

Mandates of the Working Group on Arbitrary Detention; 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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 28/11, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged harassment and arbitrary arrest of Mr. **Hun Vannak** for organising and participating in peaceful protests and meetings on environmental rights related violations resulting from sand-dredging in Koh Kor village in the Kandal Province, as well as the subsequent alleged arbitrary arrest and pre-trial detention of **Mr. Hun Vannak** and **Mr. Doem Kundy** for filming two sand-bearing large vessels anchored off the coast of Prek Ksach commune, in Koh Kong Province.

Mr. Han Vannak is an environmental human rights defender and member of the grassroots environmental rights movement (former NGO), Mother Nature. He works specifically on environmental rights and related issues, supporting local populations to mobilize and take action against environmental damage and injustices.

Mr. Doem Kundy is an environmental human rights defender and also a member of Mother Nature.

Mother Nature is an environmental rights grassroots movement in Cambodia which works to prevent the destruction of Cambodia's natural resources.

██████████ is a company based in Kandal Province operating in Cambodia and reportedly obtained a license for sand-dredging from the Cambodian Ministry of Mines and Energy. The company extracts sand from Kandal Province for the construction of apartments which reportedly has an adverse impact on the lives of members of the communities due to erosion, damage to the river bank as well as to villagers' buildings. Kandal's deputy provincial governor allegedly claimed that the sand-dredging activity in

Kandal Province conducted by [REDACTED] will ease the water flow and preserve the river bank.

According to the information received:

On 7 August 2017, Mr. Vannak attended a meeting in Koh Kor Village, between local authorities, villagers, and representatives of the [REDACTED] Company to discuss issues related to sand-dredging in the area.

Mr. Vannak streamed the live meeting on Facebook. After the meeting, at approximately midday, Mr. Vannak was arrested by 10-15 police officers who were allegedly accompanied by several uniformed representatives of the [REDACTED] sand-dredging company. No arrest warrant was presented, nor was Mr. Vannak informed about the reason for his arrest. He was allegedly forcefully pushed into a police vehicle. Mr. Vannak was released in the evening of that same day after being questioned at the Ta Kmao police station. The interrogation was reportedly related to allegations that Mr. Vannak was flying a drone without permission and encouraging villagers in Koh Kor to protest. He was released after signing a document which would allegedly prohibit him from: 1) Operating drones without prior approval from the authorities; 2) Taking part in “illegal” campaigns or protests; and, 3) Interfering with public administration. Upon his release, the authorities allegedly still did not inform him about the legal basis of his temporary detention.

On 12 September 2017, in the morning hours, Mr. Hun Vannak and Mr. Doem Kundy were arrested as they were travelling on a small speedboat off the coast of Koh Kong Province, and were taken to Koh Kong provincial police headquarters for questioning. They had just finished filming two large vessels that were suspected to be ready to carry silica sand for export. The video was aimed at asking a prominent businessman, who allegedly owns the nearby Special Economic Zone where the sand had been extracted from, why the ships appeared not to be broadcasting an Automatic Identification System signal, meaning they did not appear on online ship tracking databases. It is reported that the police were allegedly acting on a complaint issued by the company Kirisakor Koh Kong S.E.Z, which claimed that the activists were filming “inside the company’s private land”.

On 13 September 2017, Mr. Hun Vannak and Mr. Doem Kundy were allegedly interviewed in the absence of a lawyer by Koh Kong Prosecutor. The Koh Kong Provincial Court subsequently charged them with “incitement to commit a felony” and “violation of privacy (recording of a person’s image)” (Article 302 of the Criminal Code of the Kingdom of Cambodia). These charges can carry up to three years in prison. It is alleged that both Mr. Hun Vannak and Mr. Doem Kundy were subsequently placed in pre-trial detention in Prek Svay prison, Khmerak Phumin city, Koh Kong Province, where they remain in detention and have since gained access to a lawyer.

Mr. Hun Vannak and Mr. Doem Kundy's arrest happened a day after Mother Nature had posted a video claiming that there is a huge discrepancy in the numbers of Cambodian sand exported to Taiwan during 2010-2016 and those recorded by Cambodian customs services for the same period.

The harassment and arrests faced by the two defenders working on land and environmental rights in Koh Kor Village are not isolated incidents, but appear to form part of a broader context of harassment and intimidation directed against human rights defenders operating in that area. We have received information that similar meetings, such as the one Mr. Vannak participated in on 7 August 2017, as well as peaceful protests against alleged human rights violations resulting from sand-dredging, have been interrupted by police. Other organisers and active participants of similar meetings or peaceful protests have allegedly received frequent visits of police officers to their homes. Koh Kor Village residents experience regular interruptions to meetings held to discuss the environmental and land degradation due to sand-dredging, and fear that participants in such meetings and peaceful protests may be at risk of arbitrary detention or harassment as a result of their human rights work.

Concern is expressed at the alleged harassment and arbitrary arrests and detention of environmental rights defenders Mr. Hun Vannak and Mr. Doem Kundy for their peaceful actions aimed at protecting environmental rights and disclosing alleged violations thereof. Further concern is expressed at the questioning of the two human rights defenders by the Koh Kong Prosecutor in the absence of a lawyer as well as at the charges against them, which could lead to a three year prison sentence. These allegations seem to be aimed at sanctioning the legitimate exercise of freedom of expression, freedom of peaceful assembly and peaceful work in defence of human rights in Cambodia.

