

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr Mads Andenas (Norway)

Mr José Guevara (Mexico)

Ms Shaheen Ali (Pakistan)

Mr Sètondji Adjovi (Benin)

Mr Vladimir Tochilovsky (Ukraine)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

in the matter of

**Le Quoc Quan**  
**(the “Petitioner”)**

v.

**Government of the Socialist Republic of Viet Nam**

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Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50, 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/1

Submitted by:

Media Legal Defence Initiative  
The Grayston Centre  
28 Charles Square  
London N1 6HT  
United Kingdom

On behalf of:

Lawyers’ Rights Watch Canada  
Lawyers for Lawyers  
Electronic Frontier Foundation  
Reporters Without Borders  
English PEN  
Avocats Sans Frontières Network  
Article 19  
National Endowment for Democracy  
World Movement for Democracy  
Center for International Law Philippines

## **BASIS FOR REQUEST**

The Petitioner, Mr Le Quoc Quan, is a prominent blogger and human rights defender. He is a citizen of the Socialist Republic of Viet Nam, which acceded to the International Covenant on Civil and Political Rights (“ICCPR”) on 24 September 1982. Viet Nam is also bound by those principles of the Universal Declaration of Human Rights (“UDHR”) that have acquired the status of customary international law.

In his petition of 13 March 2013 (the “First Petition”, Annex 1), the Petitioner requested the United Nations Working Group on Arbitrary Detention (the “Working Group”) to render an Opinion in his case. The Petitioner submitted that he had been arbitrarily arrested and detained while he was exercising – or in situations connected to the exercise of – his right to freedom of opinion and expression (Article 19 ICCPR and UDHR), freedom of association (Articles 21 and 22 ICCPR and Article 20 UDHR), and the right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR). During his detention and trial in first instance, international norms relating to the right to a fair trial (Articles 9 and 10 UDHR and Article 9 and 14 ICCPR) had not been observed.

In its Opinion No. 33/2013 of 12 November 2013, the Working Group concluded that:

“[t]he deprivation of liberty of Mr Le Quoc Quan is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which Viet Nam is a party, and falling within category III of the categories applicable to the consideration of the cases submitted to the Working Group.”<sup>1</sup>

The Working Group determined that the Petitioner’s rights to liberty and a fair trial articulated by Articles 9 and 10 UDHR and guaranteed by Articles 9 and 14 ICCPR were violated when he was held incommunicado between 27 December 2012 and the third week of February 2013 and thereby denied adequate time and facilities for the preparation of a defence and the right to communicate with counsel. The Working Group further considered that:

“[Mr Quan’s] current detention might be the result of his peaceful exercise of the rights and freedoms guaranteed under international human rights law.

The events leading up to Mr. Quan’s arrest on 27 December 2012 indicate that his arrest and detention could be related to his blog articles on civil and political rights. Although the charge against Mr. Quan is one of tax evasion, given Mr. Quan’s history as a human rights defender and blogger, the real purpose of the detention and prosecution might eventually be to punish him for exercising his rights under article 19 of the International Covenant on Civil and Political Rights (ICCPR) and to deter others from doing so: This point is reportedly underlined by the previous arrests and harassment of Mr. Quan.”<sup>2</sup>

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<sup>1</sup> Working Group on Arbitrary Detention (the “Working Group” or “UNWGAD”), *Opinion No. 33/2013 (Viet Nam)*, sixty-seventh session, 26-30 August 2013, A/HRC/WGAD/2013/, par. 34.

<sup>2</sup> *Id.*, par. 28-29.

The Working Group requested the Government of Viet Nam “to take necessary steps to remedy the situation of Mr Quan, which is immediate release, or ensure that charges are determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR.”<sup>3</sup> Moreover, the Working Group requested that reparation would be granted to the Petitioner for the arbitrary detention that he suffered.<sup>4</sup>

Contrary to the Working Group’s Opinion in the Petitioner’s case, the Petitioner is currently still detained. As far as the signatory organisations are aware, the Government of Viet Nam has taken no steps to effect release of the Petitioner. His case has not been considered by an independent and impartial tribunal in proceedings that comply with the relevant provisions of the ICCPR and his fair trial rights were again violated during the appeal proceedings. Effective domestic remedies can be considered to have been exhausted. As a result, the Petitioner’s situation is unlikely to change for the duration of the prison sentence imposed at trial.

For the reasons stated herein, the Petitioner’s continuing detention is a violation of the fundamental human rights guarantees enshrined in international law and constitutes Category II and Category III arbitrary detention as defined by the Working Group. He should be immediately released from detention.

Therefore, the Petitioner hereby requests that the Working Group consider this Petition to be a formal request for an Opinion of the Working Group pursuant to Resolutions 1991/42 and 1997/50 of the Commission on Human Rights and Resolution 15/18 of the Committee on Human Rights.

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<sup>3</sup> Id., par. 35.

<sup>4</sup> Id., par. 36.

## MODEL QUESTIONNAIRE

As in the First Petition, the signatory organisations have endeavoured to present all information requested in the Model Questionnaire, but limited access to the Petitioner has made this difficult. It is submitted that this should not affect the admissibility or final outcome of this Petition, consistent with the position of the Working Group in this regard.<sup>5</sup> Unless otherwise indicated, the family and supporters of the Petitioner have supplied the information to counsel via civil society organisations.

