

PETITION 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

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

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

EXECUTIVE SUMMARY

This Petition request the United Nations Working Group on Arbitrary Detention to rule that the arrest and detention of Petitioner Mr. Le Quoc Quan amount to arbitrary detention.

The Petitioner is a qualified lawyer, active blogger and human rights defender. On his popular blog he exposes human rights abuses commonly ignored by Vietnamese State media. In 2008, Mr. Quan was the recipient of the Hellman/Hammett award for his writing on civil rights, political pluralism and religious freedom. Prior to being disbarred in 2007, the Petitioner defended human rights cases in court. Mr. Quan was arrested on 27 December 2012 and has been charged with tax evasion pursuant to Article 161 of the Vietnamese Penal Code. He was detained incommunicado for the first two months and had access to counsel only twice.

Despite constitutional guarantees affirming the right to freedom of opinion and expression, association and the participation in political affairs, reports demonstrate a systematic suppression of these fundamental rights by the Government of Viet Nam. Given Vietnam's recent propensity to fabricate charges such as "tax evasion" in order to suppress fundamental human rights, the Petitioner submits that the charges have been brought against him for the purpose of prosecuting him for the lawful exercise of the rights conferred to him by the International Covenant of Civil and Political Rights and also reflected in the United Nations Declaration on Human Rights.

In arresting the Petitioner for the lawful exercise of his right to freedom of opinion and expression (Article 19 ICCPR and UDHR), freedom of association (Article 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), the arrest and detention fulfil the Category II criteria for arbitrary detention. The violation of the Petitioner's right to a fair trial (Article 14 ICCPR and Article 11 UDHR) make that the arrest and detention also fulfil the criteria for Category III arbitrary detention.

Therefore, the Petitioner respectfully submits that the Working Group render an Opinion requesting the Government of Viet Nam to terminate his arbitrary detention and bring the situation in conformity with the principles set forth in the International Covenant on Civil and Political Rights.

BASIS FOR REQUEST

The Petitioner 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.

The Petitioner has 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 (Article 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).

For the reasons stated herein, the Petitioner's arrest and detention violate the fundamental guarantees enshrined in international law and constitute Category II and Category III arbitrary detention as defined by the Working Group on Arbitrary Detention. He should be immediately released from detention.

Therefore, the Petitioner hereby requests that the Working Group on Arbitrary Detention 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.

MODEL QUESTIONNAIRE

The signatory organisations have endeavoured to present all information requested in the Model Questionnaire, but limited access to the Petitioner and his own limited access to information about the reasons for his arrest and/or basis for his ongoing detention, 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 this Working Group in this regard.¹ Unless otherwise indicated, the family and supporters of the Petitioner have supplied the information

¹ 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.' Working Group on Arbitrary Detention, *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, 48th 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: UN Working Group on Arbitrary Detention, *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+)).

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: a) Issued by b) On c) No.	a) Ministry of Public Security in Hanoi b) 4 March 2011 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:	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 home, specifically around 300m from his car garage. ²
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):	State media reports that Mr. Quan is indicted under Article 161 of the 1999 Viet Nam Penal Code (tax evasion) ³ . See also the arrest warrant in <u>Annex 1</u> .

² 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>.

³ Tuoi Tre News, *Le Quoc Quan detained for tax evasion* (30 December 2012), [http://tuoiitrenews.vn/cmmlink/tuoiitrenews/business/le-quoc-quan-detained-for-tax-evasion-1.95439](http://tuoitrenews.vn/cmmlink/tuoiitrenews/business/le-quoc-quan-detained-for-tax-evasion-1.95439).

III. DETENTION

Date of detention:	27 December 2012
Duration of detention (if not known, probable duration):	2 months and ongoing
Forces holding the detainee under custody:	Public Security of Hanoi (under the Ministry of Public Security, Government of the Socialist Republic of Viet Nam)
Places of detention (indicate any transfer and present place of detention):	Hoa Lo No. 1 Prison, Hoan Kiem District, Hanoi, Viet Nam
Authorities that ordered the detention:	State authorities, details not known
Reasons for the detention imputed by the authorities:	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

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

This section presents an overview of the broader context in which the arrest and detention of the Petitioner took place, introduces his background, and summarises the most relevant facts of his arrest and his detention. We respectfully refer the Working Group to the responses to sections I (Identity), II (Arrest), and III (Detention) of the Model Questionnaire on pages 4-6 of this Petition for additional information in this regard.

A.1 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 who seek to exercise these freedoms

The Constitution of the Socialist Republic of Viet Nam (“the Constitution”) protects the right to participate in public affairs, and freedom of expression, thought, religion, and association.⁴

The Constitution provides under Article 69 for freedom of opinion, press, information, assembly, association and demonstration:

⁴ *Constitution of the Socialist Republic of Viet Nam* (15 April 1992), <http://www.unhcr.org/refworld/docid/3ae6b573c.html>.

‘The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.’⁵

However, according to reports from a wide range of sources, including numerous UN bodies, in recent years Viet Nam has instead systematically suppressed these fundamental rights and imposed significant limitations on the right to freedom of expression. Independent or privately owned media is prohibited.⁶

The First Universal Periodic Review concerning Viet Nam took place in May 2009.⁷ One of the underlying documents, the compilation of UN information prepared by the Office of the High Commissioner for Human Rights, stated:

‘38. The Special Rapporteur on the right to freedom of opinion and expression transmitted allegations concerning imprisonment of authors of articles on democracy. The Special Representative of the Secretary-General on human rights defenders transmitted allegations concerning attacks, arrests and imprisonment of pro-democracy and human rights activists, who were allegedly ill-treated while in detention.

