

TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr. Malick Sow (Senegal)

Ms. Shaheen Ali (Pakistan)

Mr. Vladimir Tochilovsky (Ukraine)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

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**

30 August 2013

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Response to Government of Viet Nam’s comments concerning the Petition filed on behalf of  
Mr Le Quoc Quan on 13 March 2013

Submitted by:

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On behalf of:

Lawyers’ Rights Watch Canada  
Lawyers for Lawyers  
Access Now  
Media Defence – Southeast Asia  
Electronic Frontier Foundation  
Reporters Without Borders  
Frontline Defenders  
English PEN  
Avocats Sans Frontières Network  
Index on Censorship  
Article 19

To the UN Working Group:

We thank you for your e-mail of 29 August 2013, transmitting the response of the Government of Viet Nam to our Petition concerning the arbitrary detention of Mr Le Quoc Quan, which was filed with your Working Group on 13 March 2013. We welcome the opportunity provided by the Working Group to respond to Viet Nam's comments within the Working Group's current session.

Our observations concerning the Government of Viet Nam's comments are as follows.

The signatory organisations would like to reaffirm the information submitted in the original Petition and underline that none of the information included in the Government's comments counters the statements of facts and conclusions in law contained in the Petition.

The Government of Viet Nam appears to deny that the situation of Mr Quan constitutes arbitrary detention by, amongst others, pointing to the various orders and decisions issued by the Vietnamese authorities in the course of Mr Quan's arrest and detention (see, for example, paragraph 3.2 and 4 of the Government's comments). The signatory organisations submit that the mere adherence to some form of procedure does not preclude the Working Group from finding that Mr Quan's detention falls within Category II and III of the categories of arbitrary detention as defined by the Working Group. Nor does adherence to the procedural or substantive requirements of domestic law extinguish individual rights protected by the ICCPR and the UDHR or discharge a State's obligation to ensure such rights.

First, as outlined in detail in the Petition, and specifically its section IV, subsections B.1-B.5, Mr Quan was arrested and detained for exercising his right to freedom of opinion and expression, right to freedom of association and the right to take part in the conduct of public affairs. The mere fact that the Government of Viet Nam formally provided other reasons for his prosecution, in this case "tax evasion", as evidenced by the Government's statements in paragraph 3.1 of its comments, which are ostensibly intended to give credibility to these charges, does not undermine this submission. Without any conclusive evidence underlying the comments made about Mr Quan's alleged tax evasion, the Government's statements cannot be taken at face value, nor do they discredit the signatory organisations' submission that these charges, often used by the Government of Viet Nam to silence those critical of the government (see section IV, subsection B.1 of the Petition), were used in the case of Mr Quan to prevent him from exercising his rights under Article 19, 21, 22 and 25 ICCPR and Article 19, 20 and 21 UDHR.

Second, as also outlined in detail in section IV, subsections B.1-B.5 of the Petition, it is clear that Mr Quan's fair trial rights were not respected throughout his period in detention. Contrary to what the Government of Viet Nam contends in paragraph 3.3 of its comments,

repeated requests were made by both Mr Quan's family and his lawyers to visit him in his place of detention. These requests were consistently denied. An example of a denial of a request for family visitation, dated 5 May 2013, is attached as Annex 1A and Annex 1B. Mr Quan's wife, Nguyen Thi Thu Hien, has formally complained about the authorities' refusal to allow family visits on numerous occasions. An example of one such formal complaint, filed on 29 May 2013, is attached as Annex 2. No family visits have been allowed until this very day. All requests by Mr Quan's counsel to visit him were denied until he was finally allowed access to his client during an interrogation in March 2013.

Third, the mere fact that Mr Quan was allowed to have counsel present during interrogations, as pointed out by the Government in paragraph 4 of its comments, does not meet the requisite standard under international human rights law that a detainee should have time and facilities for the preparation of his defence and the right to communicate with counsel without any restriction (see section IV, subsection B.4 of the Petition). Presence of counsel during interrogations only, clearly falls short of the guarantees provided under Article 14 ICCPR and 11 UDHR. Moreover, Mr Quan's lawyers were not allowed access to any of the investigative reports that were drafted after these interrogations, nor were they allowed access to any of the case documents until the investigations were concluded.

Fourth, the failure to release Mr Quan pending the determination of the current charges appears to constitute a violation of his Article 9 ICCPR right to liberty and his Article 14.2 ICCPR right to the presumption of innocence. The UN Human Rights Committee has determined in its General Comment No. 32 that "no guilt can be presumed until the charge has been proved beyond a reasonable doubt."<sup>1</sup> The Committee also noted in *Albert Womah Mukong v. Cameroon* that:

"The 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, lack of predictability and due process of law...this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances... Remand in custody must further be necessary in all the circumstances."<sup>2</sup>

The signatory organisations know of no circumstances that make the pretrial detention of Mr Quan appropriate, necessary or reasonable.

Finally, the signatory organisations would like to point out that the Government of Viet Nam has continued violating Mr Quan's fair trial rights in the period following the submission of his Petition to your Working Group. One example at hand is the last-minute postponement of

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<sup>1</sup> UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, par. 30.

<sup>2</sup> UN Human Rights Committee, *Womah Mukong v. Cameroon*, Communication No. 458/1991, CCPR/C/51/D/458/1991, 10 August 1994, par. 9.8.

Mr Quan's trial, which was due to take place on 9 July 2013. As the Government outlines in paragraph 5 of its comments, the trial was called off only the day before, on 8 July 2013. Under Article 194 of the Vietnamese Criminal Procedure Code, a new trial date should have been set within 30 days thereafter. No new trial date has been determined until today, almost two months after the trial was scheduled to take place and was cancelled.

In light of the foregoing and the submissions made in the Petition of 13 March 2013, the signatory organisations respectfully request that the Working Group move forward with its consideration of Mr Quan's case and take action as requested in Section VI of the Petition.

Should any additional information be helpful for the Working Group in its consideration of Mr Quan's Petition, please don't hesitate to contact us.

On behalf of Lawyers' Rights Watch Canada, Lawyers for Lawyers, Access Now, Media Defence – Southeast Asia, Electronic Frontier Foundation, Reporters Without Borders, Frontline Defenders, English PEN, Avocats Sans Frontières Network, Index on Censorship and Article 19,

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