**Petitioner:** Mr Le Quoc Quan

### I. IDENTITY

Family name	Le
First name	Quoc Quan
Sex	Male
Birth date	13 September 1971
Nationality	Vietnamese
Identity document:	Unknown
a) Issued by	a) Ministry of Public Security in Hanoi
b) On	b) 4 March 2011
c) No.	c) 012695474
Profession and/or activity	Lawyer, human rights defender and blogger
Address of usual residence:	Rm 504 - Block No.9 Group 64, Yen Hoa Ward, Cau Giay District, Hanoi City – Viet Nam

### II. ARREST

Date of arrest:	27 December 2012
Place of arrest:	As set out in the First Petition, Mr Quan's arrest took place at about 8am, as he was on his way to drop off his daughter at school in Hanoi, Viet Nam. He was arrested near his

<sup>5</sup> This Working Group stated in its first report to the Commission on Human Rights, when establishing its methods of work, that "failure to comply with all formalities [regarding the presentation of information about a petitioner and the use of the model questionnaire] shall not directly or indirectly result in the inadmissibility of the communication." UNWGAD, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Report of the Working Group on Arbitrary Detention*, Commission on Human Rights, 48<sup>th</sup> Sess., U.N. Doc. No. E/CN.4/1992/20 (21 January 1992), <http://www2.ohchr.org/english/issues/detention/docs/E-CN4-1992-20.pdf>, par. 8. Further, in Petition No. 29/2006, a petition was accepted (and detention was proven to be arbitrary) based almost entirely on newspaper articles. It was judged that the information was reliable as far as it was possible because it came from 'independent and reliable sources' including NGOs: UNWGAD, *No. 29/2006, Communication addressed to the Government concerning the case of Mr. Ibn al-Shaykh al-Libi and 25 other persons* (8 December 2005), [http://unwgadatabase.org/un/Document.aspx?id=2309&terms=\(+29%2f2006+\)](http://unwgadatabase.org/un/Document.aspx?id=2309&terms=(+29%2f2006+)).

	home, specifically around 300m from his car garage. <sup>6</sup>
Forces who carried out the arrest or are believed to have carried it out:	State authorities, details not known
Did they show a warrant or other decision by a public authority? (Yes) (No)	Unknown
Authority who issued the warrant or decision:	Public Security of Hanoi
Relevant legislation applied (if known):	Mr Quan was convicted on the basis of Article 161 of the 1999 Viet Nam Penal Code (tax evasion). <sup>7</sup>

### III. DETENTION

Date of detention:	27 December 2012
Duration of detention (if not known, probable duration):	One year and eight months and ongoing
Forces holding the detainee under custody:	Until 13 June 2014, Mr Quan was held by Public Security of Hanoi (under the Ministry of Public Security, Government of the Socialist Republic of Viet Nam). Since 13 June 2014, he has been held by the Department of Criminal Execution and Justice Aid, Ministry of Public Security.
Places of detention (indicate any transfer and present place of detention):	Until 13 June 2014, Mr Quan was detained in Hoa Lo No. 1 Prison, Hoan Kiem District, Hanoi, Viet Nam, a prison which is intended for pre-trial detention. On 13 June 2014, Mr Quan was transferred to An Diem prison in Dai Lanh ward, Dai Loc district, Quang Nam province, which is located in a remote area in central Viet Nam.
Authorities that ordered the detention:	State authorities, details unknown
Reasons for the detention imputed by the authorities:	Conviction of tax evasion under Article 161 of the 1999 Viet Nam Penal Code
Relevant legislation applied (if known):	Article 161 of the 1999 Viet Nam Penal Code

<sup>6</sup> South China Morning Post, *Vietnam detains dissident lawyer and blogger* (28 December 2012), <http://www.scmp.com/news/asia/article/1114243/vietnam-detains-dissident-lawyer-and-blogger>.

<sup>7</sup> Tuoi Tre News, *Le Quoc Quan detained for tax evasion* (30 December 2012), [http://tuoiitrenews.vn/cmlink/tuoiitrenews/business/le-quoc-quan-detained-for-tax-evasion-1.95439](http://tuoitrenews.vn/cmlink/tuoiitrenews/business/le-quoc-quan-detained-for-tax-evasion-1.95439); see also Annex I of the First Petition.

#### **IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

##### **A. Circumstances of the arrest and detention**

The signatory organisations respectfully refer the Working Group to the overview provided in the First Petition of the broader context in which the arrest and detention of the Petitioner took place, the Petitioner's background, and the most relevant facts regarding his arrest and his detention.<sup>8</sup> This overview demonstrated that the Petitioner was arrested and detained amidst a climate of restrictions in Viet Nam on the freedoms of participation in political affairs, expression, thought, religion, and association, and the persecution of those seeking to exercise these freedoms. The First Petition also included examples of numerous incidents of bloggers, journalists and political activists who have spoken critically about the Government of Viet Nam and were consequently arbitrarily detained, sometimes on the basis of fabricated charges. As a prominent human rights defender and blogger, the Petitioner was repeatedly harassed and also arrested because he sought to exercise his right to freedom of expression and assembly.

The following information is submitted to provide the Working Group with an update on the details of the Petitioner's detention since the First Petition.

##### **A.1 There continues to be a climate of restrictions in Viet Nam on the freedoms of participation in political affairs, expression, thought, religion, and association, and the persecution of those who seek to exercise these freedoms**

As set out in detail in the First Petition, the Petitioner was arrested and detained amidst a climate of restrictions on the exercise of freedoms of participation in political affairs, expression, thought, religion and association.<sup>9</sup> Those who seek to exercise these freedoms in Viet Nam are often persecuted.<sup>10</sup>

The Constitution of the Socialist Republic of Viet Nam ("the Constitution") protects the right to participate in public affairs<sup>11</sup> and the right to freedom of expression, thought, religion and association.<sup>12</sup> Despite these constitutional protections, Viet Nam has, in recent years, been found to have increasingly suppressed fundamental rights and imposed significant limitations on free expression, subjecting pro-democracy and human rights activists to harassment, arbitrary arrest and detention. The suppression of fundamental rights in Viet Nam has not improved since the First Petition was filed in November 2013. Reports from UN bodies and other human rights specialists indicate that, since the First Petition, Viet Nam has continued to systematically suppress these fundamental rights.<sup>13</sup>

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<sup>8</sup> See the First Petition, under IV, A.

<sup>9</sup> See the First Petition, under IV, A.1.

<sup>10</sup> Id.

<sup>11</sup> *Constitution of the Socialist Republic of Viet Nam* (15 April 1992), Article 53, <http://www.unhcr.org/refworld/docid/3ae6b573c.html>

<sup>12</sup> Id., Articles 69-70.

