

12 April 2016

Mr. Michel Frost
Special Rapporteur on the situation of human rights defenders

C/o OHCHR-UNOG
Office of the High Commissioner for Human Rights
Palais Wilson, 1211 Geneva 10, Switzerland

Subject: Complaint regarding persecution of four human rights defenders in Cambodia

Esteemed Special Rapporteur,

This joint complaint is respectfully submitted for consideration under your mandate requesting urgent intervention to stop the ongoing persecution of four human rights defenders, namely Ven Vorn, an indigenous Chong community leader and San Mala, Sim Somnang and Try Sovikea, staff members of an activist movement Mother Nature, by Cambodian government and judiciary in support of powerful groups with interest in sand mining operations.

The three Mother Nature staff members have been serving pre-trial detention for more than seven months now after Cambodian authorities charged them with “threat to commit destruction followed by an order”. The community leader, Ven Vorn was recently released after almost five months in jail after being found guilty of “forest crimes” which carried a one-year sentence but seven months were suspended. The charges and conviction against the four are clearly linked to their activism for defense of environmental rights and the rights of indigenous peoples in Areng Valley of Koh Kong province in Cambodia. Their activities have been mainly in opposition to Stung Cheay Areng Dam planned for construction in the valley by a Chinese state-owned company Sinohydro and other destructive projects in the province such as sand mining. Pre-trial detention is explicitly stated in Cambodia’s Procedures of the Criminal Code as a last-resort measure. The harassment of the three human rights defenders is clearly aimed at sanctioning their legitimate human rights actions.

Further, in February 2016, three Mother Nature founders have also been charged with being accomplice to the charges of the Mother Nature staff members. The three founders comprise of two Cambodian monks and a Spanish citizen, Alejandro Gonzalez-Davidson, who is currently in forced exile from Cambodia having been effectively deported on the orders of Prime Minister Hun Sen almost one year ago.

Though the charges against the two Buddhist monks have been dropped, charges against González-Davidson remain. Although Cambodian law clearly stipulates that all charged individuals must have the right to be present during their trials as required in international human rights standards, the Cambodian government continues to violate the right to a fair trial. Visa applications by González-Davidson have been repeatedly ignored, which represents further evidence that the upcoming trial against himself and the three Mother Nature staff members will be little more than arbitrary and clearly not based on incriminating evidence against them.

Detailed information of the human rights defenders and allegations of violations is provided in Annex.

Against such harsh oppression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai and the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith have voluntarily expressed interest in taking up the case of the four and are continuously informed developments in the case. Thus, we request you to jointly examine this communication with other concerned Special Rapporteurs and correspond with the Government of Cambodia for them to take necessary steps, without any delay, to end the detention of the three defenders, review the conviction of Ven Vorn, ask the that the Government guarantees the right to a fair trial of González-Davidson, and halt the oppression of Mother Nature and related individuals.

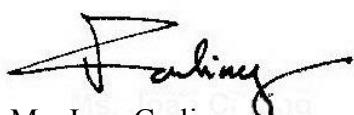
We also urge the Special Rapporteur to take into account the record of the government of Cambodia in relation to their obligations in the protection of human rights. Human rights violations are taking place particularly in the course of implementing destructive projects in the name of development, without taking into account the serious impacts of such projects to the rights, livelihoods and wellbeing of affected communities, including indigenous peoples. Those opposing such projects including human rights defenders are often subjected to violations of their civil and political rights with the use of national laws that contravenes international human rights standards, such as the International Covenant on Civil and Political Rights, which Cambodia is a State party to. Further, the government of Cambodia has recently adopted a resolution regulating the advocacy activities of non-government organizations, which further curtails their fundamental rights and freedoms.

Equally concerning is the continued use of judiciary measures by powerful state and non-state actors, who see Cambodia's growing environmental and human rights movement as a threat to their economic and political interests. Hence, we thereby appeal to you to call the attention of the government on their obligation to respect, protect and fulfill human rights, and engage constructively with the human rights defenders as well as to take measures to ensure independence of judiciary.

If you need more information, please do not hesitate to contact us. Contact information is also provided in the annex.

Your attention and action on this matter will be highly appreciated.

