

UNITED NATIONS SPECIAL RAPPOREUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, MR. FRANK LA RUE

UNITED NATIONS SPECIAL RAPPOREUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION, MR. MAINA KIAI

UNITED NATIONS SPECIAL RAPPOREUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, MRS. MARGARET SEKAGGYA

With a copy to:

UNITED NATIONS SPECIAL RAPPOREUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, MRS. GABRIELA KNAUL

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13 March 2013

Regarding the matter of Mr. Le Quoc Quan and the Government of the Socialist Republic of Viet Nam - Request for Relief Pursuant to Resolutions 7/36, 16/4, 15/21, 7/8 and 16/5

EXECUTIVE SUMMARY

This Letter of Allegation respectfully requests the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the United Nations Special Rapporteur on the Situation of Human Rights Defenders (“the Joint Rapporteurs”) to investigate and intervene in the unlawful arrest and detention of lawyer, blogger and human rights defender Le Quoc Quan. The signatory organisations request the Joint Rapporteurs to declare any continuing detention of Mr. Quan a violation of his human rights.

Mr. Quan is currently arbitrarily detained by the Government of Viet Nam due to having exercised his right to freedom of expression, right to freedom of peaceful assembly and association, as well as his activities as a human rights defender.

Mr. Quan 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. Prior to being disbarred from law in 2007, Mr. Quan defended human rights cases in court.

Mr. Quan has been repeatedly harassed by State authorities because of his work. On 27 December 2012, he was arrested and charged with “tax evasion”. He has been detained incommunicado for the first two months and has had access to counsel only twice.

Mr. Quan is being prosecuted for the lawful exercise of rights conferred to him by the United Nations Declaration on Human Rights and the ICCPR. In line with the mandates of the respective Special Rapporteurs, investigation into the following violations is sought:

Violation of right to freedom of expression: Mr. Quan’s arrest and detention due to his critical blog posts violate Article 19 of the UDHR and the ICCPR, which protect the right to freedom of expression. As a party to the ICCPR since 1982, Viet Nam is obliged to guarantee this right.

Violation of the right to freedom of peaceful assembly: Mr. Quan’s history of arrests for non-violent protest suggests that his current detention stems from his affiliation with dissidents such as Cu Huy Ha Vu and Pham Hong Son. Therefore, the arrest and detention of Mr. Quan contravene Article 20 of the UDHR and Article 21 and 22 of the ICCPR.

Violation of the protection of human rights defenders: Given that Mr. Quan’s daily work specifically promotes the protection of human rights, his subsequent arrest represents a breach of his rights as outlined in the recommendations adopted in the UN Declaration on Human Rights Defenders, 1999.

Accordingly, the signatory organisations respectfully request the Joint Rapporteurs to intervene urgently to

- (1) secure the immediate release of Le Quoc Quan; and
- (2) declare Le Quoc Quan’s continuing detention a violation of his human rights.

LETTER OF ALLEGATION

To the Special Rapporteurs:

The information below is submitted on behalf of Mr. Le Quoc Quan in support of his request that the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the United Nations Special Rapporteur on the Situation of Human Rights Defenders (“the Joint Rapporteurs”) investigate and intervene in his unlawful arrest and detention and compel his urgent release from the Government of Viet Nam. A copy is sent to the United Nations Special Rapporteur on the Independence of Judges and Lawyers.

The subject of this communication is Le Quoc Quan, a Vietnamese lawyer and human rights defender who has through a blog spoken about political freedom in Viet Nam and also criticised the current political regime. On 27 December 2012 Mr. Quan was arbitrarily arrested and detained by the Viet Nam authorities. This was a clear violation of his right to freedom of expression, right to freedom of association and also concerns his status as a human rights defender. This case is indicative of a general concern with the treatment of human rights defenders in Viet Nam and the fact that Viet Nam has systematically suppressed the fundamental rights of and imposed significant limitations on the freedom of expression of its citizens.

Summary of concerns

The table below sets out the identity, facts of arrest and detainment that form the basis of the subject of this letter.

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	Qualified 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:	Le Quoc 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. ¹
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) ² . See also the arrest warrant in Annex 1 .