<sup>13</sup> See, for example, *Report of the Working Group on the Universal Periodic Review, Viet Nam*, Human Rights Council, 26<sup>th</sup> Sess., UN Doc A/HRC/26/6 (2 April 2014), <http://daccess-dds->

The second Universal Periodic Review of Viet Nam took place in February 2014.<sup>14</sup> The report prepared by the Office of the High Commissioner of Human Rights highlighted concerns with both the persistent lack of judicial independence and increasingly harsh conviction and sentencing of government critics:

“[the United Nations Country Team] stated that the Vietnamese judicial system was marked by a lack of independence of judges. It noted that the overall progress of judicial reform had been slow and lagged behind the legislative changes and the process of simplifying public administrative procedures. Many tasks related to creating enabling conditions for the promotion and protection of human rights as set forth in the judicial reform strategy – such as the introduction of an adversarial system in court adjudication, and the strengthening of independent judicial adjudication – had not yet been sufficiently translated into concrete actions.

[...]

The United Nations High Commissioner for Human Rights expressed deep concern about the conviction and harsh sentencing of some prominent journalists and bloggers, noting this reflected a trend of increasing restrictions on freedom of expression, especially against those who used the Internet to voice their criticisms.”<sup>15</sup>

These observations of a worsening human rights climate with increasingly harsh penalties for government critics and a lack of judicial independence were repeated in the Human Rights Watch World Report 2014, which reported that:

“[t]he human rights situation in Vietnam deteriorated significantly in 2013, worsening a trend evident for several years. The year was marked by a severe and intensifying crackdown on critics, including long prison terms for many peaceful activists whose “crime” was calling for political change.

[...]

Vietnamese courts lack the independence and impartiality required by international law. Where the party or government has an interest in the outcome of a case, they—not the facts and the law—dictate the outcome. Trials are often marred by procedural and other irregularities that go along with achieving a politically pre-determined outcome.

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[ny.un.org/doc/UNDOC/GEN/G14/129/10/PDF/G1412910.pdf?OpenElement](http://www.ny.un.org/doc/UNDOC/GEN/G14/129/10/PDF/G1412910.pdf?OpenElement); Human Rights Watch, *World Report 2014: Vietnam*, <http://www.hrw.org/world-report/2014/country-chapters/vietnam>; and Amnesty International, *Annual Report 2013: Vietnam*, <http://www.amnesty.org/en/region/vietnam/report-2013>.

<sup>14</sup> *Report of the Working Group on the Universal Periodic Review, Viet Nam*, Human Rights Council, 26<sup>th</sup> Sess., UN Doc A/HRC/26/6 (2 April 2014), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/129/10/PDF/G1412910.pdf?OpenElement>.

<sup>15</sup> *Compilation prepared by the Office of the High Commissioner for Human Rights*, Human Rights Council, 18<sup>th</sup> Sess., UN Doc A/HRC/WG.6/18/VNM/2 (7 November 2013), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/184/45/PDF/G1318445.pdf?OpenElement>, par. 46 and 56.

### **Freedom of Expression, Opinion, and Information**

Government repression targets many independent writers, bloggers, and rights activists. They face police intimidation, harassment, arbitrary arrest, prolonged detention without access to legal counsel or family visits, court convictions, and often severe prison sentences. Enhancing already extensive government powers to punish and otherwise deter digital freedom, Prime Minister Nguyen Tan Dung on September 1, 2013, put into force Decree 72, which contains provisions legalizing content-filtering and censorship, and outlawing vaguely defined “prohibited acts.” It also forbids individuals from synthesizing news on their blogs or personal websites.”<sup>16</sup>

These observations are confirmed by Amnesty International in its Annual Report 2013. Amnesty International notes that the human rights situation in Viet Nam has worsened, particularly for dissidents:

“[r]epression of government critics and activists worsened, with severe restrictions on freedom of expression, association and assembly. At least 25 peaceful dissidents, including bloggers and songwriters, were sentenced to long prison terms in 14 trials that failed to meet international standards.

[...]

Long prison terms were handed down to bloggers in an apparent attempt to silence others. They were charged with “conducting propaganda” and aiming to “overthrow” the government. Dissidents were held in lengthy pre-trial detention, often incommunicado and sometimes beyond the period allowed under Vietnamese law. Reports of beatings during interrogation emerged. Trials failed to meet international standards of fairness, with no presumption of innocence, lack of effective defence, and no opportunity to call witnesses. Families of defendants were harassed by local security forces, prevented from attending trials and sometimes lost their work and education opportunities.”<sup>17</sup>

The World Press Freedom Index 2014 of Reporters Without Borders also confirms that the situation in Viet Nam has worsened: Viet Nam fell two places in the ranking, from 172 to 174 out of 180 countries.<sup>18</sup> According to Reporters Without Borders, 34 bloggers are currently jailed in Viet Nam<sup>19</sup> and two journalists are currently jailed in Viet Nam. Since March 2013, when the First Petition was submitted, 7 bloggers were arrested.

### **A.2 The Petitioner is a lawyer and human rights defender who also worked as an online journalist and blogger**

As set out in detail in the First Petition, the Petitioner has sought to exercise his rights to freedom of expression and assembly and to participate in the conduct of public affairs through

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<sup>16</sup> Human Rights Watch, *World Report 2014: Vietnam*, <http://www.hrw.org/world-report/2014/country-chapters/vietnam>.

<sup>17</sup> Amnesty International, *Annual Report 2013: Vietnam*, <http://www.amnesty.org/en/region/vietnam/report-2013>.

<sup>18</sup> Reporters Without Borders, *Press Freedom Index 2014*, <http://rsf.org/index2014/en-asia.php>.

<sup>19</sup> *Id.*



a range of activities.<sup>20</sup> He is a prominent human rights defender and blogger. On his blog, the Petitioner exposed human rights abuses and other issues not covered by Vietnamese state media.<sup>21</sup> He was disbarred, assaulted and repeatedly arrested prior to his current detention. This harassment was clearly linked to the exercise his right to freedom of expression and assembly. For further details on the Petitioner's background, the signatory organisations respectfully refer the Working Group to the overview provided in the First Petition.<sup>22</sup>

### **A.3 The Petitioner was detained without legal justification and in a manner that violates international law**

As set out in the First Petition, Mr Quan was detained on the basis of his non-violent and legitimate activities in relation to a range of political and social justice issues.<sup>23</sup> After his arrest on 27 December 2012, he was detained incommunicado for two months.<sup>24</sup> Via his wife, the Petitioner applied for bail on 29 December 2012, but this request was denied by the investigation agency and the Hanoi prosecution office. No reasons for refusing pre-trial release were provided.