(...)

40. The HR Committee was concerned at reports of the extensive limitations on the rights to freedom of expression in the media and the fact that the Press Law does not allow the existence of privately owned media. It recommended Viet Nam to put an end to restrictions on freedom of expression and that the press laws should be brought into compliance with article 19 of the ICCPR.’⁸

The Human Rights Watch World Report 2013, in its chapter on Viet Nam provides the following information with regard to developments in 2012:

‘The Vietnam government systematically suppresses freedom of expression, association, and peaceful assembly, and persecutes those who question government policies, expose official corruption, or call for democratic alternatives to one-party rule. Police harass and intimidate activists and their family members. Authorities

⁵ Ibid.

⁶ Human Rights Watch, *World Report 2012: Vietnam*, <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>.

⁷ *Report of the Working Group on the Universal Periodic Review, Viet Nam*, Human Rights Council, 12th Sess., UN Doc A/HRC/12/11 (5 October 2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf?OpenElement>.

⁸ *Compilation prepared by the Office of the High Commissioner for Human Rights*, Human Rights Council, 5th Sess., UN Doc A/HRC/WG.6/5/VNM/2 (16 March 2009), par. 38-40, http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_2_E.pdf.

arbitrarily arrest activists, hold them incommunicado for long periods without access to legal counsel or family visits, subject them to torture, and prosecute them in politically pliant courts that mete out long prison sentences for violating vaguely worded national security laws.

(...)

Repression of Rights Activists

During 2012, the Vietnam government used vaguely defined articles in the penal code that criminalize exercise of civil and political rights to send at least 33 activists to prison and arrest at least another 34 political and religious advocates. At least 12 other rights campaigners detained in 2011 were still being held, awaiting trial at this writing.⁹

In its 2012 World Report, Human Rights Watch states:

‘The government does not allow independent or privately-owned domestic media to operate and exerts strict control over the press and internet. Criminal penalties apply to authors, publications, websites, and Internet users who disseminate materials deemed to oppose the government, threaten national security, reveal state secrets, or promote "reactionary" ideas. The government blocks access to politically sensitive websites, requires internet cafe owners to monitor and store information about users’ online activities, and subjects independent bloggers and online critics to harassment and pressure.’¹⁰

These observations are confirmed by Amnesty International in its Annual Report 2012 with regard to developments in 2011:

‘Harsh repression of dissidents continued, with severe restrictions on freedom of expression, association and peaceful assembly. Critics of government policies were targeted, including social and political activists. At least nine dissident trials took place, with 20 defendants. Vaguely worded provisions of the 1999 Penal Code were used to, in effect, criminalize peaceful political and social dissent. The government continued to censor the internet, although use of social networking sites reportedly increased as people used circumvention tools to bypass restrictions. Dozens of prisoners of conscience remained in prison. Religious and ethnic groups perceived to be opposing the government continued to face human rights violations. (...)

(...)

⁹ Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam>.

¹⁰ Human Rights Watch, *World Report 2012: Vietnam*, <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>.

Repression of dissent

Severe restrictions on freedom of expression and association continued, with dissidents critical of government policies harshly repressed. Individuals most at risk included pro-democracy activists, and those calling for reform or protesting about environmental issues, land and labour rights, and the rights of ethnic and religious minorities. The authorities used vaguely worded provisions of the national security section of the 1999 Penal Code, in particular Article 79 (aiming to “overthrow” the state) and Article 88 (“conducting propaganda” against the state), to punish peaceful dissent. (...)’¹¹

According to Amnesty International the repression of dissent has continued in 2012 and 2013:

‘In 2012 alone, dozens of peaceful dissidents were imprisoned, with many sentenced to long prison terms in trials that failed to meet international standards.

(...)

The crackdown on freedom of expression has continued in 2013. On 9 January, 13 peaceful activists were sentenced to between three and 13 years’ imprisonment on charges of undertaking “activities aimed at overthrowing” the government. The Vietnamese authorities suspect them of having ties to the US-based political party Viet Tan, a group calling for peaceful reform in Viet Nam, but which Viet Nam’s government labels as a terrorist organisation.’¹²

With regard to Viet Nam’s criminal justice system, Human Rights Watch reported with regard to 2012:

‘Police brutality, including torture in detention and fatal beatings, continued to be reported in all regions of the country in 2012. At least 15 people died in police custody in the first 9 months of the year, according to state-controlled media.

Vietnamese courts lack independence since they are firmly controlled by the government and the Vietnam Communist party, and trials of political and religious dissidents fail to meet international fair trial standards. Police intimidate, and in some cases detain, family members and friends who try to attend trials or publicly display dissenting views during court proceedings.

¹¹ Amnesty International, *Annual Report 2012: Vietnam*, <http://www.amnesty.org/en/region/viet-nam/report-2012>.

¹² Amnesty International, *David Cameron should call for release of prisoners of conscience in Viet Nam as top party official visits UK* (23 January 2013), <http://www.amnesty.org/en/for-media/press-releases/david-cameron-should-call-release-prisoners-conscience-viet-nam-top-party-o>.