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

Background: recent history of repression in Viet Nam

The Constitution of the Socialist Republic of Viet Nam ("the Constitution") protects the right to participate in public affairs and the right to freedom of expression, thought, religion and association.³

¹ 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>.

² Tuoi Tre News, *Le Quoc Quan detained for tax evasion* (30 December 2012), <http://tuoitrenews.vn/cmlink/tuoitrenews/business/le-quoc-quan-detained-for-tax-evasion-1.95439>.

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

The Constitution provides under Article 69 for Freedom of Opinion, Press, Information, Assembly, Association and Demonstration:

‘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.’⁴

However, according to reports from a wide range of sources, including numerous UN bodies, in recent years Viet Nam has instead systematically and emphatically suppressed these fundamental rights and imposed significant limitations on free expression. Independent or privately owned media is prohibited.⁵

The First Universal Periodic Review concerning Viet Nam took place in May 2009.⁶ 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.’⁷

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 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

⁴ Ibid.

⁵ Human Rights Watch, *World Report 2012: Vietnam*, <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>.

⁶ *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>.

⁷ *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.

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.⁸

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.’⁹

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. (...)

(...)

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

⁸ Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam>.

⁹ Human Rights Watch, *World Report 2012: Vietnam*, <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>.

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. (...)’¹⁰

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.’¹¹

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.

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.’¹²

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

¹⁰ Amnesty International, *Annual Report 2012: Vietnam*, <http://www.amnesty.org/en/region/vietnam/report-2012>.

¹¹ 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>.

¹² Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam>.

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.¹³

This is reflected in the number of declarations of arbitrary detention relating to political activists in Viet Nam made by the United Nations Working Group on Arbitrary Detention (“UNWGAD”). Most recently, in Petition number 46/2011 the UNWGAD 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.¹⁴

In Petition number 24/2011, the UNWGAD 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.¹⁵

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).¹⁶ According to Reporters Without Borders, which publishes the ranking, at least 31 citizen journalists and 2 journalists are currently jailed in Viet Nam.¹⁷

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.¹⁸ 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

¹³ Human Rights Watch, *World Report 2012: Vietnam*, <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>.

¹⁴ 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://unwgadatabase.org/un/Document.aspx?id=2798&terms=\(+Viet+Nam+\)](http://unwgadatabase.org/un/Document.aspx?id=2798&terms=(+Viet+Nam+)).

¹⁵ 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+)).

¹⁶ Reporter Without Borders, *Press Freedom Index 2013*, http://en.rsf.org/press-freedom-index-2013_1054.html.

¹⁷ See <http://en.rsf.org/press-freedom-barometer-netizens-imprisoned.html?annee=2013>. Viet Nam ranks third after China and Oman.

¹⁸ Freedom House, *Freedom of the Press: Vietnam*, <http://www.freedomhouse.org/country/vietnam>.

are required to record personal information and browsing activity of their customers.¹⁹ 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.²⁰

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.’²¹

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.’²²

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 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 Tân and Phan Thanh Hải 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.²³ Dieu Cay wrote blog articles about the territorial dispute between China and Viet Nam, and the human rights situation in Viet Nam.²⁴ 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.²⁵ He was sentenced to 12 years of prison and five years of house arrest.²⁶

¹⁹ Ibid.

²⁰ Ibid.

²¹ 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>.

²² Freedom House, *Vietnam Renews Attack on Free Expression Online* (31 December 2012), <http://www.freedomhouse.org/article/vietnam-renews-attack-free-expression-online>.

²³ Radio Free Asia, *Jailed Blogger ‘Loses Arm’* (27 July 2011), <http://www.rfa.org/english/news/vietnam/blogger-07272011172815.html>.

²⁴ Ibid.

²⁵ Global Voices Advocacy, *Free Blogger Dieu Cay* (22 October 2010), <http://advocacy.globalvoicesonline.org/2010/10/22/free-blogger-dieu-cay>.

²⁶ BBC News Asia, *Vietnam jails dissident bloggers* (24 September 2012), <http://www.bbc.co.uk/news/world-asia-19697905>.