Mr Quan's trial was supposed to take place on 9 July 2013, but was abruptly postponed in the afternoon of 8 July 2013 without setting a new date.<sup>25</sup> The hearing eventually took place on 2 October 2013, when Mr Quan was convicted of evading corporate income tax.<sup>26</sup> He was sentenced to 30 months imprisonment and a fine of 1.2 billion dong (approximately USD 59,000). His trial began and ended on 2 October 2013.<sup>27</sup>

On 18 February 2014, Mr Quan's conviction and sentence were upheld on appeal, despite calls for his release by multiple human rights organisations.<sup>28</sup> Mr Quan had not been able to communicate with his lawyers until the appeal hearing. Mr Quan's trial held much later than the date it should have taken place on the basis of Viet Nam's criminal procedure code. The trial lasted for four hours and the court took 30 minutes to reach its decision.<sup>29</sup> During his trial, the Petitioner appeared visibly emaciated.<sup>30</sup> While the Petitioner's wife and mother were admitted to the court room, any other people, including the siblings of the Petitioner, were banned.

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<sup>20</sup> See the First Petition, under IV, A.2.

<sup>21</sup> BBC News Asia, *Court appeal of dissident Vietnam bloggers is rejected* (28 December 2012), <http://www.bbc.co.uk/news/world-asia-20856696>.

<sup>22</sup> See the First Petition, under IV, A.2.

<sup>23</sup> See the First Petition, under IV, A.3.

<sup>24</sup> Id.

<sup>25</sup> Human Rights Watch, *Vietnam: Drop Charges Against Le Quoc Quan* (8 July 2013), <http://www.hrw.org/news/2013/07/07/vietnam-drop-charges-against-le-quoc-quan>.

<sup>26</sup> BBC, *Vietnam dissident Le Quoc Quan jailed over tax evasion* (2 October 2013) <http://www.bbc.co.uk/news/world-asia-24361701>, see also the update to the First Petition (Annex 2).

<sup>27</sup> Id; Radio Free Asia, *Vietnamese Dissident Meets Family Members for First Time Since Arrest* (8 October 2013) <http://www.rfa.org/english/news/vietnam/le-quoc-quan-10082013143855.html>.

<sup>28</sup> See, for example, Human Rights Watch, *Vietnam: Quash Conviction of Le Quoc Quan. Appeal Court Should Free Lawyer to Honor UN Rights Council Promises* (17 February 2014), <http://www.hrw.org/news/2014/02/16/vietnam-quash-conviction-le-quoc-quan>.

<sup>29</sup> PEN America, *Le Quoc Quan's Appeal Rejected* (19 February 2014), <http://worldvoices.pen.org/rapid-action/2014/02/19/le-quoc-quans-appeal-rejected>.

<sup>30</sup> Media Legal Defence Initiative, *MLDI condemns Le Quoc Quan ruling, explores appeal options* (18 June 2014), <http://www.mediadefence.org/news/mldi-condemns-le-quoc-quan-ruling- explores-appeal-options>.

The case against the Petitioner was marked by irregularities. The audit carried out by the Ministry of Finance was incorrect on a number of points, Mr Quan was denied his right to contract an expert witness, and instead of following the appropriate administrative procedure and investigate his company, Mr Quan was personally prosecuted.

The European Union Delegation to Vietnam (the “EU Delegation”) expressed concern over the outcome of the appeal.<sup>31</sup> The EU Delegation recalled that the Working Group found the Petitioner’s detention to be arbitrary and requested the Government of Viet Nam to take necessary steps to remedy his situation. The EU Delegation called the sentencing “particularly disappointing in light of Vietnam’s election to the UN Human Rights Council” and “reiterate[d] prior calls on Vietnam to respect the right to freedom of expression and for the release of all peaceful advocates of human rights in the country.”<sup>32</sup>

The International Commission of Jurists condemned the outcome of the appeal and commented that “[t]he ICJ has repeatedly criticized the lack of independence of the courts in Viet Nam. This is a political case and the government of Viet Nam has again used the courts to punish a significant critical voice.”<sup>33</sup>

With the outcome of the Petitioner’s appeal, it is clear that Viet Nam has disregarded the Opinion of the Working Group of 12 November 2013, which requested that the Government of Viet Nam take the necessary steps to remedy the situation of Mr Quan by immediately releasing him or ensuring that the charges against him were determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR.<sup>34</sup> Moreover, the Working Group requested that reparation would be granted to the Petitioner for the arbitrary detention that he suffered.<sup>35</sup> However, the Petitioner is still detained and his case has not been reviewed by an independent and impartial tribunal. The Petitioner has not been compensated for his arbitrary detention.

On 7 May 2014, the Petitioner filed a cassation appeal. Although this formally is his only remaining domestic recourse,<sup>36</sup> it is not likely that a decision will be made during the remaining time of his sentence. The Vietnamese Penal Code provides that a cassation appeal will only be heard once a request for review of a judgment has been granted, while the Vietnamese Criminal Procedure Code does not set a time limit for decisions on such requests.<sup>37</sup> Cassation appeals can therefore remain pending for years.

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<sup>31</sup> The European Union Delegation to Vietnam, *Message from the Delegation of the European Union to Vietnam on lawyer Le Quoc Quan’s appeal trial* (18 February 2014), [http://eeas.europa.eu/delegations/vietnam/documents/press\\_corner/2014/20140218\\_quan\\_appealtrial\\_en.pdf](http://eeas.europa.eu/delegations/vietnam/documents/press_corner/2014/20140218_quan_appealtrial_en.pdf).