Vietnamese law continues to authorize arbitrary “administrative detention” without trial. Under Ordinance 44 (2002) and Decree 76 (2003) persons deemed threats to national security or public order can be placed under house arrest, involuntarily committed to mental health institutions, or detained at “re-education” centers.¹³

In 2012 Human Rights Watch reported:

‘Political and religious detainees and others whose cases are considered sensitive are frequently tortured during interrogation, held incommunicado prior to trial, and denied family visits and access to lawyers. Vietnamese courts remain under the firm control of the government and the Vietnam Communist party, and lack independence and impartiality. Political and religious dissidents are often tried without the assistance of legal counsel in proceedings that fail to meet international fair trial standards. Defense lawyers who take on politically sensitive cases are intimidated, harassed, debarred, and imprisoned.’¹⁴

This is reflected in a number of declarations of arbitrary detention relating to political activists in Viet Nam made by this Working Group.

Most recently in Petition number 46/2011 the Working Group found the government of Viet Nam to be in contravention of Articles 9, 10, 20 and 21 of the UDHR and Articles 9, 14, 22, and 25 of the ICCPR, falling within arbitrary detention categories II and III, when seven land activists were arrested, detained incommunicado, tried and convicted for associating with and participating in activities in support of an opposition party and sentenced to between two and eight years in prison. The detainees were convicted in a one-day closed trial, faced violations of their right to counsel and were denied access to their case files.¹⁵

In Petition number 24/2011, the Working Group found the government of Viet Nam in contravention of Articles 9 and 19 of the ICCPR, falling within category II arbitrary detention when a legal activist in Viet Nam was sentenced to seven years in prison and three years of probation on charges of propaganda against the government after bringing lawsuits against the Vietnamese prime minister for human rights violations. The detainee alleges his trial was plagued by irregularities and lasted only half a day.¹⁶

¹³ Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam>.

¹⁴ Human Rights Watch, *World Report 2012: Vietnam*, <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>.

¹⁵ UN Working Group on Arbitrary Detention, *No. 46/2011, Communication addressed to the Government concerning Tran Thi Thuy, Pham Ngoc Hoa, Pham Van Thong, Duong Kim Khai, Cao Van Tinh, Nguyen Thanh Tam and Nguyen Chi Thanh* (24 June 2011), [http://unwgdatabase.org/un/Document.aspx?id=2798&terms=\(+Viet+Nam+\)](http://unwgdatabase.org/un/Document.aspx?id=2798&terms=(+Viet+Nam+)).

¹⁶ UN Working Group on Arbitrary Detention, *No. 24/2011, Communication addressed to the Government concerning Cu Huy Ha Vu* (28 February 2011), [http://unwgdatabase.org/un/Document.aspx?id=2806&terms=\(+Viet+Nam+\)](http://unwgdatabase.org/un/Document.aspx?id=2806&terms=(+Viet+Nam+)).

Journalistic activity and blogging are heavily curtailed by the Vietnamese government. In the recently published World Press Freedom Index 2013, Viet Nam ranks among the ten countries that respect press freedom the least (no. 172 out of 179 countries).¹⁷ According to Reporters Without Borders, which publishes the ranking, at least 31 citizen journalists and 2 journalists are currently jailed in Viet Nam.¹⁸

Numerous measures curtail journalistic freedom, including a law that requires journalists to pay damages to people allegedly harmed by articles written (even when the assertions in the articles are true), as well as the government practice of imposing disciplinary sanctions on foreign journalists when they cover politically sensitive topics.¹⁹ The Internet has been a primary target for government crackdowns. Since 2008, Internet use and particularly blogosphere activity in Viet Nam have been monitored by a dedicated agency. Internet cafés are required to record personal information and browsing activity of their customers.²⁰ For these reasons online journalists and bloggers such as Le Quoc Quan are particularly vulnerable to interrogation, arrest, and detention in respect of their online activities.²¹

Lately, the crackdown by the Vietnamese government has intensified. The well-known non-governmental organisation Article 19, which reports on freedom of speech internationally, recorded a recent decree in Viet Nam on online activity:

‘Vietnam, already infamous for its recent crackdown on bloggers, is further tightening its grip on free speech by putting forward a new decree to regulate online activity. The decree is problematic in that it requires all online users to use their real names and personal details, which in turn will create an environment of self-censorship. The decree also mandates for Internet companies to locate servers and offices inside the country, thereby placing them directly under Vietnamese law.’²²

Freedom House has also as recently as 31 December 2012 put out a “freedom alert” on the basis that it ‘condemns the recent escalation in the persecution of free speech advocates in Viet Nam, and calls for the release of several bloggers who have been unjustly imprisoned for shining a light on corruption and human rights abuses.’²³

There have been numerous incidents of individuals who are bloggers, journalists or political activists who have spoken critically about the state and were arbitrarily detained. For

¹⁷ Reporter Without Borders, *Press Freedom Index 2013*, <http://en.rsf.org/press-freedom-index-2013,1054.html>.

¹⁸ See <http://en.rsf.org/press-freedom-barometer-netizens-imprisoned.html?annee=2013>. Viet Nam ranks third after China and Oman.

¹⁹ Freedom House, *Freedom of the Press: Vietnam*, <http://www.freedomhouse.org/country/vietnam>.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Article 19, *Vietnam: Internet decree or Internet-phobia?* (21 June 2012), <http://www.article19.org/resources.php/resource/3341/en/vietnam:-internet-decree-or-internet-phobia>.