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.²⁷ 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.²⁸ She was sentenced to 10 years of prison and five years of house arrest.²⁹

Phan Thanh Hai wrote under the pen name “Anhbasg” or “Anh Ba Sai Gon.”³⁰ He was also a co-founder of the independent Free Journalists Network in Vietnam.³¹ He wrote articles promoting government transparency, freedom of expression, and freedom of association.³² 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.³³ He was sentenced to four years in prison and three years of house arrest.³⁴

In its 2013 World Report, Human Rights Watch states that the Vietnamese authorities 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 Nhuong, 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.’³⁵

²⁷ Human Rights Watch, *Vietnam: Immediately Release Rights Bloggers* (16 April 2012),

<http://www.hrw.org/news/2012/04/16/vietnam-immediately-release-rights-bloggers>.

²⁸ 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/>.

²⁹ 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>.

³⁰ Human Rights Watch, *Vietnam: Immediately Release Rights Bloggers* (16 April 2012),

<http://www.hrw.org/news/2012/04/16/vietnam-immediately-release-rights-bloggers>

³¹ Radio Free Asia, *Jailed Blogger 'Loses Arm'* (27 July 2011),

<http://www.rfa.org/english/news/vietnam/blogger-07272011172815.html>.

³² ³² Human Rights Watch, *Vietnam: Immediately Release Rights Bloggers* (16 April 2012),

<http://www.hrw.org/news/2012/04/16/vietnam-immediately-release-rights-bloggers>.

³³ Ibid.

³⁴ 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>.

³⁵ Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam>.

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.’³⁶

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.³⁷

Le Quoc Quan

Mr. Quan 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, Mr. Quan also has been an active blogger since 2005, writing for the BBC and many online newspapers. In 2008 he was a recipient for the 2008 Hellman/Hammett award for extensive writing on civil rights, political pluralism and religious freedom on his blog: lequocquan.blogspot.com.³⁸

An example of the content of his recent pre-detention blogs is as follows. On 27 November 2012, Mr. Quan 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

³⁶ 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>.

³⁷ 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>.

³⁸ 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>.

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

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 Le Quoc Quan 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", Mr. Quan practised as a lawyer. His first arrest in 2007 followed his return from the US⁴⁰ 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.⁴¹ 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 surveillance⁴² 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 being tried for spreading propaganda against the State.⁴³ The Vietnamese government said that the two were detained for allegedly causing public disorder. They were released without charges;
- on 19 August 2012, Mr. Quan 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. Mr. Quan believed at the time

³⁹ 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>.

⁴⁰ Lawyers for Lawyers, *Le Quoc Quan, Vietnamese lawyer has been harassed constantly since 2007*, <http://www.advocatenvooradvocaten.nl/lawyers/le-quoc-quan/>.

⁴¹ 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>.

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

⁴³ See 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.

that he was attacked by State agents;

- in an interview with the Associated Press news agency in September 2012, Mr. Quan said that he and his family and staff had received frequent warnings from 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.⁴⁴

By reading Le Quoc Quan'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, Mr. Quan set out his intention to sue the security police for continual harassment.⁴⁵ 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",⁴⁶ 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.⁴⁷

In December 2012, Mr. Quan 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.

(...)

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

⁴⁴ Bangkok Post, *Vietnam detains dissident lawyer: family* (28 December 2012),

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

⁴⁵ 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-dinh-giao-duc-6-thang-tai.html>.

⁴⁶ 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>.

⁴⁷ 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>.

openly, with the rights to seek and pursue our happiness and success on this beloved homeland, Vietnam.’⁴⁸

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.

Mr. Quan is now being held incommunicado in detention at Hoa Lo No. 1 Prison, Hoan Kiem District, Hanoi, Viet Nam. Both his lawyer and family have been denied access to him. His lawyer was finally allowed to attend one of the interrogation sessions in the last week of February. At the start of his detention he was on hunger strike, which lasted for fifteen days. Consequently, he has lost a lot of weight. The current state of his health is unknown.

The arrest warrant suggests that he has been detained under Article 161 of the 1999 Penal Code concerning tax evasion. It is plain that this is not the actual reason for his detention. Not only has Mr. Quan not been notified of any concerns with his financial affairs by the State at any stage prior to his arrest and detention, but given the background to the case, as set out above, it is highly unlikely that this is the real reason for his arrest and detention.

