

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: AL  
KHM 2/2016:

19 April 2016

Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 26/22, 30/23, 28/11, 25/2, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention of environmental rights defenders - Mr. **Alex Gonzalez-Davidson**, Mr. **Ven Vorn**, Mr. **Try Sovikea**, Mr. **Sun Mala**, Mr. **Sim Samnang**, Mr. **Chek Nitra** and Mr. **Mot Kimry** - members of the non-governmental organisation, Mother Nature Cambodia, as well as an English journalist, local community members, Ms. **Mot Sopha**, Ms. **Lem Socheata**, and a young girl. Mr. Ven Vorn, Mr. Try Sovikea, Mr. Sun Mala and Mr. Sim Samnang were the subject of a previous communication sent on 18 November 2015, see A/HRC/31/79, case no. KHM 5/2015. No reply has been received to date.

Mother Nature Cambodia is a Cambodian environmental grassroots movement that works with local communities to protect the unique ecosystems and natural resources of Koh Kong province and human rights. Mother Nature Cambodia works closely with indigenous communities of the Areng valley to protest against the construction of a controversial hydro dam, and with local fishing communities to protest against sand mining which threatens estuary ecosystems and consequently their livelihood.

According to the information received:

*Allegations of arbitrary arrest and detention of Mr. Ven Vorn*

On 28 April 2015, Mr. Ven Vorn - a community leader for the indigenous Chong minority in Koh Kong Province and a member of Mother Nature Cambodia - was charged with the offenses of “harvesting timber products and/or non-timber forest products without a permit” (Article 98 of the Forestry Law) and “destruction of evidence” (Article 533 of the Criminal Code). On 17 February 2016, Mr. Ven Vorn appeared before the Koh Kong Provincial Court to hear those charges. Reportedly, the Koh Kong Provincial Court dropped the charge of “destruction of evidence” due to a lack of evidence.

On 3 March 2016, the Koh Kong Provincial Court found Mr. Ven Vorn in violation of article 98 of the Forestry Law and sentenced him to a one-year imprisonment. The sentence was suspended. No further information is received regarding the official conditions of the suspended sentence. On the same day, Mr. Ven Vorn was released from Koh Kong Provincial Prison.

It is alleged that days before Mr. Vorn’s release, Mr. Vorn’s wife and other family members were asked to thumbprint a document which stated that Mr. Ven Vorn would not engage in any activities against the Government and that he would keep his distance from Mother Nature Cambodia, Cambodia National Rescue Party, and Cambodia Youth Network, a non-governmental organization. Allegedly, Mr. Vorn’s family refused to thumbprint the document.

*Allegations of arbitrary arrest and continued detention of Mr. Sim Samnang, Mr. Tri Sovichea and Mr. San Mala and allegation of judicial harassment against Mr. Gonzalez-Davidson*

On 17 August 2015, Mr. Sim Samnang, Mr. Tri Sovichea and Mr. San Mala, members of Mother Nature Cambodia, were arrested and charged under article 424 of the Criminal Code (“threats to cause destructions followed by an order”). These three activists have been detained since 17 August 2015.

On 23 February 2015, Mr. Alejandro Gonzalez-Davidson, a Spanish national and a founder of the Mother Nature Cambodia, was detained and deported following the decision of the Ministry of Interior not to renew his visa. Mr. Gonzalez-Davidson resided in Cambodia for thirteen years. It is alleged that Mr. Gonzalez-Davidson’s deportation was a direct retaliation for his long-standing environmental activism against the construction of the Chhay Areng hydropower dam in Koh Kong Province.

On 19 January 2016, an arrest warrant was issued by the investigative judge at Koh Kong’s court of first instance for Mr. Gonzalez-Davidson. Mr. Gonzalez-Davidson is accused of being an accomplice to Mr. Sim Samnang, Mr. Tri Sovichea and Mr. San Mala, aiding the crime of issuing a threat to commit destruction followed by an order, committed at Andoung Teuk estuary, Andoung

Teuk commune, Botum Sakor district, Koh Kong Province, from 26 to 28 July 2015 and on 12 August 2015.

On 18 March 2016, Mr. Gonzalez-Davidson sent a letter to the Cambodian Government requesting for visa in order for him to return to Cambodia to participate in the upcoming trial and the relevant procedures. Subsequently, Mr. Gonzalez-Davidson obtained an e-visa issued on 6 April 2016 with expiry date 6 July 2016. However, in a letter dated 8 April 2016, the Ministry of Foreign Affairs and International Cooperation informed the Head of Department of Immigration at the Ministry of Interior of its decision to revoke Mr. Gonzalez-Davidson's e-visa and requested all immigration officers to not authorize Mr. Gonzalez-Davidson to enter Cambodia.

*Allegations of harassment and detention of seven activists in relation to activities by sand dredging company, Oudom Seima*

On 7 December 2015, seven activists were detained for approximately two hours by private security guards allegedly employed by Oudom Seima, a sand dredging company in Koh Kong. The security guards claimed that the activists had taken 'illegal' camera footage of their sand mining operations. The seven activists are a journalist, two Mother Nature Cambodia activists, Mr. Chek Nitra and Mr. Mot Kimry, as well as four local community members including Ms. Mot Sopha, Ms. Lem Socheata, and a young girl.