<sup>32</sup> *Id.*

<sup>33</sup> International Commission of Jurists, *Viet Nam: ICJ condemns Le Quoc Quan decision, calls for release* (18 February 2014), <http://www.icj.org/viet-nam-icj-condemns-le-quoc-quan-decision-calls-for-release/>.

<sup>34</sup> UNWGAD, *Opinion No. 33/2013 (Viet Nam)*, sixty-seventh session, 26-30 August 2013, A/HRC/WGAD/2013/, par. 35.

<sup>35</sup> *Id.*, par. 36.

<sup>36</sup> PEN International, *Viet Nam: Appeal of prominent blogger and human rights lawyer Le Quoc Quan rejected* (19 February 2014), <http://www.pen-international.org/newsitems/viet-nam-appeal-of-prominent-blogger-and-human-rights-lawyer-le-quoc-quan-rejected/>.

<sup>37</sup> See the Criminal Procedure Code, No. 19/2003/QH11 (26 November 2003)., Part 6.

An example of this is the case of Huynh Van Nen, who was convicted and sentenced to life imprisonment in August 2000 for attempted murder. When new evidence suggested that Huynh Van Nen had been wrongly convicted, his lawyer filed a cassation appeal. The case was often reported in the media and Huynh Van Nen is widely considered to be innocent. However, 14 years after his conviction and the cassation appeal, the request for a review of the judgment has still not been granted.

The conditions of the Petitioner's trial and detention have been alarming. Until 13 June 2014, the Petitioner was placed in a detention centre which is intended for pre-trial detention, while according to Vietnamese law he should have been moved to a regular prison within 15 to a maximum of 45 days after the appeal trial. The fact that Mr Quan was placed in a prison intended for temporary detention resulted, among other things, in a limitation of his activities, no access to reading or writing materials and no access to a bible, nor was he allowed to leave his cell to do exercise or labour. In addition, he was held in a windowless cell where the lights were on 24 hours per day.

On 13 June 2014, the Petitioner was moved to An Diem prison, which is located in a remote area of central Viet Nam, 70 km away from Da Nang and far from Hanoi, where his family resides. Although the conditions of his imprisonment have improved compared to Hoa La prison, his current detention in central Viet Nam could be in contravention of Principle 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("BPPP Principles"), which provides that if a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Moreover, the Petitioner fears that his case will follow a similar pattern as the case of Mr Nguyen Van Hai. Mr Nguyen Van Hai, popularly known by his pen name "Dieu Cay", is also a prominent critic of the government of Viet Nam. He has been in prison since April 2008. Similar to the Petitioner, Mr Nguyen Van Hai was initially sentenced to 30 months imprisonment on the basis of fabricated charges of tax evasion under Article 161 of the Viet Nam Penal Code 1999.<sup>38</sup> On the day he was supposed to be released, he was charged with "conducting propaganda against the Socialist Republic of Vietnam" in violation of Article 88, Section 2 of the 1999 Viet Nam Penal Code and sentenced to 12 years in prison.<sup>39</sup> Given the similarities between Mr Nguyen Van Hai's and that of the Petitioner there are valid reasons to believe that the Petitioner's detention will not end after 30 months.

The arrest and prosecution of the Petitioner was in retaliation for his peaceful exercise of the rights and freedoms guaranteed under international human rights law. His conviction and sentencing were the result of his being denied minimum due process guarantees (timely access to legal counsel) and the right to have the charges determined by an independent and

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<sup>38</sup> Committee to Protect Journalists, *Nguyen Van Hai, Vietnam, 2013 CPJ International Press Freedom Awardee* (2013), <http://www.cpj.org/awards/2013/nguyen-van-hai-vietnam.php>; see also Human Rights Watch, *Vietnam: Drop Politically Motivated Charges Against Critics* (30 September 2013), <http://www.hrw.org/news/2013/09/30/vietnam-drop-politically-motivated-charges-against-critics>.

<sup>39</sup> See for instance Reporters Without Borders, *Court upholds long jail sentences for bloggers on appeal* (28 December 2012), <http://en.rsf.org/vietnam-court-upholds-long-jail-sentences-28-12-2012.43848.html>.

impartial tribunal. In addition, the Petitioner was wrongly denied the right to be presumed innocent and to pre-trial release as guaranteed by the ICCPR. The Government of Viet Nam has refused to comply with the Working Group's recommendations for immediate release or trial before an impartial and independent tribunal in accordance with the ICCPR requirements and for reparations. The Government of Viet Nam has not remedied the violations identified by the Working Group. Accordingly, the detention of the Petitioner is without legal justification and violates international law.

## **B. Reasons why the detention is arbitrary**

The continuing detention of the Petitioner constitutes arbitrary detention because it results from the exercise of his right to freedom of opinion and expression (Article 19 ICCPR, Article 19 UDHR), his right to peaceful assembly and association (Articles 21 and 22 ICCPR, Article 20 UDHR), and his right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR). It therefore falls within Category II arbitrary detention as articulated by the Working Group.

The detention of the Petitioner further constitutes arbitrary detention because it violates his fair trial rights (Articles 9 and 14 ICCPR, Articles 10 and 11 UDHR). It therefore also falls within Category III arbitrary detention as articulated by the Working Group. The following section details the reasons that the continuing detention is arbitrary by category, addressing each category in turn.

It is noted that Viet Nam is a party to the ICCPR; consequently this Petition sets out the various ICCPR articles that Viet Nam has breached as a result of its treatment of the Petitioner. The Petitioner also notes that Viet Nam has breached principles of customary international law reflected in the UDHR.

### **B.1 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to freedom of opinion and expression (Article 19 ICCPR, Article 19 UDHR), his right to peaceful assembly and association (Articles 21 and 22 ICCPR, Article 20 UDHR) and his right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR)**

The signatory organisations respectfully refer the Working Group to the overview included in the First Petition of the reasons why the arrest and detention of the Petitioner are arbitrary, which demonstrate that the Petitioner was arrested and detained due to his history as a human rights defender and blogger, his participation in peaceful demonstrations, and active involvement in civil society regarding a range of political and social justice issues.