Moreover, 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 (Dieu Cay) when he was arrested.⁴⁹ He 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.⁵⁰ He finished his prison term in October 2010, but was immediately rearrested on charges of “conducting propaganda” against the State.

The mandate of the Special Rapporteurs

The respective mandates of the Special Rapporteurs are as follows:

(i) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Resolutions 7/36 and 16/4):

⁴⁸ The full text of the letter can be found in [Annex 2](#) to this Letter.

⁴⁹ Vietnamese Canadian Federation, *Violations of Human Rights in Vietnam, 2012 Annual Report*, <http://vietnam.ca/pdf/VCF%202012%20Annual%20Human%20Rights%20Report.pdf>.

⁵⁰ 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>.

To promote and protect the freedom of opinion and expression. The Special Rapporteur is particularly interested in receiving information relating to:

- The detention of, discrimination against, or threats or use of violence and harassment, including persecution and intimidation, directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including professionals in the field of information.
- Violations relating to the activities of political opposition parties (whether a group or an individual), and human rights defenders (e.g. lawyers, community activists).

(ii) Special Rapporteur on the rights to freedom of peaceful assembly and of association (Resolution 15/21):

To promote and protect the rights to freedom of peaceful assembly and of association – in particular, to make recommendations and to report on violations, wherever they may occur, of these rights, as well as discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals directed at persons exercising these rights, and to draw the attention of the Human Rights Council and the High Commissioner to situations of particularly serious concern.

(iii) Special Rapporteur on the situation of human rights defenders (Resolutions 7/8 and 16/5):

The protection of human rights defenders – including the protection of the defenders themselves as well as the protection of their right to defend human rights.

These mandates all apply in the case of Le Quoc Quan. His right to freedom of opinion and expression, and his right to peaceful assembly and association, have been violated through his unlawful arrest and detention. Furthermore, Mr. Quan is properly defined a ‘human rights defender’ who has sought the promotion and protection of civil and political rights in Viet Nam through his profession as a human rights lawyer, his writings and his public campaigning work. Each mandate will be addressed in greater detail in turn.

(i) Violation of Le Quoc Quan’s right to freedom of opinion and expression

Firstly, the arrest and detention of Mr. Quan as outlined above amounts to a clear violation of his right to freedom of opinion and expression as guaranteed under Article 19 UDHR and Article 19 ICCPR. The right is also recognised by Article 23 of the Basic Principles on the Role of Lawyers.⁵¹ As a party to the ICCPR since 24 September 1982, Viet Nam is obliged to guarantee this right and freedom to all its citizens.

Mr. Quan’s arrest and detention is clearly linked to his previous expressions, both as a lawyer, journalist, blogger and as a political campaigner. These activities are all legitimate and peaceful activities that constitute the fabric of civil society and are equally peaceful and

⁵¹ 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.

legitimate exercises of his right to freedom of opinion and expression.

It is a clear and established principle of international law that the right to freedom of opinion guaranteed by both Article 19 of the UDHR and Article 19 ICCPR is a fundamental right that can only be restricted under very limited circumstances. As the Human Rights Committee has stated in its General Comment 34:

‘Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.

Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.’⁵²

All forms of opinion are protected. This includes political views, which are critical of a political power, regime or ruling class. The free exchange of ideas and opinions on politics and other matters of public interest is what makes a democracy function. It is incompatible with the right to free expression to criminalise the holding of an opinion or to intimidate or stigmatise a person through arrest, detention, trial or imprisonment for reasons of the opinions they may hold.⁵³ Further, any coercion into the holding or not holding of any opinion is prohibited.⁵⁴

It is clear that the arrest and detention of Mr. Quan is being used as a mechanism to coerce and silence his right to expression and as such constitutes a flagrant violation of his right to freedom of opinion and expression.

(ii) Violation of Le Quoc Quan’s right to freedom of peaceful assembly and of association

Mr. Quan’s right to freedom of peaceful assembly and association as enshrined in Article 20 UDHR and Articles 21 and 22 ICCPR has been similarly violated. It is clear that his arrest and detention are linked to his association with other individuals who oppose the regime. For example, on 4 April 2011, Mr. Quan was arrested 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.

