

**Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues**

Ref.: AL VNM 2/2023  
(Please use this reference in your reply)

28 April 2023

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 situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 49/5, 51/8, 43/16 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, threats, surveillance, undue travel restrictions and harassment of two Vietnamese human rights defenders, Mr. Y Khiu Niê and Mr. Y Sĩ Êban, both belonging to "Montagnards" indigenous community and religious minority of Christian Protestants. Their arrest appears to be related to the legitimate exercise of their rights to freedom of thought, conscience and religion and their participating in the Southeast Asia Freedom of Religion or Belief Conference (SEAFORB), that took place in Bali (Indonesia) in November 2022.** The allegations received also indicate that these restrictions might amount to intimidation and reprisals for cooperating or attempting to cooperate with the United Nations, its representatives and mechanisms in the field of human rights.

According to the information received:

From 7 to 9 November 2022, the SEAFORB, an international conference on freedom of religion or belief in Southeast Asia took place in Bali. This conference has been held annually since 2015 and is considered a civic forum for discussion, dialogue and experience exchange of various issues and challenges in relation to freedom of religion or belief in Southeast Asia. Many representatives of civil society, religious communities, international organizations, including the United Nations, the Special Rapporteur on freedom of religion or belief, and diplomats participated in the 2022 conference.

Mr. Y Khiu Niê and Mr. Y Sĩ Êban belong to one of the indigenous communities in Vietnam and are Christian Protestant. Both individuals were prevented from travelling to attend the conference in Bali by law enforcement authorities in November 2022. Consequently, they could neither participate in the conference nor engage in person with the UN and/or the Special Rapporteur on issues of relevance and concern for them and their communities.

*The case of Mr. Y Khiu Niê*

Mr. Y Khiu Niê is a Vietnamese national residing in Krông Buk District in Đắk Lắk Province. He had purchased a round trip ticket to Bali with the intention of attending the 2022 conference.

On 6 November 2022, while at the check-in area of Tân Sơn Nhất International Airport (Ho Chi Minh City), Mr. Niê was informed that he had failed to meet the vaccination and COVID-19 PCR test requirements to board the airplane. This decision was communicated by an airport employee, in the presence of the airport police officers. At the time of this decision, though Mr. Niê was in possession of his vaccination certificate, he did not possess documentation relating to his PCR test result. In response Mr. Niê had proposed undergoing an expedited PCR test (this facility was being offered outside of the airport premises at the time). His proposal was refused and the decision to prohibit his travel was restated by the airport employee. Airport police officers were present throughout Mr. Niê's discussion with the airport employee.

Mr. Niê left the airport in a bus departing at 7.15 am. The bus was stopped by the police of Đắk Nông Province around 3.30 pm at a location which was a few kilometers away from Đắk Lắk Province. Mr. Niê was removed from the bus and restrained with handcuffs. Thereafter, he was taken to a building of the Police Department of Đắk Lắk Province located at 1 Lý Thái Tổ Street, Buôn Ma Thuột City (Office of Social Order Management, Police Department of Đắk Lắk Province). Mr. Niê had recognized several police officers from among the group arresting him, as officers from Krông Búk District, namely Officers ██████████ and ██████████ and others as police officers belonging to the Police Department of Đắk Lắk Province, namely Officers ██████████, ██████████ and ██████████. Several other police officers remain unidentified. The police authorities did not present a warrant for the arrest. Mr. Niê was detained from 4 pm on 6 November until 8.45 pm on 7 November for hours of intense interrogation. During this time, he was not given an opportunity to contact anyone, including for the purposes of obtaining access to legal counsel.

On 6 November 2022, the police interrogated Mr. Niê until midnight. On 7 November, he was interrogated from 7.30 am until his release at 8.45 pm, without the presence of a lawyer. During these interrogations, the police officials threatened Mr. Niê with imprisonment and forced him to sign a document stating that he will cease all communication with international human rights organizations, specifically for the purpose of submitting violation reports to the UN, and Western governments. Mr. Niê was also forced to record a video clip stating that several civil society organisations are undermining the Vietnamese government. During the interrogations, the police officers had revealed that Mr. Niê had been under surveillance.