Respectfully,



Ms. Joan Carling
Secretary General
Asia Indigenous Peoples Pact (AIPP)
www.aippnet.org



Mr. Alejandro Gonzalez-Davidson
Founder and Director
Mother Nature
www.mothernature.pm

Also, on behalf of the following organizations

1. Cambodia Indigenous Peoples Alliance (CIPA)
2. Cambodia Youth Network (CYN)

Annex

A. Information of the human rights defenders

San Mala (age 24), Sim Somnang (age 23) and Try Sovikea (age 28) are staff members of the Cambodian NGO Mother Nature (MN), an activist movement engaged so far in two campaigns (one against a hydro-dam by the Chinese corporation Sinohydro, and the other more recent one against highly destructive and presumably illegal sand dredging in the coastal province of Koh Kong).

Ven Vorn (age 37) is not a staff member of MN but has worked closely with the MN in relation to the above-mentioned Areng campaign. Ven Vorn is a member of the indigenous Chong group of the Areng Valley, which was going to be displaced from their ancestral lands to make way for the dam. Ven Vorn is also a member of the commune council for the ruling Cambodian People's Party (CPP), in the commune of Chumnoab, Thmo Bang district, Koh Kong province.

All four men are Cambodian nationals and are currently serving pre-trial detention after being laid with various charges in relation to their human rights activism. The three MN staff members have been in jail for five months and Ven Vorn for three months now.

B. Engagement in human rights activities

Try Sovikea, San Mala, and Sim Somnang had been engaged in a campaign to stop Sinohydro from proceeding with the construction of a hydro-dam in the Areng Valley of Koh Kong throughout 2014 and mid-2015. The three MN staff members had performed several activities aimed at empowering the local people of the Areng Valley, disclosing the existence of this highly detrimental project to the Cambodian people (already rejected twice due to the dam's lack of economic feasibility), manning a road block that kept at bay dam builders and heavy machinery, and lobbying parliamentary commissions as well as other civil society groups into the campaign.

Starting in March 2015, after the dam was officially put on hold due to strong local opposition until at least mid-2018 by the Cambodian Prime Minister, they became engaged in a new campaign to stop the illegal and destructive sand mining / dredging that had been taking place in the coastal province of Koh Kong. This mining, intended for export and not for domestic use, had been causing widespread environmental destruction and had severely affected the livelihoods of the local fishing communities.

The local communities complained that the sand companies had been mining outside designated areas, at depths deeper than what their permits allowed them to, with disregard to the needs and wants of the local communities, without conducting valid environmental and social impacts assessments, etc. Little if any at all of the benefits of this large-scale sand mining operation is reaching either state coffers or the local communities living along the estuaries where it takes place.

After an intensive campaign which included the three activists leading peaceful protests against the presence of these mining ships, they were arrested on 17 August 2015 and remain in pre-trial detention to this day in Koh Kong provincial prison after being charged with "threat to commit destruction followed by an order" under Article

424 of Cambodia's Penal Code.ⁱ The charges carry a maximum prison sentence of 1 to 2 years and a fine of US\$500 to US\$1,000 if they are found guilty. They were denied bail in September.ⁱⁱ

Ven Vorn is a member of the indigenous Chong people that inhabit the valley of Areng, in Koh Kong province, an area of outstanding biodiversity that sits partly inside the Central Cardamoms Protected Forest, one of mainland South East Asia's largest protected forests. Ven Vorn had been directly involved in the empowerment of his fellow villagers in relation to several issues for several years, not only as a charismatic and well-spoken member of the community but also as a member of the commune council for the ruling CPP.

After the MN started having a full time presence in the area in order to oppose the destructive dam in mid-2013, Ven Vorn's role grew in importance and he was able to effectively inform people of the threats the dam poses to their very livelihoods, culture and future. Crucially, he was able to mobilize villagers to peacefully oppose the dam. Despite him being tied up by his membership to the local branch of the CPP, which was unable and/or unwilling to oppose the dam going, he became the campaign's most important local activist. He was active on radio, in workshops and meetings with other community members, conducting door to door outreach activities, coordinating the visit to the valley of various anti-dam groups, and involved in the coordination of visits to other areas which had already seen large-scale development projects negatively affecting forest depending communities such as his. Crucially, prior to his arrest he had been actively involved in the creation and further empowerment of other community members (women's group, youth group) who were themselves becoming effective human rights activists.