As set out in detail the First Petition, although the Petitioner has been convicted of tax evasion, it is submitted that, given the history of Viet Nam detaining and prosecuting those who speak out against the political regime (see the First Petition and above under A.1), the real purpose behind the detention and prosecution is to punish the Petitioner for exercising his right to freedom of expression, peaceful assembly and association and his right to take part in the conduct of public affairs.

This point is underlined by the previous arrests and harassment of the Petitioner, as set out in

the First Petition, and the targeting of other dissidents on the basis of trumped up charges.<sup>40</sup> It is furthermore underlined by the irregularities during Mr Quan's arrest, trials and detention. It has for instance come to the attention of the signatory organisations that:

- during Mr Quan's arrest and the search of his home, investigation officers repeatedly stated that the arrest and search concerned "a political case," rather than a case of tax evasion. The relevant investigation officers belonged to the public security investigation unit as opposed to the regular police force or the tax authorities;<sup>41</sup>
- instead of following the appropriate administrative procedure and investigating the company, Viet Nam Solutions, as would have been done in cases of corporate income tax evasion, Mr Quan was personally prosecuted;<sup>42</sup>
- Mr Quan was denied bail without reasons and thereafter was not brought regularly or at all before the court to have the legality of his continuing pre-trial detention reviewed;<sup>43</sup>
- both court hearings in the Petitioner's case were exceptionally short for a highly complex case such as corporate tax evasion.<sup>44</sup> The trial in first instance began and ended on 2 October 2013. The appeal proceedings on 18 February 2014 lasted for four hours and the court took 30 minutes to reach its decision;<sup>45</sup>
- some of the persons that had been employed by Mr Quan's company testified under duress;<sup>46</sup> and
- during the appeal hearing, supporters of Mr Quan, including his siblings and international observers, were not allowed in the court.<sup>47</sup>

The above irregularities form a pattern that indicates that the Petitioner is detained in order to prevent him from further exercising his right to freedom of expression, peaceful assembly and association and his right to take part in the conduct of public affairs.<sup>48</sup> The arrest and detention of the Petitioner therefore constitute a Category II form of arbitrary detention.

**B.2 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to equality before courts and tribunals (Article 14 ICCPR, Article 10 UDHR) including his right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (Article 14(3)(e) ICCPR)**

It is reported that the Petitioner was denied his right to contract an expert witness, while the

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<sup>40</sup> See the First Petition, under IV, B.1. See also for instance Human Rights Watch, *Vietnam: Drop Politically Motivated Charges Against Critics* (30 September 2013), available at <http://www.hrw.org/news/2013/09/30/vietnam-drop-politically-motivated-charges-against-critics>.

<sup>41</sup> Information submitted by the Petitioner's defence team and family members.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> BBC, *Vietnam dissident Le Quoc Quan jailed over tax evasion* (2 October 2013), <http://www.bbc.co.uk/news/world-asia-24361701>.

<sup>45</sup> PEN America, *Le Quoc Quan's Appeal Rejected* (19 February 2014), <http://worldvoices.pen.org/rapid-action/2014/02/19/le-quoc-quans-appeal-rejected>.

<sup>46</sup> Information submitted by the Petitioner's defence team and family members.

<sup>47</sup> *Id.*

<sup>48</sup> The arrest and detention are also contrary to the principles reflected in Article 23 of the Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

prosecution was allowed to call an expert witness. In particular, in often highly complicated cases such as tax evasion, access to an expert witness is critical to ensure a fair trial.

The denial of the right to present the relevant evidence of witnesses is a clear violation of Article 14 ICCPR and the principles in Article 10 UDHR. Article 14 ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals.” The right to equality before courts and tribunals also ensures equality of arms:<sup>49</sup>

“[t]his means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”<sup>50</sup>

It is for the State Party to show that any procedural inequality was based on reasonable and objective grounds, not entailing actual disadvantage or other unfairness.<sup>51</sup>

Article 14(3) ICCPR further provides that in the determination of a criminal charge against him, everyone is entitled to certain minimum guarantees. One of these minimum guarantees is the right to “examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him” (Art. 14(3)(e) ICCPR). The Human Rights Committee’s General Comment No. 32 clarifies that:<sup>52</sup>

“[a]s an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”

Although Article 14(3)(e) does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, it does provide a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.<sup>53</sup>

Moreover, the Petitioner’s right to equality before courts and tribunals was violated by the manner in which his case was dealt with by the Vietnamese authorities. Instead of following the appropriate administrative procedure and primarily investigate the Petitioner’s company, the Petitioner was personally prosecuted and held criminally liable.

General Comment No. 32 clarifies that the principle of equality before courts also implies that similar cases are dealt with in similar proceedings:

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<sup>49</sup> Human Rights Committee, General Comment No. 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, Human Rights Committee, 90th Sess., U.N. Doc. No. CCPR/C/GC/32 (23 August 2007) (hereinafter “General Comment No. 32”), par. 13.

<sup>50</sup> General Comment No. 32, par. 13. See also Human Rights Committee, Communication No. 1347/2005, *Dudko v. Australia*, par. 7.4.

<sup>51</sup> Human Rights Committee, Communication No. 1347/2005, *Dudko v. Australia*, par. 7.4.

<sup>52</sup> General Comment No. 32, par. 39.

<sup>53</sup> *Id.*

“[e]quality before courts and tribunals also requires that similar cases are dealt with in similar proceedings. If, for example, exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of certain categories of cases, and reasonable grounds must be provided to justify the distinction.”<sup>54</sup>

It is reported that an investigation in a similar case of alleged tax evasion would primarily have focused on the company that was suspected of evading taxes. Such a company would have received a request to submit its audit reports to the tax authorities, and have the opportunity to explain and refute any concerns the tax authority might have had. Should there have been evidence of tax evasion, the company would have been held liable, rather than the owner(s) of the company. The case would have been dealt with via administrative rather than criminal proceedings.

As the Petitioner was denied his right to obtain the examination of witnesses on his behalf, which is critical for ensuring an effective defence, and his case has not been treated equally before courts and tribunals as similar cases, it is clear that there has been a violation of the Petitioner’s right to equality before courts and tribunals, as set out in Article 14 ICCPR and the principles in Article 10 UDHR.