Concern is also expressed at allegations of frequent police harassment and interruptions during meetings held in Koh Kor Village, during which local inhabitants discuss human rights and environment-related concerns regarding sand-dredging in the area. Particular concern is expressed that these alleged acts seem to be aimed at sanctioning the legitimate exercise of freedom of expression, freedom of peaceful assembly and peaceful work in defense of human rights in Cambodia.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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

As 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the arrest and detention of Mr. Hun Vannak subsequently on 7 and 12 September 2017 and the arrest and detention of Mr. Doem Kundy on 12 September 2017, and explain how these measures are compatible with international norms and standards as stated, inter alia, in the the ICCPR. Please also explain why Mr. Vannak and Mr. Kundy were not immediately granted access to a lawyer while being questioned by the Koh Kong Prosecutor and please indicate when they were granted access to a lawyer of their choosing following their arrest on 12 September 2017.
3. Please provide further explanations as to why the police were accompanied by members of the [REDACTED] company while arresting Mr. Vannak on 7 September 2017 after he had attended a meeting on human rights concerns relating to this company's activities in the Kandal Province.
4. Please outline the factual basis for charging Mr. Vannak and Mr. Kundy with "incitement to commit a felony" and "violation of privacy" under article 302 of the Criminal Code of the Kingdom of Cambodia.
5. Please provide details into the legal basis of frequent interference by the police in the meetings held in Koh Kor Village, during which local inhabitants discuss human rights and environment-related concerns regarding sand-dredging in the area, and explain how those actions are compatible with Cambodia's obligations in relation to the rights of freedom of expression, peaceful assembly and participation in the con text of decision-making processes.
6. Please indicate what measures have been taken to ensure that human rights defenders in Cambodia, particularly environmental and land rights defenders, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation directed against them or their family members 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 person(s) 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such allegation letter in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the allegation letter procedure and the regular procedure.

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

Elina Steinerte
Chair-Rapporteur of the Working Group on Arbitrary Detention

John H. 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

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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 attention to the following human rights standards:

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Cambodia acceded to on 26 May 1992, and in particular to articles 9(2) (3), 14, 19, 21 and 22, which provide the right to liberty and security of the person, to be free from arbitrary detention, to be informed at the time of arrest of the reasons for arrest, the right to be brought promptly before a judge and to be tried or released within a reasonable time, to communicate with counsel of one's own choosing and the rights to freedom of expression, peaceful assembly and freedom of association.

Article 9 of the ICCPR states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Furthermore, paragraph 4 of the same article 9 states that anyone deprived of his liberty is entitled to bring proceedings before a court, for it to determine the legality of such detention or to order the release of the person concerned. According to the Human Rights Committee's General Comment N° 35, article 9 requires compliance with domestic rules that define the procedure for arrest by identifying the grounds, procedures and officials authorized to arrest or specifying when a warrant is required. It also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge, where individuals may be detained, when the detained person must be brought to court, as well as the legal limits on the duration of detention. It also requires compliance with domestic rules providing safeguards for detained persons. The Committee further developed and analyzed the rights and guarantees protecting from arbitrary detention, including to be immediately informed about the reasons for the arrest and of any criminal charges, the need for judicial control of detention and the right to take proceedings for release and to challenge unlawful or arbitrary detention.

We would like to highlight key aspects of Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court, (adopted by the Working Group on Arbitrary Detention during its 72nd sessions, held in April 2015). According to such Principles and Guidelines, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. In this context, principle 1 states that everyone is guaranteed the right to take proceedings before a court, in order that that court may decide on the arbitrariness or lawfulness of the detention, and obtain without delay appropriate and accessible remedies. Principle 4 indicates that this right is not derogable under international law and it must not be suspended, rendered impracticable, restricted, or abolished under any circumstances. In addition, principle 5 states that the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention may be exercised by anyone without

discrimination. And principle 6 further requires that the court, which is to review the arbitrariness and lawfulness of the deprivation of liberty, shall be established by law and bear the full characteristics of a competent, independent and impartial judicial authority, capable of exercising recognizable judicial powers, including the power to order immediate release if the detention is found to be arbitrary or unlawful.

In its General Comment No. 31, the Human Rights Committee observed that there is a positive obligation on States to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and to redress the harm caused by non-state actors. A failure to investigate and bring perpetrators of such violations to justice could, in and of itself, give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

We would like to draw your Excellency's Government's attention to article 13 of the International Covenant on Economic, Social and Cultural Rights, acceded to by your Government on 26 May 1992, which states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

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 5 point c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- 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;

- 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 also to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

In addition, we would also like to draw the attention of your Excellency's Government to the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

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

The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

All States have a duty under the international human rights framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." As specified in the Guiding Principles, fulfilling this duty requires that a State take appropriate steps to "prevent, investigate punish and redress such abuse through effective policies, legislation, regulations and adjudication." In addition, this requires, inter alia, that a State should "enforce laws that are aimed at, or

have the effect of requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.