²³ Freedom House, *Vietnam Renews Attack on Free Expression Online* (31 December 2012), <http://www.freedomhouse.org/article/vietnam-renews-attack-free-expression-online>.

example, on 24 September 2012, a trial took place in the prosecution of three bloggers Nguyen Van Hai (popularly known by his pen name “Dieu Cay”), Tạ Phong Tan and Phan Thanh Hai for “conducting propaganda against the Socialist Republic of Viet Nam” according to Article 88, Section 2 of the 1999 Penal Code.

Dieu Cay was a former member of the Vietnamese army who became an outspoken blogger. He was a co-founder of the independent Free Journalists Network in Vietnam.²⁴ Dieu Cay wrote blog articles about the territorial dispute between China and Viet Nam, and the human rights situation in Viet Nam.²⁵ He exposed government corruption and called for freedom of expression, through his Yahoo 360 blog. He was one of the first Vietnamese to criticise China’s decision to incorporate the Paracel and the Spratly Islands---which were also claimed by Viet Nam.²⁶ He was sentenced to 12 years of prison and five years of house arrest.²⁷

Tạ Phong Tan was a former policewoman who became a lawyer and an outspoken blogger. She wrote numerous articles on social issues, such as the mistreatment of children, official corruption, unfair taxation of poor people, grievances in relation to illegal land confiscations by local officials, and abuse of power by the Vietnamese police.²⁸ She was a co-founder of the independent Free Journalists Network in Vietnam. Tạ Phong Tan’s mother was reported to have committed suicide by self-immolation in protest to the hardships suffered by her daughter.²⁹ She was sentenced to 10 years of prison and five years of house arrest.³⁰

Phan Thanh Hai, wrote under the pen name “Anhbasg” or “Anh Ba Sai Gon.”³¹ He was also a co-founder of the independent Free Journalists Network in Vietnam.³² He wrote articles promoting government transparency, freedom of expression, and freedom of association.³³ When he finished his legal studies in 2008, and fulfilled all requirements to become a lawyer, the Justice Ministry still turned down his application due to his participation in protests and his blog writings.³⁴ He was sentenced to four years in prison and three years of house arrest.³⁵

²⁴ Radio Free Asia, *Jailed Blogger ‘Loses Arm’* (27 July 2011), <http://www.rfa.org/english/news/vietnam/blogger-07272011172815.html>.

²⁵ Ibid.

²⁶ Global Voices Advocacy, *Free Blogger Dieu Cay* (22 October 2010), <http://advocacy.globalvoicesonline.org/2010/10/22/free-blogger-dieu-cay>.

²⁷ BBC News Asia, *Vietnam jails dissident bloggers* (24 September 2012), <http://www.bbc.co.uk/news/world-asia-19697905>.

²⁸ Human Rights Watch, *Vietnam: Immediately Release Rights Bloggers* (16 April 2012), <http://www.hrw.org/news/2012/04/16/vietnam-immediately-release-rights-bloggers>.

²⁹ English PEN, *[Vietnam] Mother of detained blogger dies in self-immolation protest* (2 August 2012), <http://www.englishpen.org/vietnam-mother-of-detained-blogger-dies-in-self-immolation-protest/>.

³⁰ Amnesty International, *Viet Nam: Bloggers’ shameful jail sentences aim to stifle free speech* (24 September 2012), <http://www.amnesty.org/en/for-media/press-releases/viet-nam-bloggers-shameful-jail-sentences-aim-stifle-free-speech-2012-09-24>.

³¹ Human Rights Watch, *Vietnam: Immediately Release Rights Bloggers* (16 April 2012), <http://www.hrw.org/news/2012/04/16/vietnam-immediately-release-rights-bloggers>

³² Radio Free Asia, *Jailed Blogger ‘Loses Arm’* (27 July 2011), <http://www.rfa.org/english/news/vietnam/blogger-07272011172815.html>.

³³ ³³ Human Rights Watch, *Vietnam: Immediately Release Rights Bloggers* (16 April 2012), <http://www.hrw.org/news/2012/04/16/vietnam-immediately-release-rights-bloggers>.

³⁴ Ibid.

In its 2013 World Report, Human Rights Watch states that the Vietnamese authorities also widely used Article 88 of the 1999 Penal Code (conducting Propaganda against the State) to silence bloggers and rights activists:

‘ (...) In October, musicians Tran Vu Anh Binh and Vo Minh Tri (also known as Viet Khang) were sentenced to a total of 10 years in prison for writing songs critical of the regime. In August, bloggers Dinh Dang Dinh and Le Thanh Tung were sentenced to six and five years in prison respectively. In June and July, labor rights activist Phan Ngoc Tuan in Ninh Thuan province and land rights activists Nguyen Kim Nhan, Dinh Van Nhung, and Do Van Hoa in Bac Giang province were sentenced to a total of eighteen-and-a-half years in prison for conducting propaganda against the State for storing and distributing pro-democracy documents and leaflets. In March and May, five Catholic activists—Vo Thi Thu Thuy, Nguyen Van Thanh, Dau Van Duong, Tran Huu Duc, and Chu Manh Son—were jailed for a total of 17 years and 9 months for distributing pro-democracy leaflets, reduced to the total of 16 years and 3 months on appeal.’³⁶

