

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues

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(Please use this reference in your reply)

6 September 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 49/5, 42/22, 50/17 and 43/8.

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 administrative sanctions against three Montagnard Protestants, Mr. Čung Niê, Y Thinh Niê and Y Don Niê, which appear to be related to the legitimate exercise of their rights to freedom of thought, conscience and religion, freedom of expression, as well as freedom of peaceful assembly and of association in the context of the celebration on 22 August 2021 of the UN General Assembly-designated International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief (henceforth the "International Day"). The allegations received also refer to the arbitrary arrest, interrogation and other forms of intimidation against individuals belonging to religious minority groups who commemorated the International Day on 22 August 2020.

According to the information received:

In May 2022, Mr. Čung Niê, Mr. Y Thinh Niê and Mr. Y Don Niê, who belong to the Montagnard indigenous community and the religious minority of Christian Protestants in Viet Nam, sent written documents to their respective Communes requesting authorities to provide them with guidance on how their religious minority *groups* could register for collective religious practice in compliance with the law, considering that the registration form available was suitable only for religious *organisations*, whereas the groups did not feel the need to establish themselves as organisations.

Subsequently, police from Cur Suê Commune, security police of Cur Mgar District and officers from the Security Branch of the Police Department of Đăk Lăk Province arrested Mr. Y Don Niê and Mr. Y Čung Niê on 24 and 27 May 2022 respectively and reportedly interrogated them about the above-mentioned written request without the presence of a lawyer. They were both released on the same day. Similarly, Mr. Y Thinh Niê was arrested, interrogated and released on 26 May 2022.

On 2 June 2022 police officers of Cur Mgar District arrested Mr. Y Don Niê and Mr. Y Čung Niê in Sut Mđung Village (Cur Suê Commune) for the second time. On the same date, police officers of the Security Branch of the Police Department of Đăk Lăk Province arrested Mr. Y Thinh Niê in Draï Si Village

(Êa Tar Commune). The three were brought to the district security police and interrogated again about the written requests without the presence of a lawyer. During the interrogation, Mr. Y Don Niê and Mr. Y Čung Niê were reportedly threatened by police officers with heavy fines and imprisonment should they insist on sending similar requests and continue to remain independent from religious organizations as recognized and allegedly controlled by the Government. Mr. Y Thinh Niê was told by police officers that the request for guidance was unlawful because Montagnard Christians had been reporting violations to the international community through reactionary organisations, referring to two international civil society organisations working in the field of human rights and freedom of religion or belief.

On 10 June 2022, the People’s Committee of Cù M’gar District announced its decisions to impose a penalty of four million VND each on Mr. Y Don Niê, Mr. Y Čung Niê and Mr. Y Thinh Niê (see decisions No. 57/QĐ-XPHC, 55/QĐ-XPHC and 56/QĐ-XPHC respectively), for violating article 7 (4c) of Decree No. 144/2021/NĐ-CP (“Taking advantage of democracy, freedom of religion and belief to organise, hire, entice, tempt another person to infringe upon interests of the State, or lawful rights and interests of another organization or individual”) for having conducted activities aimed at celebrating the International Day on 22 August 2021.

According to the decisions of the Chairman of the People’s Committee of Cù M’gar District, “at 4 pm on 20 August 2021, Mr. Y Thinh Niê rode his motorbike to the home of Mr. Y Don Niê to invite him to have his picture taken with a group on the occasion of the International Day. Mr. Y Don Niê called Mr. Y Čung Niê and asked the latter to join the group. Mr. Y Čung Niê agreed. When the latter arrived at the home of Mr. Y Don Niê, he found Mr. Y Thinh Niê there. Mr. Y Thinh Niê used a felt tip pen to write on the calendar hanging on the wall - in Viet Nameese, English, and Ede - the following: the house church of Sút Mđung Village, Cù Suê, Cù M’gar - commemorates victims of violence based on freedom of religion or belief 22/8/2021”.