According to Mr. Mot Kimry, the activists were on public land, taking photographs of dredging activities occurring in the mangroves near Smach Island. The security guards ordered the activists to erase their photographs and video footage, and told that authorization for photographing was required from both the security guards and the local authorities. In order to prevent the situation from escalating, the activists allowed the guards to erase their photographs. Despite this, they were still prevented from leaving and were taken to a second location, where they were subjected to over an hour of intense questioning. After approximately an hour and a half of being intimidated by the guards, they were eventually released.

They were informed by a representative of Oudom Seima that the company's activities were legal, and that they were in possession of a valid permit. It is alleged that Oudom Seima argued that community members were present without having the correct authorization from the Ministry of Mines and Energy, thereby justifying the actions of the security guard.

It is alleged that the security guard of Oudom Seima requested the activists to reveal their ID or passports, which they refused to do. On 28 December 2015, four of the detained persons - Mr. Mot Kimry, Mr. Chek Nitra, Ms. Mot Sopha and Ms. Lem Socheata - filed a complaint to the prosecutor of Koh Kong Provincial Court in relation to this incident.

Serious concern is expressed at the alleged arbitrary arrest and the suspended one year imprisonment sentence to Mr. Ven Vorn as well as harassment to the members of his family. Further concern is expressed at the alleged arbitrary arrest and continued detention of Mr. Try Sovikea, Mr. Sun Mal, and Mr. Sim Samnang as well as the criminal charges against and deportation of Mr. Alejandro Gonzalez-Davidson. Concern is also expressed that the charges brought against them may be directly related to their legitimate human rights work, defending and exercising their rights to freedom of opinion and expression, peaceful assembly and association. Finally, concern is also expressed at the alleged harassment and arbitrary detention of Mr. Chek Nitra and Mr. Mot Kimry, Ms. Mot Sopha, Ms. Lem Socheata, and a young girl by security guards of the sand dredging company, Oudom Seima.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details of the legal basis for Koh Kong Provincial Court's decision to sentence Mr. Ven Vorn to a suspended one-year imprisonment and the conditions of the suspended imprisonment. Please indicate how these measures comply with Cambodia's international human rights obligations and other international human rights instruments, among them the International Covenant on Civil and Political Rights.
3. Please provide details of the legal basis for the alleged arrest and continued detention of Mr. Try Sovikea, Mr. Sun Mal, and Mr. Sim Samnang. Please indicate how these measures comply with Cambodia's international human rights obligations and other international human rights instruments, among them the International Covenant on Civil and Political Rights.
4. Please provide details of the legal basis for the alleged criminal charges against and deportation of Mr. Alejandro Gonzalez-Davidson. Please also provide details of the basis for revoking Mr. Gonzalez-Davidson's e-visa issued on 6 April 2016. Please indicate how these measures comply with Cambodia's international human rights obligations and other international human rights instruments, among them the International Covenant on Civil and Political Rights.
5. Please provide detailed information on any measures taken to investigate the above-mentioned allegations, including the complaint filed by Mr. Mot

Kimry, Mr. Chek Nitra, Ms. Mot Sopha and Ms. Lem Socheata to the prosecutor of Koh Kong Provincial Court;

6. Please indicate what measures have been taken to ensure that human rights defenders and environmental activists are able to carry out their legitimate work in a safe and enabling environment in Cambodia, including exercising their rights to freedom of peaceful assembly, freedom of association and freedom of opinion and expression, without fear of threats or acts of persecution and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Dante Pesce

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Rhona Smith

Special Rapporteur on the situation of human rights in Cambodia

John Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst

Special Rapporteur on the situation of human rights defenders

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government attention to the following human rights standards:

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia in 1992, which guarantee the rights to freedom of opinion and expression, and freedom of peaceful assembly, respectively. We would like to remind your Excellency's Government that any restrictions to this right shall be provided by law; may only be imposed for one of the grounds set out in article 19 and subparagraphs (a) and (b) of paragraph 3, and must conform to the strict tests of necessity and proportionality.

The recent 2014 report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression emphasizes that freedom of expression plays a central role in the effective functioning of a vibrant democratic

political system, recalling States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated, including those of a critical and dissenting kind. He added that States must remove any regulation of or restriction of such expression, outside of restrictions that fall within well-recognized understandings of permissible limitations on freedom of expression as recognized in international human rights law. Under no circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attacks as arbitrary arrest, be compatible with article 19 of the ICCPR (A/HRC/27/30).

Finally, the Universal Declaration of Human Rights proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Following years of consultations that involved Governments, civil society and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31).

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- (a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

The corporate responsibility to respect human rights covers the full range of rights listed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It also includes the respect of the eight International Labour Organization core conventions also envisaged in Principle 4 of the UN Global Compact, which states that business enterprises should uphold the elimination of all forms of forced and compulsory labour. The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.