C. Violations against the human rights defenders

As stated above, the three MN staff members had been involved in a campaign against the hydro dam in Areng, which had already placed them made in the eyesight of local, district, provincial and national level officials. As part of their activism, San Mala had been arrested once by military police on 15 September 2015 and once more illegally held for several hours by immigration police on 23 February 2015 – the day MN founder and director Alejandro Gonzalez Davidson, a Spanish national, was arrested and forcibly deported from Cambodia. The three were repeatedly and publicly warned by authorities throughout the anti hydropower dam campaign, culminating in Cambodians Prime Minister Hun Sen threatening with the use of B-21 rocket launchers against what he described a 'secessionist movement' in the Areng Valley, on 24 February 2015.

As part of the campaign against the sand mining, which kicked off in April 2015 and lasted until the three MN members were arrested in late August of the same year, the harassment against San Mala and Try Sovikea, as well as against two other MN activists, started when police forces from Andoung Teuk commune in the district of Botum Sakor, Koh Kong province, summoned them to the nearest police station to answer accusations against them by the mining company Direct Access. The other two MN activists refused to attend because they were concerned it was only a ploy to have them arrested.

On 17 August 2015, around twenty armed policemen surrounded the home where they had been staying, confiscated villagers' mobile phones and subsequently arrested

them both. They were then taken to Koh Kong provincial court, charged and subsequently sent to jail for pre-trial detention. Remarkably, Sim Somnang was also arrested and charged with the same crime, even though the original summons did not include his name but the name of another MN activist, who was not in the province of Koh Kong at that time.

The harassment against Ven Vorn intensified shortly after Gonzalez-Davidson was forcibly deported from the country when he was summonsed to Koh Kong provincial court to answer accusations against him by the provincial branch of the Forestry Administration in relation to a visitor center that the MN and local indigenous communities of Areng had built in the valley. After the court summon was postponed, Ven Vorn attended the court on 3 April 2015. That day, he was allowed to return home, as charges were not yet filed against him. On 2 September, Ven Vorn and 16 other individuals, including human rights defenders, community members and journalists were detained, held and interrogated for hours for their role in the peaceful protest camp site in Koh Kong city that the MN and communities from across Koh Kong had set up for over two weeks to demand the release of the three MN activists jailed for their role in the sand mining campaign.

On 7 October, Ven Vorn was called in for questioning one more time to answer for the same charges by the Forestry Administration that he had been already been questioned about in April 2015. This time, he was formally charged by the prosecutor under article 98 of the Law on Forestry, which covers the “unauthorized harvesting of forest products”, and under article Article 533 of the criminal code, which concerns “destroying, displacing or removing of any object from the scene of a felony”. The charges carried a prison sentence of 1 to 5 years and a fine of US\$2,500 to \$25,000 for the “forestry crimes”, and a prison sentence of 1 to 3 years plus a fine of US\$500 to US\$1,500 for the second crime related to the “tampering with evidence”. He was subsequently taken to the same provincial prison of Koh Kong, where he has been held until today, awaiting trial.

On 17 February 2016, the prosecution requested dropping the charge of “tampering with evidence” against Ven Vorn due to lack of proof. Then, on 3 March, the court, after finding Ven Vorn guilty of “forest crimes”, handed down a one-year sentence with seven months suspended and he was released. Upon leaving the prison, Ven Vorn has said the court’s decision was unfair and he was considering appealing the verdict.ⁱⁱⁱ Though out of jail, he still faces likelihood of being detained if the political situation worsens as he has pledged to continue his activism.

The situation of the three human rights defenders still in jail is precarious, as conditions in Cambodian jails are highly detrimental to the physical and mental health of inmates. They are locked up in extremely overcrowded cells for 21 to 23 hours per day. Food rations are insufficient and so MN staff members, as well as their own family members, have to take food and other basic necessities to them in jail on a regular basis. Their families have to make a considerable economic investment in order to spend with them a meager 15 to 20 minutes every two weeks.

The health of Sim Somnang, who suffers from an undiagnosed problem with his lungs, is particularly worrying. He has complained of a cough throughout his incarceration – a health problem he had been suffering from even before he was arrested but has only worsened. Sim Somnang has a wife and a young 2 year-old son, while Ven Vorn, has a wife and three small daughters. Both Somnang and Vorn were

the sole breadwinners of their families and their incarceration is causing severe economic hardships on their families.