The decision further stated that Mr. Y Don Niê, along with Mr. Y Čung Niê and others stood in a row for a picture in which he was holding the sign just made by Mr. Y Thinh Niê. Mr. Y Thinh Niê subsequently forwarded the picture to a Montagnard refugee abroad with the aim of having it posted on Facebook on the page of a Montagnard organisation “to falsely accuse and distort the truth, claiming that Viet Nam violates human rights and freedom of belief or religion”. According to the decision, the People’s Committee considered that “Y Thinh Nie has taken advantage of his rights to freedom and democracy, freedom of belief, to plan, incite, and entice others to violate State interests”. The decision further alleged that “from April 2021 to May 2021, Mr. Y Don Niê and Mr. Y Čung Niê (...) made preparations such as obtaining a table, a Cross, and a Bible to entice Protestants in Sút Mđung Village, Cù Suê Commune, Cù M’gar District, to come together for group religious practice at a private home without the prior approval of the People’s Committee of Cù Suê Commune and other appropriate authorities”.

The three decisions issued by the People’s Committee of Cù M’gar District refer to the Administrative Violation Report No. 02/BB-VPHC dated 7 June

2022. Nonetheless, Mr. Y Don Niê, Y Čung Niê and Thinh Niê were not provided with a copy of the violation report despite requesting a written copy of the charges.

On 4 July 2022, the People's Committee of Čũ M'gar District ordered the Commune's authorities to direct the commune police force to provide a copy of the citation to the requester by 7 July 2022, as prescribed by the national law (clause 6.a of article 12, Central Government Decree No. 118/2021/NĐ-CP). Nonetheless, at two separate meetings on 6 July 2022, representatives of the People's Committees and Police of Čur Suê and Êa Tar Communes refused to provide those accused with the citations which were the basis for the fines. Furthermore, Commune government representatives of Êa Tar Commune initially told Mr. Y Thinh Niê that the original citation had been sent to the district government and they had not kept a copy; but later reportedly admitted that the citation contained national security secrets and could not be shared with the affected individuals.

The sanctions imposed on Mr. Y Don Niê, Mr. Y Čung Niê and Mr. Y Thinh Niê for celebrating the International Day appear to be linked to the legitimate written requests for guidance they sent in May 2022, which relate to the registration of collective religious practice. Ever since early Autumn 2021, several independent, unregistered Montagnard Protestant groups, and thereafter a number of independent religious groups in Viet Nam's Central Highlands have been increasingly notifying local Governments of their wish to conduct collective religious activities and requested guidance in this regard, particularly in light of the suppression or forbidding of their religious practices by authorities on a number of occasions on the basis that they had not been registered.

According to the Law on Belief and Religion (02/2016/QH14), a religious organization is "a group of believers, dignitaries, religious officers and clergypersons of a religion, which is organized according to a certain structure recognized by the State in order to carry out religious activities". As per art. 17 of the Law on Belief and Religion, the registration of religious collective practice is not restricted to religious organizations. According to art. 17, religious practice could be requested by a group of believers of a religion who do not belong to a religious organization recognized by the State if requirements contained in art 16 are met (namely having their own tenets and canon laws; the name of the group wishing to carry out collective religious practice is not identical with that of an existing religious organization). Moreover, the Law on Belief and Religion explicitly requires "belief activities of a belief establishment" to be registered, "except for lineal ancestor worship houses" (paragraph 1 of art. 12). Nonetheless, the Law does not seem to establish explicitly a similar obligation to register religious practice for believers not affiliated to a religious organization who wish to conduct collective religious activities.

Furthermore, the penalties imposed to Mr. Čung Niê, Mr. Y Thinh Niê and Mr. Y Don Niê do not represent isolated cases of censure of activities related to the celebration of the International Day by the authorities. According to information received, several incidents took place previously where authorities arrested, interrogated, threatened or otherwise intimidated members of

different independent religious groups for having conducted commemorative activities to mark the International Day as well as other activities perceived as critical towards the Government.

