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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013****No. 33/2013 (Viet Nam)****Communication addressed to the Government on 25 June 2013****Concerning Mr. Le Quoc Quan****The Government has replied to the communication.****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

3. The case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Le Quoc Quan (hereinafter Mr. Quan), born in 1971 in Nghe An Province, Vietnam, is a qualified lawyer, prominent human rights defender and the author of a widely read blog on issues of human rights, democracy and social justice. He is Director of the Viet Nam Solutions Company Ltd. At Ha Noi. In 2008, Mr. Quan was the recipient of the Hellman/Hammett award for his extensive writing on civil rights, political pluralism and religious freedom.

5. It was reported that on the morning of 27 December 2012, Mr. Quan was arrested by Police agents near his home as he was on his way to drop off his daughter at school in Ha Noi. His home and office were reportedly subsequently searched by the police.

6. The source reports that Mr. Quan was detained **incommunicado** for the first two months. At the start of his detention he was reportedly on hunger strike, which lasted for 15 days. His attorney officially requested to see him several times, but he was reportedly 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.

7. According to the information received, Mr. Quan has not been allowed any access to his family or the outside world. His family has reportedly requested visitation and has tried to send him more supplies of food but this has been denied. It is further reported that Mr. Quan has lost a lot of weight as a result of his hunger strike at the beginning of his detention, and that the current state of his health is of great concern.

8. According to the source, Mr. Quan has no indication of his trial date. He has reportedly been charged with tax evasion pursuant to article 161 of the Vietnamese Penal Code. However, the alleged criminal act underlying the charges against him is reportedly not known and a temporary detainment order has only recently been made available.

### *Previous communication from the Working Group on this case*

9. The Working Group sent an Urgent Appeal together with other Special Procedures mandate holders to the Government of Viet Nam regarding the present case, as well as other cases, on 14 January 2013. The Working Group thanks the Government of Viet Nam for having provided it with its response dated 21 March 2013.

10. In accordance with paragraph 23 of its Methods of Work (UN Doc. A/HRC/16/47, Annex), “[a]fter having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an Opinion on whether the deprivation of liberty was arbitrary or not”. Paragraph 23 further clarifies that the “Government is required to respond separately for the urgent action procedure and the regular procedure.”

*Previous periods of detention and alleged harassment of Mr. Quan and his family members*

11. Mr. Quan was a member of the Hanoi Bar Association from 2002 to 2007 and defended human rights cases in court. The source reports that his first arrest followed his return from the United States with the publication of a report on democracy in Viet Nam. He reportedly spent 100 days in detention on suspicion of engaging in “activities to overthrow the regime”. Following his release, he was reportedly no longer permitted to leave Viet Nam and he was subsequently disbarred and kept under constant surveillance by State officials.

12. According to the information received, Mr. Quan was arrested again on 4 April 2011, 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. According to the source, the Government said that the two were detained for allegedly causing public disorder. They were released without charges.

13. The source reports that on 19 August 2012, Mr. Quan was severely injured in 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 hospital for a number of days. According to the source, Mr. Quan believed at the time that he was attacked by State agents.

14. In an interview with the Associated Press news agency in September 2012, Mr. Quan reportedly said that he and his family and staff had received frequent warnings from the authorities. Nevertheless, he pledged to carry on speaking out against the government and in support of multi-party democracy and freedom of speech.

15. According to the information received, Mr. Quan’s brother, Le Dinh Quan, was arrested for tax evasion in October 2012. He is currently detained in Detention Center No 3 in Kien Hung. In addition, Mr. Quan’s cousin, Nguyen Thi Oanh, was reportedly 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, Mr. Quan 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.

16. The source contends that Mr. Quan was targeted by the State authorities in Viet Nam for arrest and detention on the basis of his expression of his political opinions and that his arrest and detention is arbitrary.

*Current status of the defendants’ detention.*

17. Mr. Quan is currently detained at the Hoa Lo Detention Center No. 1, Hoan Kiem District, Ha Noi.

*Response from the Government*

18. The Working Group thanks the response provided by the Government. Concerning the previous periods of detention and alleged harassment of Mr. Quan, the Government refers to its response dated 21 March 2013 to the joint urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, communicated to the Government on 14 January 2013.

19. In its response to the joint urgent appeal, the Government refers the following:

“Mr. Le Quoc Quan, born on 13 September 1971 in Nghe An residence in Ha Noi, is a lawyer and the Director of Viet Nam Solutions company.

In May 2006, Mr. le Quoc Quan participated in Viet Tan group’s activities. He was in custody from 09 to 18 March 2007 for investigation. On 19 March 2007, the Investigation Bureau of the Ministry of Public Security issued an order to institute and arrest Mr. Le Quoc Quan for the charge of “overthrowing the People’s administration.” On 16 June 2007, the People’s Supreme Court decided to cancel the detention measures and released him.