**B.3 The detention of the Petitioner constitutes a Category III arbitrary detention because it violates his right to a fair and public hearing by a competent, independent and impartial tribunal (Article 14 ICCPR, Article 10 UDHR)**

It is reported that the hearing of the Petitioner’s appeal was not accessible for any other person than his wife and mother. Interested persons who gathered outside the court were banned from the court room.<sup>55</sup>

This is a clear violation of the Petitioner’s right to a fair and public hearing in a criminal case against him as set out in Article 14 ICCPR and Article 10 UDHR. General Comment No. 32 clarifies that:

“[a]ll trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. [...]”<sup>56</sup>

Article 14(1) ICCPR provides that under circumstances the press and the public may be excluded from a court hearing:

“[...] [t]he press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or

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<sup>54</sup> General Comment No. 32, par. 14.

<sup>55</sup> See for example Lawyers for Lawyers, *Vietnam Appeal Court upholds sentence Le Quoc Quan* (19 February 2014), <http://www.advocatenvooradvocaten.nl/8817/vietnam-appeal-court-upholds-sentence-le-quoc-quan/>; Front Line Defenders, *Update: Vietnam -Sentencing upheld in appeal trial of Le Quoc Quan* (18 February 2014), <http://www.frontlinedefenders.org/node/25050>.

<sup>56</sup> General Comment No. 32, par. 28.

when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice [...].”

These are, however, exceptional circumstances, and apart from such circumstances, a hearing must be open to the general public.<sup>57</sup>

The appeal proceedings took four hours and the court rendered its judgment half an hour later.<sup>58</sup> Taking into account the seriousness of the offence of tax evasion and the often complex nature of evidence in tax evasion cases, the signatory organisations submit that the short period of time taken by the court to assess the case and reach a verdict indicates either that the court was not competent, not independent, or not impartial.

This is in contravention of the Petitioner’s right to a fair trial by a competent, independent and impartial tribunal as set out in Article 14(1) ICCPR. The requirement of independence refers, among others, to the actual independence of the judiciary from political interference by the executive branch and legislature.<sup>59</sup> The requirement of impartiality is twofold. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other.<sup>60</sup> Second, the tribunal must also appear to a reasonable observer to be impartial.<sup>61</sup> The requirement of competence, independence and impartiality of a tribunal in the sense of article 14 (1) ICCPR is an absolute right that is not subject to any exception.<sup>62</sup>

By failing to conduct the appeal proceedings in public and properly assess the case against the Petitioner, it is clear that the Petitioner’s right to a fair and public hearing by a competent, independent and impartial tribunal as set out in Article 14 ICCPR and recognised in Article 10 UDHR has been violated.

#### **B.4 The detention of the Petitioner constitutes a Category III arbitrary detention because it violates his right to be tried without undue delay (Article 14(3)(c) ICCPR, BPPP Principle 38)**

On 7 May 2014, the Petitioner submitted a cassation appeal in his case. However, as set out above, it is common in Viet Nam for cassation appeals to be pending for years while the appellant remains in detention. This is due to the fact that a cassation appeal will only be heard once a request for review of a judgment has been granted. The Vietnamese Criminal Procedure Code does not set a time limit for decisions on such requests.

Article 14(3) ICCPR prescribes that in the determination of a criminal charge against him, the

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<sup>57</sup> General Comment No. 32, par. 29.

<sup>58</sup> PEN America, *Le Quoc Quan’s Appeal Rejected* (19 February 2014), <http://worldvoices.pen.org/rapid-action/2014/02/19/le-quoc-quans-appeal-rejected>.

<sup>59</sup> General Comment No. 32, par. 19.

<sup>60</sup> General Comment No. 32, par. 21. See also Human Rights Committee, Communication No. 387/1989, *Karttunen v. Finland*, par. 7.2.

<sup>61</sup> General Comment No. 32, par. 21.

<sup>62</sup> General Comment No. 32, par. 19. See also Human Rights Committee, Communication No. 263/1987, *Gonzalez del Rio v. Peru*, par. 5.2.



accused shall be entitled to certain minimum guarantees. One of these minimum guarantees is that the accused shall be tried without undue delay (Article 14(3)(c) ICCPR). This guarantee relates to all stages: whether in first instance or on appeal, a trial must take place “without undue delay.”<sup>63</sup> This right is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and to ensure that their deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.<sup>64</sup> In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.<sup>65</sup>

As the Petitioner was denied bail, and has no prospect of his cassation appeal being heard, the signatory organisations submit that the failure to decide without undue delay on the Petitioner’s cassation appeal is in violation of his right to be tried without undue delay as set out in Article 14(3)(c) ICCPR.

### **B.5 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to bail under Article 9(3) ICCPR**

On 29 December 2013, Mr Quan’s wife applied for bail on his behalf. The request was sent to Hanoi’s people Procuracy and the Division of Economic and Power Abuse Crime Investigation of the Hanoi Department of Public Security. The request was however never addressed by either of these bodies.

Article 9 ICCPR prescribes that it shall not be the general rule that persons awaiting trial shall be detained in custody. The United Nations Human Rights Committee (“HR Committee”) stated in General Comment No. 35 that “detention in custody of persons awaiting trial shall be the exception rather than the rule.”<sup>66</sup>

General Comment No. 35 outlines the standard for review as follows:<sup>67</sup>

“[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law, and should not include vague and expansive standards such as “public security.” Pretrial detention [or detention pending a determination of guilt] should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. Neither should pretrial detention [or detention while innocent] be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity.” [emphasis added]

The HR Committee further specified that in each individual case, the Court should examine

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<sup>63</sup> General Comment No. 32, par. 35.

<sup>64</sup> General Comment No. 32, par. 35.

<sup>65</sup> General Comment No. 32, par. 35. See also Human Rights Committee, Communication No. 818/1998, *Sextus v. Trinidad and Tobago*, par. 7.2.

<sup>66</sup> Human Rights Committee, *Draft General Comment No. 35, Article 9: Liberty and security of person*, Human Rights Committee, U.N. Doc. CCPR/C/107/R.3 (28 January 2013) (hereinafter “General Comment No. 35”), par 39.