The Vietnamese government also uses other vague and overly broad articles in the 1999 Penal Code to repress dissent. In its Annual Report 2012, the Vietnamese Canadian Federation states:

‘In fact, fabricated charges such as “tax evasion” and “tax fraud” are often used to silence those critical of the government. Priest Anton Le Ngoc Thanh was beaten and detained during a protest, having been accused of “causing a traffic accident”. Indeed, “tax fraud” was the initial charge against lawyer Le Quoc Quan and blogger Nguyen Van Hai when they were arrested.’³⁷

Nguyen Van Hai, also known as Dieu Cay, was jailed for two and a half years in 2008 for “tax fraud”. According to Human Rights Watch, this was widely seen as a baseless pretext to punish him for his critical blogs and political activities.³⁸

³⁵ Human Rights Watch, *Vietnam: Drop Charges Against and Release Bloggers* (20 September 2012), <http://www.hrw.org/news/2012/09/20/vietnam-drop-charges-against-and-release-bloggers>.

³⁶ Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam>.

³⁷ Vietnamese Canadian Federation, *2012 Annual Report. Violations of Human Rights in Vietnam* (December 2012), <http://vietnam.ca/pdf/VCF%202012%20Annual%20Human%20Rights%20Report.pdf>.

³⁸ Human Rights Watch, *Banned, Censored, Harassed, and Jailed* (11 October 2009), <http://www.hrw.org/en/news/2009/10/11/banned-censored-harassed-and-jailed>.

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

The Petitioner has sought to exercise his right to freedom of expression and assembly through a range of activities. He is a prominent Vietnamese human rights defender and blogger. On his popular blog he exposes human rights abuses and other issues not covered by Vietnamese state media.³⁹

The Petitioner is by profession a lawyer who graduated with a Masters degree in law from Hanoi University in 2003. From 1998-2006 he served as a consultant for numerous community-based organisations and civil society groups, including International Development Projects funded by the World Bank, the Asian Development Bank (ADB), and the Swedish International Development Agency (SIDA). He had been a member of the Hanoi Bar Association since 2002 until he was disbarred following his return to Viet Nam from the United States in 2007.

In addition to practising as a lawyer, the Petitioner has been an active blogger since 2005, writing for the BBC and many online newspapers. In 2008 he was a recipient of the 2008 Hellman/Hammett award for extensive writing on civil rights, political pluralism and religious freedom on his blog: lequocquan.blogspot.com.⁴⁰

An example of the content of his recent pre-detention blogs is as follows. On 27 November 2012 he wrote a post titled 'The Party is the grandmother of the laws', suggesting that the Communist Party of Viet Nam considered itself above the law. He called for and stressed the importance of the separation of powers and criticised the Communist Party for its total control of the government and the laws, and for being financed by taxpayers' money. He said:

'Article 46 of the Communist Party's bylaws states that "the Party's financial resources come from: membership fees, the Party's investments and government budget". Membership fee is insignificant, investments are unprofitable. The largest and most important source to finance the activities of the Party is government budget. Why does taxpayers' money go the Party? Someone once raised this question at a conference and Do Muoi [former Party General Secretary] answered: "The Party governs the people and thus it is being paid by the people". But do the Vietnamese people need the Party to govern when they already have the State? What if in the future another political party comes to power instead of the Communist Party?'

³⁹ BBC News Asia, Court appeal of dissident Vietnam bloggers is rejected (28 December 2012), <http://www.bbc.co.uk/news/world-asia-20856696>.

⁴⁰ Human Rights Watch, *Vietnam: Eight Vietnamese Writers Receive Prestigious Human Rights Prize* (23 July 2008), <http://www.hrw.org/news/2008/07/21/vietnam-eight-vietnamese-writers-receive-prestigious-human-rights-prize>.

⁴¹ Le Quoc Quan, *Dang La Ba Cua Luat Phap* (27 November 2012), <http://lequocquan.blogspot.com/2012/11/ang-la-ba-cua-luat-phap.html>.

The events leading up to his arrest on 27 December 2012 indicate that his arrest and detention relate to his blog articles on religious freedom and civil and political rights, rather than tax evasion. It is averred that because of his human rights activities the Petitioner has been under constant harassment by the Vietnamese authorities since 2007.

Before being disbarred in connection with his arrest in March 2007 on suspicion of engaging in “activities to overthrow the regime”, the Petitioner practised as a lawyer. His first arrest in 2007 followed his return from the US⁴² where he had been a Reagan-Fascell Democracy Fellow in residence at the National Endowment for Democracy in Washington, D.C. for five months, which fellowship culminated in him drafting a report entitled ‘Promoting Democracy in Vietnam: The Role of Civil Society’.

This 2007 period of detention led former United States Secretary of State Madeleine Albright, amongst others, to write to Viet Nam in protest, and Amnesty International to name him a prisoner of conscience.⁴³ He was released after a hundred days in prison, but was no longer permitted to leave Viet Nam. He was subsequently disbarred and kept under constant surveillance⁴⁴ by State officials until the December 2012 arrest. Some examples of this include the following:

- on 4 April 2011, Le Quoc Quan was arrested again, together with Dr. Pham Hong Son, after appearing outside a Hanoi courthouse to show support for dissident Cu Huy Ha Vu who was a fellow lawyer being tried for spreading propaganda against the State.⁴⁵ The Vietnamese government said that the two were detained for allegedly causing public disorder. They were released without charges;
- on 19 August 2012, the Petitioner was severely injured because of a violent attack near his house in Hanoi. He was struck by a steel baton on his knee, thigh, and back and had to recover in the hospital for a number of days. The Petitioner believed at the time that he was attacked by State agents;
- in an interview with the Associated Press news agency in September 2012, the Petitioner said that he and his family and staff had received frequent warnings from

⁴² Lawyers for Lawyers, *Le Quoc Quan, Vietnamese lawyer has been harassed constantly since 2007*, <http://www.advocatenvooradvocaten.nl/lawyers/le-quoc-quan/>.