Prior to this, in December 2021, Mr. Niê was subject to surveillance and later interrogated by area police authorities as a result of a family member joining an indigenous human rights organisation in Thailand.

*The case of Mr. Y Sĩ Êban*

Mr. Y Sĩ Êban is a Vietnamese national and a Christian residing in Đắk Lắk Province. He is a member of the Evangelical Church of Christ of the Central Highlands.

On 6 November 2022, Mr. Êban arrived at the Tân Sơn Nhất International Airport (Ho Chi Minh City) to attend the 2022 conference in Bali. Mr. Êban had obtained his boarding pass to board the airplane. While at the passenger check-in area, as a result of police surveillance, he was arrested by the airport police officers and taken to a police facility. On the same day, he was transferred to the custody of a group of police officers from Đắk Lắk Province. The police authorities did not present a warrant for the arrest. Mr. Êban's three mobile phones were confiscated by the police and he was not given an opportunity to contact anyone upon his arrest or throughout the detention period, including to obtain access to legal counsel.

Mr. Êban was taken to Đắk Lắk Province and detained at the police building located at 1 Lý Thái Tổ Street, Buôn Ma Thuột City (Office of Social Order Management, Police Department of Đắk Lắk Province). Later, he had learned that Mr. Y Khiu Niê was also detained in the same facility.

During the interrogations, which were conducted without the presence of a lawyer, the police officers questioned his motive for attending the international conference on freedom of religion and belief in Bali and accused Mr. Êban of committing political crimes. He was not given any specific information relating to the said crimes. The police officers had also stated that they intend to issue a travel ban, restricting him from traveling to several countries.

He was further ordered to cease teaching the Bible, and to refrain from participating in house church activities of a relative. In addition to these restrictions, he was also ordered to refrain from engaging with several civil society organisations. Thereafter, the authorities had forced Mr. Êban to record a video clip critiquing several civil society organisations and to sign a document stating that he will leave the Evangelical Church of Christ of the Central Highlands, discontinue online training, and refrain from contacting international human rights advocates.

On 7 November 2022, Mr. Êban was released from police custody following the inquiries by his family. During the interrogations, Mr. Êban sustained injuries to his face and head due to repeated physical assaults.

Without prejudice to the accuracy of the abovementioned allegations, we wish to express our serious concern over the alleged arbitrary arrest, threats, harassment, undue travel restrictions, surveillance and acts of violence against Mr. Y Khiu Niê and Mr. Y Sĩ Êban, which appear to be related to the legitimate and peaceful exercise of their rights as guaranteed by the International Covenant on Civil and Political Rights (ICCPR), ratified by the Socialist Republic of Viet Nam on 24 September 1982, including the right to freedom of thought, conscience and religion (article 18), freedom of expression (article 19), the right to equality before the law and equal protection (article 26) and the rights of members of a religious minority to profess or practice their own religion with other members of their group (article 27).

Allegations of threats, harassment, travel restrictions and acts of violence against those who seek to attend the SEAFORB conference were the subject of a previous communication from the Special Procedures mandate holders in VNM 2/2020. We regret that no reply has been received to date. The alleged incidents were included in the 2020 report of the Secretary-General on cooperation with the UN (A/HRC/45/36 para. 124, annex I paras. 146-151 and 154).

Viet Nam has featured in several reports of the Secretary-General on intimidation and reprisals for cooperation with the United Nations in the field of human rights, including on allegations regarding arbitrary arrest, threats, surveillance, and undue travel restrictions against those seeking to participate in the annual SEAFORB conference. The 2019 report of the Secretary-General on cooperation with the UN included allegations of police warnings, travel restrictions, interrogations as well as harassment of relatives of several activists from Viet Nam invited to attend the 2018 SEAFORB conference in Bangkok, which included the participation of the Special Rapporteur on freedom of religion and belief (A/HRC/42/30, Annex II para. 112). Your Excellency's Government responded in 2019 and 2018 stating that relevant authorities do not "intimidate" or "harass" individuals because they attend an international workshop or conference, and that information to that effect was untrue.