<sup>67</sup> *Id.*

whether available alternatives to detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.<sup>68</sup>

That deprivation of liberty should always be the exception has been reaffirmed by the HR Committee on several occasions. In General Comment No. 8, the HR Committee stated that detention of accused persons “should be an exception and as short as possible.”<sup>69</sup> This position is also frequently stated in the Human Rights Committee’s Views<sup>70</sup> and Concluding Observations.<sup>71</sup>

In its Concluding Observations on Argentina, the HR Committee reiterated that detention should be the exception and stressed that courts should examine the possibility of alternative measures.<sup>72</sup>

“[t]he State party should take measures, without delay, to reduce the number of persons held in pretrial detention and the length of pretrial detention by taking such steps as having greater recourse to precautionary measures or making greater use of bail or of electronic bracelets. The Committee reiterates that pretrial detention [or detention while presumed innocent] should not be the norm; instead it should be resorted to only as an exceptional measure and to the extent that it is necessary and consistent with due process of law and with article 9, paragraph 3, of the Covenant. There should be no offences for which it is mandatory.”

The HR Committee has determined that the relevant factors for detention should be specified in law.<sup>73</sup> However, even if the arrest and detention are lawful, detention must still be reasonable and necessary considering all individual circumstances. If this is not the case, the detention should be qualified as arbitrary. In *Hugo van Alphen v. The Netherlands*, the Committee held that:<sup>74</sup>

“[t]he drafting history of article 9, paragraph 1, confirms that “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.” [emphasis added]

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<sup>68</sup> Id.

<sup>69</sup> Human Rights Committee, *General Comment 8, Right to liberty and security of persons (Article 9)* (30 June 1982), para. 3.

<sup>70</sup> See Human Rights Committee, Communication No. 526/1993, *Hill v Spain* (2 April 1997), CCPR/C/59/D/526/1993, par. 12.3; Communication No. 432/1990, *W.B.E. v. The Netherlands* (23 October 1992), CCPR/C/46/D/432/1990, par. 6.3.

<sup>71</sup> Human Rights Committee, *Concluding observations on El Salvador* (18 November 2010), CCPR/C/SLV/CO/6, par. 15.

<sup>72</sup> Human Rights Committee, *Concluding observations on Argentina* (31 March 2010), CCPR/C/ARG/CO/4, par. 16.

<sup>73</sup> General Comment No. 35, par. 39, cited above.

<sup>74</sup> Human Rights Committee, Communication No. 305/1988, *Hugo van Alphen v. The Netherlands* (23 July 1990), CCPR/C/39/D/305/1988.

It is clear that the Vietnamese authorities have failed to take all of the individual circumstances of the Petitioner's case into account. By failing to consider and reply to the request for bail or to examine alternative measures, the Vietnamese authorities failed to apply the appropriate standards as it is obliged to do under international law and the ICCPR in particular. The Vietnamese authorities have therefore violated their obligations under the ICCPR, specifically those regarding Articles 9 and 14, by denying the Petitioner bail on the stated grounds.

For these reasons, the detention of the Petitioner is rendered arbitrary under Category II and III.

**V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

As set out in the update to the First Petition (Annex 2), the Petitioner was convicted of evading corporate income tax on 2 October 2013 and was sentenced to 30 months imprisonment and a fine of 1.2 billion dong (approximately USD 59,000).<sup>75</sup> His trial began and ended on 2 October 2013.<sup>76</sup> Mr Quan appealed his conviction. The conviction and sentencing were upheld on appeal.<sup>77</sup>

On 7 May 2014, the Petitioner filed a cassation appeal, which is his only remaining domestic recourse.<sup>78</sup> This should not be considered an effective domestic remedy as cassation appeals can remain pending for years (see also A.3 above).

**VI. REQUESTED ACTION FROM THE WORKING GROUP**

For the reasons set out above, the detention of the Petitioner is rendered arbitrary under Categories II and III. The Petitioner therefore requests the Working Group to:

- (a) render an opinion that the detention of the Petitioner is arbitrary for being in contravention to Article 19, 21, 22 and 25 of the ICCPR and Article 19, 20 and 21 of the UDHR and therefore falls within Category II of the categories of arbitrary

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<sup>75</sup> BBC, *Vietnam dissident Le Quoc Quan jailed over tax evasion* (2 October 2013), <http://www.bbc.co.uk/news/world-asia-24361701>.

<sup>76</sup> Id.; see also Radio Free Asia, *Vietnamese Dissident Meets Family Members for First Time Since Arrest* (8 October 2013), <http://www.rfa.org/english/news/vietnam/le-quoc-quan-10082013143855.html>.

<sup>77</sup> See for example Human Rights Watch, *Vietnam: Quash Conviction of Le Quoc Quan. Appeal Court Should Free Lawyer to Honor UN Rights Council Promises* (17 February 2014), <http://www.hrw.org/news/2014/02/16/vietnam-quash-conviction-le-quoc-quan>.

<sup>78</sup> PEN International, *Viet Nam: Appeal of prominent blogger and human rights lawyer Le Quoc Quan rejected* (19 February 2014), <http://www.pen-international.org/newsitems/viet-nam-appeal-of-prominent-blogger-and-human-rights-lawyer-le-quoc-quan-rejected/>.

detention defined by the Working Group;

- (b) render an opinion that the detention of the Petitioner is arbitrary due to failure by the Government of Viet Nam to ensure the Petitioner's rights to a fair trial guaranteed by Articles 9 and 14 of the ICCPR and by Articles 9 and 10 of the UDHR and therefore falls within Category III of the categories of arbitrary detention defined by the Working Group;
- (c) recommend that the Government of Viet Nam release the Petitioner and withdraw the tax evasion charges, and provide just compensation to him for the arbitrary detention that he suffered; and
- (d) request that the Government of Viet Nam take such other steps as are necessary to prevent further violations of the Petitioner's freedom to participate in public life and his rights to freedom of expression, association and assembly as recognised and guaranteed by the ICCPR and the UDHR.

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