In October 2010, the Human Rights Council adopted Resolution 15/21 in which it expressly recognised the importance of the rights to freedom of peaceful assembly and of association to the full enjoyment of civil and political rights, and economic, social and cultural rights. The Council recognised that these rights are

⁵² 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. 2-3.

⁵³ General Comment No. 34, par. 9.

⁵⁴ General Comment No. 34, par. 10.

‘essential components of democracy, providing individuals with invaluable opportunities to, inter alia, express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities (...) and elect leaders to represent their interests and hold them accountable.’⁵⁵

In October 2012, the Human Rights Council renewed its commitment to promote and protect the rights to freedom of peaceful assembly and of association, by adopting resolution 21/16, in which it *inter alia*

- *‘Reiterat[ed]* the important role of new information and communications technologies in enabling and facilitating the enjoyment of the rights to freedom of peaceful assembly and of association, and the importance for all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries.
- *Recogniz[ed]* the importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies,
- *[Declared itself a]ware* of the crucial importance of active involvement of civil society in processes of governance that affect the life of people,
- *Remind[ed]* States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law;
- *Expresse[d]* concern at violations of the rights to freedom of peaceful assembly and of association’.⁵⁶

The right of association often dovetails with the right to freedom of expression. The UN Office of the High Commissioner for Human Rights has observed that:

‘(...) the free communication of information of and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment

⁵⁵ *Resolution 15/21 The rights to freedom of peaceful assembly and of association*, Human Rights Council, 15th Sess., UN Doc. A/HRC/RES/15/21 (6 October 2010), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>, preamble.

⁵⁶ *Resolution 21/16 The rights to freedom of peaceful assembly and of association*, Human Rights Council, 21st Sess., UN Doc. A/HRC/RES/21/16, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/63/PDF/G1217463.pdf?OpenElement> (11 October 2012). See also <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>.

and respect for the rights guaranteed in articles 19, 21 and 22 of the [ICCPR], including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.⁵⁷

The UN has already expressed concern over Viet Nam's use of broad criminal law provisions to suppress freedom of speech, peaceful assembly and association. For example, the UNWGAD has held in cases very similar to Mr. Quan's (i.e. where individuals have been detained on the basis of expression of their beliefs) that such detentions were arbitrary and contrary to Viet Nam's obligations under international human rights law, as discussed above in this Letter.

It is plain from this case and others that there is an ongoing pattern of human rights violations by the Government of Viet Nam 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 treatment of Mr. Quan is clearly an example of this ongoing situation, which is inarguably a violation of international law.

(iii) Le Quoc Quan's work as a Human Rights Defender

Although there is no specific definition of who is a human rights defender, the Declaration on Human Rights Defenders refers to 'individuals, groups and associations... contributing to... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals'.⁵⁸ The guidance on 'Who is a defender?' by the Special Rapporteur states that 'the most obvious human rights defenders are those whose daily work specifically involves the promotion and protection of human rights, for example (...) human rights lawyers.'⁵⁹

It is plain that Mr. Quan is a human rights defender. He qualified as a lawyer, graduating with a Masters degree in law from Hanoi University in 2003. Whilst undertaking his work as a lawyer he criticised the Government of Viet Nam for its violations of human rights abuses and worked tirelessly to try and defend and promote the rights of the people of Viet Nam.

Outside of his work as a lawyer and prior to his arrest, Mr. Quan spoke out widely on the need for Viet Nam to observe its human rights obligations and publicised his concerns about human rights abuses by the Vietnamese Government, in both media interviews and in regular posts on his blog⁶⁰ for which he received the 2008 Hellman/Hammett award for extensive

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>, par. 25.