⁴³ Amnesty International, *Prominent Vietnamese activist jailed over democracy calls* (5 April 2011), <http://www.amnesty.org/en/news-and-updates/prominent-vietnamese-activist-jailed-over-democracy-calls-2011-04-05>, and Amnesty International, *Viet Nam: Silenced critics must be released* (24 April 2007), <http://www.amnesty.org/en/library/asset/ASA41/004/2007/en/85d9a30f-d39a-11dd-a329-2f46302a8cc6/asa410042007en.html>.

⁴⁴ Lawyers for Lawyers, *Le Quoc Quan, Vietnamese lawyer has been harassed constantly since 2007*, <http://www.advocatenvooradvocaten.nl/lawyers/le-quoc-quan/>.

⁴⁵ UN Working Group on Arbitrary Detention, *No. 24/2011, Communication addressed to the Government concerning Cu Huy Ha Vu* (28 February 2011), [http://unwgadatabase.org/un/Document.aspx?id=2806&terms=\(+Viet+Nam+\)](http://unwgadatabase.org/un/Document.aspx?id=2806&terms=(+Viet+Nam+)), p. 5.

the Vietnamese authorities. Nevertheless, he pledged to carry on speaking out against the government and in support of multi-party democracy and freedom of speech; and

- in October 2012, the Petitioner's brother, Le Dinh Quan, was arrested for tax evasion. He is currently detained in Detention Center No 3 in Kien Hung. Further, his cousin, Nguyen Thi Oanh, was arrested in December 2012. She was in the early months of her pregnancy and released without charges on 4 February 2013. In early December of 2012, the Petitioner told Agence France-Presse that his family was under 'much pressure... It is terrible', with both his brother and female cousin being held in detention.⁴⁶

By reading the Petitioner's blog it is possible to obtain a far more detailed sequence of the harassment he suffered prior to his arrest. He has posted a covering letter of his formal complaint. In this document, the Petitioner set out his intention to sue the security police for continual harassment.⁴⁷ He has listed the violations and harassment that he and his family have had to endure, including notices to appear for daily interrogations, threats to submit to "administrative re-education"⁴⁸ and he has posted the actions he planned to take against the Hoan Kiem District, Hanoi security police office, including suing and filing formal complaints.⁴⁹

In December 2012, the Petitioner became very fearful for his own safety and wrote a letter, which was broadcast on Radio New Horizon on 2 January 2013, excerpts of which are as follows:

'As a dissident lawyer, I may face harassment or even imprisonment. Under the event that my freedom is compromised, I write this letter to present a number of points so that the truth cannot be distorted with inaccurate information.

1/ With my understanding of the law, I affirm that: my advocacy activities, my blogs and writing, and my words are well-intended and innocent under under (sic) Vietnamese and International law.

(...)

⁴⁶ Bangkok Post, *Vietnam detains dissident lawyer: family* (28 December 2012),

<http://www.bangkokpost.com/news/asia/328259/vietnam-detains-dissident-lawyer-family>.

⁴⁷ Le Quoc Quan, *Phan Doi Quyét Dinh Giao Duc 6 Thang Tai Phuong* (1 February 2012),

<http://lequocquan.blogspot.com/2012/02/phan-oi-quyet-inh-giao-duc-6-thang-tai.html>.

⁴⁸ Le Quoc Quan, *Don Kien Quyét Dinh Ngay 13 Thang 4 Nam 2011 Cua Cong An Quan Hoan Kiem – Thanh Pho Ha Noi* (3 February 2012), <http://lequocquan.blogspot.com/2012/02/on-kien-quyet-inh-ngay-1342011-cua-cong.html>.

⁴⁹ Le Quoc Quan, *Don So 2 – Khoi Kien Quyét Dinh Hanh Chinh Ngay 27-11-2011 Cua Cong An Quan Hoan Kiem* (8 February 2012), <http://lequocquan.blogspot.com/2012/02/on-so-2-khoi-kien-quyet-inh-hanh-chinh.html>.

I strongly believe that the day will come when we will live in a free and truly democratic society. A day when all Vietnamese people can express their views openly, with the rights to seek and pursue our happiness and success on this beloved homeland, Vietnam.’⁵⁰

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

The Petitioner was detained on the basis of his non-violent and legitimate activities in relation to a range of political and social justice issues. On the 27 December 2012 Mr. Quan was taking his child to school. He left his residence and was arrested whilst walking to his car. It is not known if he was informed at the time of his arrest, why he was being arrested. His office was subsequently ransacked and searched by the police. It is again not known if the authorities took any of Mr. Quan’s property during this search.

For two months, the Petitioner was detained incommunicado with the outside world and to counsel. At the start of his detention he was on hunger strike, which lasted for fifteen days. His attorney Tran Thu Nam has officially requested to see him several times, but was only allowed to meet his client twice: once to attend one of his interrogation sessions in the last week of February 2013, and once in the second week of March 2013.