For instance, on 16 August 2020, the police in Dak Lak Province visited the home of Mr. Y Phô Êban, Pastor of Good News Mission Church of Cuê Village and interrogated him about his plans to observe the International Day. Before leaving, they threatened to kill him if he reported the interference; the police also smashed his tablet to ensure there was no evidence of the visit. In the following days, Facebook messages smearing the pastor and other members of his church were disseminated on social media.

On 20 August 2020, at about 6 am, the Police arrested Mr. Y Siu Loar as well as other five leaders of the International Degar Church in Pior 2 Village, in Ia Pior Commune (Chur Prông District, Gia Lai Province), and brought them to the Police station of the Commune. The officers reportedly interrogated those arrested about activities conducted to celebrate the International Day. The six religious leaders observed the International Day on 19 August 2020, 3 days before the actual day, to avoid any interference by the police. Mr. Siu Loar was reportedly interrogated until 5 pm. The other five were released around 10 am after having been allegedly coerced into signing pledges to recant their faith and stop sending information to civil society organizations that could be used in United Nations' public reports.

On 22 August 2020, 10 Police officers of Cu Kuin District and the police of Êa Bhôk Commune entered the home of Pastor Y Khen Bdap, the leader of the Good News Mission Church in Êa Khít Village (Êa Bhôk Commune, Cu Kuin District - Dak Lak Province) while other 20 Police officers remained in the street surveilling the house. The Chief of the police of Êa Bhôk Commune reportedly had threatened and warned the Pastor about observing the International Day, claiming that it was illegal.

On 27 August 2020, two leaders of Cao Dai independent groups were allegedly interrogated for hours by the Police in two different locations of the Tiên Giang Province (Tây Phước District and the Town of Cai Lậy) due to their participation in activities aimed at celebrating the International Day, as well as seemingly to their collaboration with civil society organizations working in the area of human rights and freedom of religion or belief. The police characterized those activities and any religious celebration as illegal because the leaders were not affiliated with the official Cao Dai religious organization under the alleged control of the Government.

On 20 August 2022, different members of an independent local group of Cao Dai believers gathered at the private residence of Ms. Nguyễn Thị Thu Cúc, Chair of the Executive Committee of the local Cao Dai parish, in Bình Khánh 1 Village, Bình Khánh Ward, Long Xuyên City, An Giang Province. The group decided to celebrate the International Day during the weekend, to facilitate the participation of the members. At 3 pm, several officers of the Homeland Security Branch entered Ms. Nguyễn Thị Thu Cúc's house. Police officers told the group that the Government had forbidden the observance of the International Day. The law enforcement officers reportedly coerced participants into signing a document according to which they committed

before the Security Agency “that the Cao Dai Church will not engage in any kind of observance on 21 or 22 August 2022 against the authentic Cao Dai Church established in 1926”. The document also states that “we shall be held legally responsible if we observe this International Day”. The document was co-signed by a member of the Police Department of the An Giang Province, and a member of the Police of Long Xuyen City.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern over the arbitrary arrest and administrative penalties of Mr. Ćung Niê, Mr. Y Thinh Niê and Mr. Y Don Niê, which appear to be related to the legitimate and peaceful exercise of their rights as guaranteed by the ICCPR, ratified by the Socialist Republic of Viet Nam on 24 September 1982, including the right to freedom of expression (art. 19), freedom of thought, conscience and religion (art. 18), freedom of peaceful assembly and of association (art. 21 and 22), and the rights of members of a religious minority to profess or practice their own religion with other members of their group (art. 27). We are particularly concerned that an administrative sanction has been imposed on Mr. Ćung Niê, Mr. Y Thinh Niê and Mr. Y Don Niê for their participation in peaceful activities aimed at honoring the International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief, established by the United Nations General Assembly through resolution A/RES/73/296 of 2 June 2019.

Moreover, the allegations appear to depict a pattern of intimidation against religious leaders and individuals belonging to independent minority religious groups to prevent or discourage them from observing the International Day as well as from carrying out other activities perceived as critical of the Government, including the collaboration with civil society human rights organisations and United Nations human rights mechanisms.