⁵⁸ *Resolution 53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, United Nations General Assembly, 53rd Sess., UN Doc. A/RES/53/144 (8 March 1999), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

⁵⁹ Office of the High Commissioner for Human Rights, *Who is a defender*, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

⁶⁰ <http://lequocquan.blogspot.com>

writing on civil rights, political pluralism and religious freedom.⁶¹ Bloggers and online journalists and media workers are at increased risk of their rights being violated on the basis of the public nature of their courageous and valuable work expressing their views and reporting on current events.⁶² The Special Rapporteur has recognised that “journalists and media workers can be considered as human rights defenders when, through their activities, they promote human rights in general and strive to protect the rights of others.”⁶³

Through his work, Mr. Quan has made a major contribution to the promotion of human rights in his country. The recent example of a post, written shortly before his arrest and detention and discussed above in this Letter, underlines this point.

The UN Declaration on Human Rights Defenders⁶⁴ adopted by the General Assembly in March 1999 provides specific rights and protections to human rights defenders. They include:

- their right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international level (Art 1);
- their right to meet or assemble peacefully; to form, join and participate in non-governmental organizations, associations or groups; and to communicate with non-governmental or intergovernmental organizations (Art 5);
- their right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters (Art 6(b)-(c));
- their right to develop and discuss new human rights ideas and principles and to advocate their acceptance (Art 7);
- their right to have effective access to participation in the government of their country and in the conduct of public affairs (Art 8(1));
- their right to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, attributable to States that result in violations or affect the enjoyment of human rights and fundamental freedoms (Art 12(3)); and
- their right to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means (Art 13).

There is no doubt that Le Quoc Quan is a human rights defender, for the reasons outlined

⁶¹ 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>.

⁶² *Report of the Special Rapporteur on the situation of human rights defenders*, Human Rights Council 19th Sess., UN Doc A/HRC/19/55 (21 December 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/175/06/PDF/G1117506.pdf?OpenElement>, par. 25.

⁶³ *Ibid.*, par. 32.

⁶⁴ *Resolution 53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, United Nations General Assembly, 53rd Sess., UN Doc. A/RES/53/144 (8 March 1999), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

above and his rights under the Declaration on HRD have clearly been breached.

The Declaration on HRD further provides that the State has the responsibility to protect and implement all human rights by adopting any legal guarantees required to ensure all persons under its jurisdiction are able to enjoy those rights and freedoms in practice (Article 2). The Vietnamese authorities have failed to afford the minimum protections guaranteed under international and domestic law that are due to those in detention.

Further violations of Le Quoc Quan's human rights

No access to legal counsel

Mr. Quan has been detained incommunicado and with no access to legal counsel for over two months since he was arrested. Mr. Quan's counsel has only twice been allowed to meet his client: once to attend one of his interrogation sessions in the last week of February 2013, and once in the first week of March 2013. It is not known when he is to be tried.

This is in clear contravention of his right under the ICCPR 'to communicate with counsel of his choosing' (Article 14(3)(b)). Further, Principle 17(1) of the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment ("the BPPP") provides that 'A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.' The Human Rights Committee has made clear that the right to communicate with counsel requires that the accused be 'granted prompt access to counsel'. The Basic Principles on the Role of Lawyers provide that access to a lawyer shall in any case not be later than forty-eight hours from the time of arrest or detention.⁶⁵

No access to familial relations

Mr. Quan has also been refused permission to have contact with his family. This is in contravention of Principle 15 of the BPPP which states that 'communication of the detained or imprisoned person with the outside world and in particular his family or counsel shall not be denied for more than a matter of days'. There are only very limited exceptions to this principle (i.e. if 'exceptional needs' or 'indispensable' to security and good order).

Further, this is in contravention of Principle 19 BPPP which states that 'a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations'.

⁶⁵ Article 7 of the Basic Principles on the Role of Lawyers.

Request for urgent action

In light of the facts and circumstances outlined above, it is evident that Le Quoc Quan has been subjected to treatment that is contrary to the basic principles of international human rights law, due to having exercised his right to freedom of expression, right to freedom of peaceful assembly and association, as well as his activities as a human rights defender.

Accordingly, the signatory organisations respectfully request the Joint Rapporteurs to intervene urgently to

- (1) secure the immediate release of Le Quoc Quan; and
- (2) declare Le Quoc Quan's continuing detention a violation of his rights as recognised and guaranteed by the ICCPR and the UDHR.

Please do not hesitate to contact us if you have any questions or need any additional information.

Yours sincerely,

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