We are concerned that these allegations **appear to illustrate an emerging pattern of intimidation and reprisals against individuals who cooperate or seek to cooperate with civil society human rights organisations, United Nations human rights entities** or mechanisms or foreign diplomatic representatives.

We also note that several Special Procedure mandate holders have pointed to an environment of fear in Viet Nam based on allegations that acts of reprisal took place after victims shared their testimonies with or availed themselves of procedures under the auspices of the United Nations for the protection of human rights. We are seriously concerned about the chilling effect of this as it could inhibit cooperation with the United Nations and lead to self-censorship where individuals decline to engage or do it only on conditions of anonymity.

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 the abovementioned individual 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 explain why Mr. Y Khiu Niê and Mr. Y Sĩ Êban, who attempted to participate in the international conference in Bali, were taken into

custody by security personnel prior to their departure and interrogated; and how this practice is consistent with Vietnam's commitment under ICCPR.

3. Please provide information on the factual and legal grounds for their arrest and interrogation. In relation to Mr. Y Sĩ Êban, please provide information on whether any investigation has been conducted into the allegation that he was physically ill-treated during the police interrogation.
4. Please provide the legal grounds for the close surveillance, interrogation and travel restrictions imposed on all participants of 2015-2022 conferences and those who have engaged and cooperated with the UN, its representatives and mechanisms in the field of human rights.
5. Please provide precise information of any measures taken to prevent acts of intimidation or reprisals against any individual or human rights defender who seeks to cooperate with United Nations, its representatives and mechanisms in the field of human rights, and other foreign diplomatic representatives.
6. 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 community of Montagnard Christians.

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

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 urgent appeal and the regular procedure.

While awaiting a reply, we reiterate our earlier recommendation that determined steps be taken to ensure – and protect - the exercise of the right to freedom of religion and belief, expression and information, and to refrain from interfering in its peaceful exercise; to prevent their recurrence, and if the investigations confirm the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In light of the repeated allegations of threats, intimidation, and reprisals exercises against individuals who are exercising peacefully their right to freedom of conscience, religion, belief, expression and information, including in the form of cooperation with the United Nations human rights institutions, this communication –

and any response received from Your Excellency's Government - will be shared with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary-General to lead the efforts within the United Nations system to address this issue.

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

Nazila Ghanea  
Special Rapporteur on freedom of religion or belief

Matthew Gillett  
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

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, to its article 9 enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. In its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of peaceful assembly (art. 21), freedom of assembly (art. 21) and freedom of association (art. 22). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention. It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. Furthermore, article 14 of the ICCPR upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law, as well as the right to legal assistance.

We would also like to recall article 18 of the ICCPR 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).

We also recall that 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.

We further refer to the General Comment No. 34 (2011) of the Human Rights Committee, which provides in paragraph 9 that “All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19 of the ICCPR.

Further, recognizing that Mr. Y Khiu Niê and Mr. Y Sî Êban 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 which provides that “ in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion (...)”. In relation to your Excellency’s obligations pursuant to article 27 of the ICCPR, we further recall General Comment No. 23: Rights of Minorities (art. 27), adopted by the Human Rights Committee on 8 April 1994. In particular, we bring attention to the conclusion that, in protecting the rights of minorities covered under article 27, “a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation” and thus “[p]ositive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party” (CCPR/C/21/Rev.1/Add.5, para 6.1).

We would like to draw your Excellency’s Government attention to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by consensus by the UN General Assembly on 18 December 1992 (A/RES/47/135). Article 1 of this Declaration highlights “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”

We would like to refer 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.

With regards to the travel restrictions experienced by Mr. Y Khiu Niê and Mr. Y Sî Êban, we respectfully remind your Excellency’s Government of article 9 (4) of the Declaration on Human Rights Defenders which states that “everyone has the

right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.”

The Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirm the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also calls on States to ensure accountability for reprisals by providing access to remedies for victims and preventing any recurrence. It also calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.