We are also concerned by the lack of response from authorities to the numerous written requests for guidance about how religious minority groups not affiliated with a religious organization could exercise their right to freedom to manifest religion or belief through collective religious practice and to freedom of peaceful assembly and of association in connection to their religion or belief, as guaranteed by international human rights instruments.

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.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 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 factual and legal grounds for the arrest and interrogation of Mr. Ćung Niê, Mr. Y Thinh Niê and Mr. Y Don Niê as well as for the administrative penalties imposed on them.
3. Please provide information on the compatibility of the arrest and interrogation of individuals for their participation in activities aimed at celebrating the UN International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief with the international legal obligations of the Socialist Republic of Viet Nam, notably its duty to protect the rights to freedom of religion, belief, freedom of expression, freedom of peaceful assembly and of association and as members of a religious minority.
4. Please provide precise information about the requirements and limitations established by the national law to conduct collective religious practice by individuals not belonging to a religious organisation recognised by the State and how these requirements and limitations comply with the right to freedom of thought, conscience and religion and the right to freedom of worship and assemble in connection to a religion or belief.
5. Please provide precise information on concrete steps taken by your Excellency's Government to protect and promote the rights of religious minorities, in particular, the independent religious communities of Montagnard Christians and Cao Dai followers amongst others.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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.

We refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Socialist Republic of Viet Nam on 24 Sep 1982, and, in particular, its article 18 which stresses that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching".

The Human Rights Committee emphasised in General Comment No. 22 (HRI/GEN/1/Rev.1) paragraph 3 that article 18 of ICCPR "distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1; "the freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts." (paragraph 4).

Peaceful expression of one's thought and conscience cannot be restricted unless it has fulfilled stringent tests of legality, proportionality and necessity. According to the Human Rights Committee "in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner" (see General Comment No. 22 paragraph 8).

We also recall that according to article 21 of the ICCPR, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." The 'provided by law' requirement means that any restriction 'must be made accessible to the public' and 'formulated with sufficient

precision to enable an individual to regulate his or her conduct accordingly' (CCPR/C/GC/34).

The legitimate aims must be restricted to those exhaustively listed in the ICCPR, see CCPR/C/21/Rev.1/Add. 13 para. 6. Furthermore, the requirement of legality entails that the law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution", para 25. Lastly, the proportionality requirement entails that the restriction "must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected", para. 34.

Furthermore, the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) establishes in art. 6 that the right to freedom of thought, conscience, religion or belief shall include, inter alia the freedom to "worship or assemble in connection with a religion or beliefs". The Commission on Human Rights (resolution 2005/40, paragraph 4d), the Human Rights Council (resolution 6/37) and the General Assembly (resolution 65/211, paragraph 12g) have reiterated the obligation of the States to ensure the right of all persons to worship or assemble in connection with a religion or belief", including of those not belonging to a religion or belief recognised by a State through a registration procedure.

In this regard, registration requirements established by the national law should not constitute an impairment for the peaceful exercise of the right to freedom of religion or belief and the subsequent right to freedom of worship. According to the Special Rapporteur on freedom of religion or belief, the registration should not be compulsory and it should not represent a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits; in the latter case, registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed; moreover, the registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc. (see E/CN.4/2005/61, paras. 56-58).

We would like to remind your Excellency's Government that according to art. 2 of the 1981 Declaration, "discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis". The 1981 Declaration further states in its article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In article 4 (1), the General Assembly establishes that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" According to Article 4(2) of the 1981 Declaration: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter".

Finally, recognizing that Mr. Čung Niê, Y Thinh Niê and Y Don Niê belong to ethnic and religious minorities we would like to bring to your Excellency's Government's attention the international standards regarding the protection of rights of persons belonging to minorities, in particular article 27 of the ICCPR that guarantees minorities, inter alia, the right to practice and profess their own religion. Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).