidence in court.*

*(3) There is no link between the alleged murder weapon (a hoe) and the accused. DNA samples from the hoe don't match the accused DNA profiles but instead match the DNA profiles of other individuals.*

*(4) The DNA evidence allegedly matching the accused as well as all surrounding or circumstantial evidence in this case apparently showing the guilt of the accused is unreliable and should be inadmissible and not considered by the Court. All of this evidence was not collected, tested or analysed in accordance with internationally accepted standards such as ISO 17025. This evidence should not be considered as satisfying beyond reasonable doubt that the accused violently raped and murdered the female deceased or murdered the male deceased. This includes all evidence linking the accused to the alleged crime scene such as cigarette butts, theft of the male deceased's mobile phone and sunglasses as well as a 'running man' caught on CCTV.*

*(5) The prosecution case is marked by an absence of significant evidence needed to prove the guilt of the accused for crimes they are charged with. This absent evidence includes photographs of the crime scene, autopsy and DNA analysis processes, chain of custody documents for forensic evidence, certain forensic evidence documents as well as detailed DNA analysis laboratory case notes. In addition, the clothes and the body surface of the female deceased expected to contain significant traces of DNA of the perpetrators were either not tested at all or tested but not included in the prosecution file or case evidence list. CCTV footage provided by the prosecution seemed to be incomplete and no fingerprint or footprint evidence was presented as part of the prosecution case.*



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**The conclusion of the closing statement is the opinion of the two accused in calling for the Court to issue a judgement on 24<sup>th</sup> December 2015 dismissing all the charges against them.**

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