On 27 December 2012, the Investigation Bureau of Ministry of Public Security issued an order to arrest Mr Le Quoc Quan on tax evasion charges (article 161 of the Penal Code). Preliminary investigation shows that his Viet Nam Solutions company, established 2011, has 13 times changed the purpose of business with the last time on 06 June 2012 applying for “update, search, store, process data and provide market information.” On that legal status, Mr Le Quoc Quan sought cooperation with economic experts, gathering information for making fake contracts on hiring experts and coordinators, then claimed with tax authorities in an attempt to evade business taxes. The total tax evasion has amounted to VND 437, 500, 000. The concerned authorities continue working on this case and other implicated cases.

The arrest, detention and investigation of Mr Le Quoc Quan was carried out in strict compliance with the sequence and procedures stipulated in current Vietnamese laws, international norms and practices on human rights. The current investigation against Mr Le Quoc Quan relates to economic charges.”

20. In its response to the Working Group’s communication dated 25 June 2013, which arrived in the course of the 67th session of the Working Group, the Government pointed out that, from 2009 to 2011, “ Mr. Quan directed employees to contact and collect business and personal information of officials and economic experts for making fake expert consultation and coordination business contracts, with the purpose of formalizing the company’s “increased” input costs and then claiming the taxes with tax authorities in order to evade the company’s income taxes. The new figure of tax evasion amounts to VND 649 million, showing enough evidence of violation of Clause 3, Article 161 of the Penal Code on tax evasion”.

21. On 25 December 2012, the Investigation Bureau of Ha Noi Public Security issued an order to proceed the criminal case against, and to arrest Mr. Quan, on the tax evasion charge, in accordance with Article 161 of the Penal Code. On 27 December 2013, Mr. Quan was arrested for temporary detention.

22. The Government further reports that no request for visitation from Mr. Quan’s family was registered. Mr. Quan’s wife and his brother monthly meet and provide him with supplies. Mr. Quan uses the supplies from his family. Therefore, the information that he was on hunger strike for 15 days is groundless. He is in normal health condition.

23. The Government further reports that Mr. Quan is currently held in the temporary Detention Center No. 1 of Ha Noi Public Security. His three defense attorneys have several times been working with him. Mr. Quan’s first instance trial was scheduled to 9 July 2013.

24. The Government concludes that Mr. Quan, a lawyer who has, as such, the duty of defending laws and justice, has used sophisticated and fraudulent tricks to deceive the authorities for tax evasion. His arrest and detention have been carried out in strict compliance with the sequence and procedures stipulated in the Vietnamese laws and international norms and practices on human rights.

## Discussion

25. The Government and the source agree that Mr. Le Quoc Quan is a Vietnamese lawyer. According to the source, he is also a well-known human rights defender and has been harassed constantly since 2007 by the authorities because of his work. Mr. Quan has been on constant surveillance and has regularly been subjected to arbitrary arrest.

26. Mr. Quan was latest arrested on 27 December 2012 on charges of tax evasion, nine days after the British Broadcasting Corporation published his article entitled, “*Constitution or a contract for electricity and water service?*” This article criticized the retention of constitutional article 4, which makes the Communist Party preeminent in national life. At the moment of his arrest, the police agents refused to give a copy of the arrest warrant to his family.

27. Mr. Quan was held in **incommunicado** detention at Detention Center No. 1 in Ha Noi. He denied the charges of tax evasion considering them as unfounded. The source considers the charges to be politically motivated.

28. Considering and reading through all documentation submitted on this case, the Working Group believes that the profile of Mr. Quan is dominated by his work as a lawyer and as a human rights defender. His current detention might be the result of his peaceful exercise of the rights and freedoms guaranteed under international human rights law.

29. 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.

30. In any case, Mr. Quan’s current detention seems to be a clear violation of articles 9 and 10 UDHR, articles 9 and 14 ICCPR, 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.’

31. 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.

32. 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). The right to access to counsel without undue delay is recognized by the Basic Principles on the Role of Lawyers, which provides that access to a lawyer shall in any case not be later than forty eight hours from the time of arrest or detention.

33. Mr. Quan was held in **incommunicado** detention during the first two months of his detention. Prison officials have repeatedly denied visitation requests by Mr. Quan’s family. Detention 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).

**Disposition**

34. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The 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.

35. Consequent upon the Opinion rendered, the Working Group requests the Government to take necessary steps to remedy the situation of Mr Le Quoc 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.

36. That reparation is granted to him for the arbitrary detention that he suffered.

37. The Working Group brings to the attention of the Government, the obligations as state party to the ICCPR and to bring her laws in conformity with international law, in particular international human rights law.

*[Adopted on 30 August 2013]*

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