The Petitioner has no indication of his trial date. The alleged criminal act underlying the charges against him are not known and a temporary detainment order has only recently been made available. However, given the background to this case, there are very strong reasons to believe that the Petitioner was arrested due to his role as a human rights defender.

The Petitioner has not been allowed any access to his family or the outside world other than the presence of his lawyer at one interrogation in February. His family has requested visitation and has tried to send him more supplies of food but this has been denied. As a result of his hunger strike at the beginning of his detention, the Petitioner has lost a lot of weight. The current state of his health is unknown, but is of great concern.

B. Reasons why the arrest and/or detention are arbitrary

The arrest and detention of the Petitioner is arbitrary as it falls within Categories II and III arbitrary detention as articulated by the Working Group. The following section details the reasons that the arrest and detention are 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 Petition also notes that Viet Nam has breached principles of customary international law reflected in the UDHR.

⁵⁰ The full text of the letter can be found in [Annex 2](#) to this Letter.

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)

Although the charge against the Petitioner is one of tax evasion, it is submitted that, given the history of Viet Nam detaining political prisoners (see above) and those who speak out against the political regime, and also due to the Petitioner's history as a human rights defender and blogger, the real purpose of the detention and prosecution is to punish the Petitioner for exercising his rights under Article 19 ICCPR and to deter others from doing so. This point is underlined by the previous arrests and harassment of the Petitioner.

Charges such as “tax evasion” and “tax fraud” are often used by Viet Nam to silence those critical of the government. Priest Anton Le Ngoc Thanh was detained during a protest, having been accused of “causing a traffic accident”. Tax fraud was the initial charge against blogger Nguyen Van Hai when he was arrested.⁵¹ Blogger Dieu Cay was also prosecuted for tax evasion. He wrote blogs that criticised Viet Nam's accommodationist policies to its northern neighbour, China. In 2006, he was one of the founding members of the Free Journalists Network in Viet Nam. Dieu Cay was placed under police surveillance in early 2008, prior to anti-China protests during the Olympic Torch relay in Ho Chi Minh City. He was arrested on 19 April 2008 and charged with tax fraud, widely seen as a baseless pretext to punish him for his critical blogs and political activities.⁵²

While Article 19(3) ICCPR permits certain restrictions on the freedom of opinion and expression, the Human Rights Committee expressly provided that

‘[p]aragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of his exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest (...) be compatible with article 19.’⁵³

Of particular relevance to the Petitioner is that the Human Rights Committee has determined that:

‘[t]he penalization of a (...) journalist solely for being critical of the government or

⁵¹ Vietnamese Canadian Federation, *Violations of Human Rights in Vietnam, 2012 Annual Report*, <http://vietnam.ca/pdf/VCF%202012%20Annual%20Human%20Rights%20Report.pdf>.

⁵² Human Rights Watch, *Banned, Censored, Harassed, and Jailed* (11 October 2009), <http://www.hrw.org/en/news/2009/10/11/banned-censored-harassed-and-jailed>.

⁵³ U.N.G.A., U.N. H.R. Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, U.N. Doc. No. CCPR/C/GC/34 (Sep. 12, 2011), at [23].

the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”⁵⁴

However, it is for precisely such reasons that the Petitioner was arrested and detained. The Petitioner sought to express his views and opinions on democracy, other political issues, and a wide range of human rights issues; it is averred that it is solely on this basis that he has been detained and that there is no substance to the charge of tax evasion that has been levied against him. The arrest and detention of the Petitioner therefore constitute a Category II form of arbitrary detention as it violates Article 19 ICCPR and the principles in Article 19 UDHR.⁵⁵

B.2 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to peaceful assembly and association (Article 21 and 22 ICCPR, Article 20 UDHR)

The Petitioner’s arrest and detention are also linked to his association with other individuals who oppose the regime. As described above, the Petitioner was arrested on 4 April 2011 together with Dr. Pham Hong Son after appearing outside a Hanoi courthouse to show support for a fellow lawyer being tried for spreading propaganda against the State. The arrest of Petitioner fits into an ongoing pattern of human rights violations by the Government of Viet Nam, outlined above, which has frequently involved arbitrary detention of those who express political views that oppose the Government of Viet Nam, or associate with those who oppose the Government.

The December 2012 arrest and detention of the Petitioner on these grounds also violates rights guaranteed him under the Constitution. His arrest and detention is a direct violation of Article 69 of that instrument, which provides that

‘[c]itizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law.’⁵⁶

Therefore, the arrest and detention of the Petitioner constitute a Category II form of arbitrary detention as it violates the rights guaranteed by Articles 21 and 22 ICCPR and the principles recognised by Article 20 UDHR.

⁵⁴ General Comment No. 34, Article 19: Freedoms of opinion and expression, Human Rights Committee, 102nd Sess., U.N. Doc. No. CCPR/C/GC/34 (12 September 2011) (hereinafter “General Comment No. 34”), par. 42.

⁵⁵ 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.

⁵⁶ *Constitution of the Socialist Republic of Vietnam* (15 April 1992), <http://www.unhcr.org/refworld/docid/3ae6b573c.html>.

B.3 The arrest and detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR)

The Petitioner has been arrested and detained for exercising his freedom to take part in the conduct of public affairs (Article 25 ICCPR, Article 21 UDHR). He has been detained due to his participation in activities relating to a range of political and social justice issues and his active involvement in civil society, which is set out above.