D. Link with their human rights works

It is more than evident that the judicial harassment of the four human rights defenders and their continued detention is in clear retaliation of their activism against the hydropower dam and the sand mining. The powerful syndicates whose business interests were affected by the activities of the four activists, not only wanted to remove whom they considered to be ‘thorns in their sides’, but also wanted to send a strong message to the local communities the four had managed to galvanize that further activism would be repressed with punitive measures. The arrest and continued detention of the 3 MN staff members has allowed the sand mining cartels to resume their mining activities without further protests/interference. The judicial harassment of the four is being used as a coercion measure by the local authorities of the Areng Valley and the areas affected by sand mining.

It is worthy of remark that in the case of the three MN activists, who are yet to be tried/sentenced despite having already over-passed the 4 month pre-trial detention period stipulated by the Procedures of the Criminal Code, there is no evidence against them, no witnesses, and no inculpating documentation whatsoever. Despite this, their pre-trial detention period was recently expanded from four to six months, without doubt in order to try and break their spirits further, continue coercing and intimidating the communities they work with and fellow MN activists who are out of jail and who are proceeding with the campaigns.

The case of Ven Vorn is also a clear case of harassment by powerful state actors through the use of the Cambodian judiciary. The judiciary has been proven to be time and again riddled with endemic corruption and, in case concerning that of political and/or human rights activists, little less than a tool of repression, intimidation and coercion. The entire community legally purchased the timber, which Ven Vorn is charged for illegally harvesting, from fellow community members. The purpose was to construct a visitor center for the benefit of the whole indigenous community.

As for the second charge against Ven Vorn that was dropped, it is even more of a travesty of justice as the ‘tampering of evidence’ the prosecutor alleged he had committed is related to the timber (originally in planks of wood when the investigation by forestry administration agents started in early 2015) were eventually used to build the above-mentioned center.

E. Perpetrators

The direct perpetrators are the Koh Kong provincial authorities, including the sub-provincial district authorities, under the Royal Government of Cambodia headed by Prime Minister Hun Sen, who himself threatened the use of B-21 rocket launchers against what he described a ‘secessionist movement’ in the Areng Valley, on 24 February 2015.

Other specific institutions perpetrating the violations against the human rights defenders include Cambodian National Police, under the Ministry of the Interior of the Royal Government of Cambodia, Prosecutor General’s Office to the Koh Kong Provincial Court and the Provincial Court itself.

The powerful mining cartels of Koh Kong province and among them, Rainbow International Co. Ltd. and Direct Access being the two main mining companies, as well as Sinohydro, a Chinese state-owned hydropower engineering and construction company, are also responsible for the violations against the human rights defenders.

F. Other related developments

On 18 January 2016, three MN founders were charged of being accomplice to the three MN staff members in their offences and arrest warrants issued against them.^{iv} The charges, if proven guilty, are punishable by up to two years in prison.

The three founders comprise of two monks – Venerable Sok Chantra, the 24-year-old chief monk of Angkiri Pagoda in Prolay Commune (Areng Valley), Koh Kong Province who is the Secretary of Mother Nature, and Venerable Ven Dhammadat who is a founder and non-executive Director of the Mother Nature organization and who lives in Parestan Chamkarchhuk Pagoda, Tropang Jor Commune, Oral District, Kampong Speu Province.

The third MN founder and director Gonzalez-Davidson, already on forced exile from Cambodia, is concerned about his right to free trial on the charges laid on him, including his right to defend himself and to answer any allegations before a judge, as guaranteed under Article 38 of the Constitution of the Kingdom of Cambodia and Article 14 of the International Covenant on Civil and Political Rights.^v He is currently prevented from entering Cambodia until authorized by the Ministry of Interior or the Ministry of Foreign Affairs and International Cooperation.

Though the Koh Kong judges have dropped the charges against the two Buddhist monks, charges against González-Davidson remain. Although Cambodian law clearly stipulates that all charged individuals must have the right to be present during their trials, and even though judges have issued an arrest warrant and at least two subpoenas related to charges against him, the Cambodian government continues to violate his right to a fair trial. Visa applications by González-Davidson have been repeatedly ignored – denied by the Ministry of Interior, which represents further evidence that the upcoming trial against the himself and the three MN activists will be little more than arbitrary and clearly not based on incriminating evidence against them.

G. Actions taken with various redress and support mechanisms and their response

As informed, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai and the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith have voluntarily expressed interest in taking up the case of the four and are continuously informed developments in the case. The Office of Rhona Smith has recently offered to organize a joint meeting among various UN mechanisms involved in the case of the four defenders.

The Delegation of the European Union to Cambodia has also been engaged in the situation of the human rights defenders. The EU delegation has shown particular interest after urgent support was provided for Ven Vorn to cover his family's needs to visit him in the jail and provide food and their own subsistence in December 2015

from European Instrument for Democracy and Human Rights (EIDHR) Small Grants for human rights defenders. The three MN activists have also been provided such support from the EIDHR. The EU delegation in Cambodia has also held meetings with the MN representatives and other stakeholders, whereby the Delegation has been urged for more interventions for the four defenders as per the EU Guidelines on Human Rights Defenders.

The EU delegation has also been continuously informed of the developments in the situation regarding the charges against an EU national, Gonzalez-Davidson, along with the Ambassador at the Spanish Embassy in Bangkok.

H. Actions requested from the Special Rapporteur

The oppression against the human rights defenders in question is a clear violation of the Declaration on human rights defenders, which applies to Cambodia. The Declaration provides that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to meet or assemble peacefully (Art. 5(a)). It is the duty of State of Cambodia to “take all necessary measures to ensure the protection by the competent authorities 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 present Declaration” (Art. 12).

Thus, we request you to request you to jointly examine this communication with other concerned Special Rapporteurs and correspond with the Government of Cambodia to take necessary steps, without any delay, to end the detention of the three defenders, review the conviction of Ven Vorn, ask that the Government guarantees the right to a fair trial of González-Davidson and halt the oppression of Mother Nature and related individuals.

We also urge the Special Rapporteur to take into account the record of the government of Cambodia in relation to their obligations in the protection of human rights. Human rights violations are taking place particularly in the course of implementing destructive projects in the name of development, without taking into account the serious impacts of such projects to the rights, livelihoods and wellbeing of affected communities, including indigenous peoples. Those opposing such projects including human rights defenders are often subjected to violations of their civil and political rights with the use of national laws that contravenes international human rights standards, such as the International Covenant on Civil and Political Rights, which Cambodia is a State party to. Further, the government of Cambodia has recently adopted a resolution regulating the advocacy activities of non-government organizations, which further curtails their fundamental rights and freedoms.

Equally concerning is the continued use of judiciary measures by powerful state and non-state actors, who see Cambodia's growing environmental and human rights movement as a threat to their economic and political interests. Hence, we thereby appeal to you to call the attention of the government on their obligation to respect, protect and fulfill human rights, and engage constructively with the human rights defenders as well as to take measures to ensure independence of judiciary.

I. Information of main submitting organizations, including contact details for further information

Mother Nature (MN) is an activist movement officially registered as per existing Cambodian laws, working primarily for environmental rights and empowerment of communities in Koh Kong province. Contact Alejandro Gonzalez-Davidson, Founder and Director, information.mothernature@gmail.com, alex.mothernature@gmail.com

Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements in Asia. It is committed to the cause of promoting and defending indigenous peoples' rights and human rights and articulating issues of relevance to indigenous peoples. At present, AIPP has 47 members from 14 countries in Asia with 14 National Formations, 15 Sub-national Formations and 18 Local Formations. Contact Prabindra Shakya, Human Rights Campaign and Policy Advocacy Programme Coordinator, prabin@aippnet.org, shakya.prbn@gmail.com

ⁱ <http://www.phnompenhpost.com/national/conservation-activists-arrested-koh-kong>

ⁱⁱ <http://www.phnompenhpost.com/national/activist-trios-bail-appeal-thwarted>

ⁱⁱⁱ <http://www.phnompenhpost.com/national/areng-activist-guilty-forest-crimes-released-suspended-sentence>

^{iv} <http://www.phnompenhpost.com/national/deported-activist-gonzalez-davidson-charged>

^v <http://www.phnompenhpost.com/analysis-and-op-ed/its-time-me-return>