The arrest and detention of the Petitioner on this basis is a clear violation of Article 25 ICCPR, which protects the freedom of each citizen to take part in the conduct of public affairs. The Human Rights Committee has defined this conduct to include “exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves.”⁵⁷ This freedom must be able to be exercised without distinction on any basis (including political or other opinion)⁵⁸ and only objective and reasonable restrictions on this freedom are permissible.⁵⁹

The right of citizens to take part in the government of their country is also recognised by Article 21 of the UDHR. In violation of these internationally protected guarantees, the Petitioner was targeted by the State authorities in Viet Nam for arrest and detention on the basis of his expression of his political opinions. Therefore, the arrest and detention of the Petitioner constitutes Category II arbitrary detention in violation of Article 25 ICCPR and the principles in Article 21 UDHR.

The arrest and detention of the Petitioner on this basis also violates his rights guaranteed by Article 53 of the Constitution, which provides that

‘[c]itizens have the right to take part in managing the State and society, in debating on general issues of the whole country or of the locality, and make petitions or recommendation to the state offices and vote at any referendum held by the State.’⁶⁰

⁵⁷ *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)*, Office of the High Commissioner for Human Rights, 57th Sess., UN Doc CCPR/C/21/Rev.1/Add.7 (12 July 1996), <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb> (hereinafter “General Comment No. 25”) par. 8.

⁵⁸ Articles 2 and 14 of the ICCPR.

⁵⁹ General Comment No. 25, par. 4.

⁶⁰ *Constitution of the Socialist Republic of Viet Nam* (15 April 1992), <http://www.unhcr.org/refworld/docid/3ae6b573c.html>.

B.4 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to time and facilities for the preparation of his defence and to communicate with counsel of his own choosing without restriction (Article 14 ICCPR, Article 11 UDHR, BPPP Principles 15 and 18)

It is reported that the Petitioner is being held incommunicado and his legal representative has been granted access to see him only once, in the last week of February. Detention of the Petitioner under such conditions is a clear violation of Article 14 ICCPR, the principles in Article 11 UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“BPPP Principles”) 15 and 18.

Article 14(1) of the ICCPR provides that in the determination of any criminal charge, all persons ‘shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.’ Article 14(3) makes clear that such a fair trial requires that accused persons be afforded certain procedural minimum guarantees. This general principle is also reflected in Article 11 UDHR, which requires that a person charged with a penal offence be tried with all the guarantees necessary for his defence. Article 14(3)(b) ICCPR provides that the required guarantees include adequate time and facilities for the preparation of a defence and the right of the accused to communicate with counsel of his or her own choosing.

BPPP Principles 15 and 18 add to this by providing that communication with counsel ‘shall not be denied for more than a matter of days’ (Principle 15) and that the right to communicate with legal counsel is exercisable ‘without delay ... [and] may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order’ (Principle 18). While the BPPP, as a statement of principles, does not itself have independent binding legal effect, this Petition nevertheless refers to relevant principles from the BPPP because such an instrument is regarded, at the least, as having moral force and as containing an authoritative interpretation of States’ obligations under international law.⁶¹ Moreover, this Working Group has, since its inception, identified these principles as a source it will consider in determining arbitrariness of detention.⁶²

The right to access to counsel without undue delay is also recognised by the Basic Principles on the Role of Lawyers, which provide that access to a lawyer shall in any case not be later

⁶¹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly Resolution 43/173 (9 December 1988), http://www.unhchr.ch/html/menu3/b/h_comp36.htm.

⁶² Working Group on Arbitrary Detention, *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, 48th 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. 7, Annex I, A1-A14 and B1-B3. See also Working Group on Arbitrary Detention, *Fact Sheet No.26*, <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

than forty-eight hours from the time of arrest or detention.⁶³

B.5 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to communicate with the outside world, particularly with his family (BPPP Principles 15 and 19)

Prison officials have repeatedly denied visitation requests by the Petitioner's family. He has not been able to see his family, even though it is now over two months since the petitioner's arrest.⁶⁴ Detention of the Petitioner under such conditions is a clear violation of BPPP Principles 15 and 19. These Principles provide that communication with the outside world, particularly with family, "shall not be denied for more than a matter of days" (Principle 15) and that a detained or imprisoned person shall have the right to be visited by and communicate with members of his family in particular, and be given adequate opportunity to communicate with the outside world (Principle 19).

For these reasons, the detention of the Petitioner is rendered arbitrary under Category 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

The Petitioner's ability to pursue domestic remedies with legal and administrative authorities, has been limited by significant restrictions on his access to a lawyer and other non-State persons. Without such contact it has been impossible for him to pursue any domestic legal remedies to secure his release, the withdrawal of charges, or the fair determination of the accusations against him.

VI. REQUESTED ACTION FROM THE WORKING GROUP

For 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

⁶³ Article 7 of the Basic Principles on the Role of Lawyers.

⁶⁴ International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), *Viet Nam: Arbitrary detention of Mr. Le Quoc Quan* (4 January 2013), <http://www.fidh.org/Viet-Nam-Arbitrary-detention-of-Mr-12679>.

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 Article 11 of the UDHR and by Article 14 of the ICCPR 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, or ensure the charges are determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR, 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.

VII. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE):

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