



**The Honourable Appeal Judge**

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Copy furnished:



- 1) H.E. Prime Minister Nguyen Tan Dung, Socialist Republic of Vietnam
- 2) Hon. Chief Judge Truong Hoa Binh, Supreme People's Court of Vietnam
- 3) H.E. Amb. Franz Jessen—Delegation of the European Union to Vietnam
- 4) H.E. Amb Hugh Borrowman—Australian Embassy in Vietnam
- 5) H.E. Amb. Antony Stokes—British Embassy in Vietnam
- 6) H.E. Amb. David Devine—Embassy of Canada in Vietnam
- 7) H.E. Amb. Jean-Noël Poirier—Embassy of France in Vietnam
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**Subject: Legal issues in support of Mr Le Quoc Quan's appeal against his conviction for alleged 'tax evasion'**



**Dear Hon. Appeal Judge,**

The signatory organisations wish to express their support for the appeal of Mr Le Quoc Quan against his recent conviction on charges of alleged tax evasion. In this context, we would like to highlight four important legal issues in support of Mr Quan's appeal which we hope this Honourable Court will take into consideration as it decides on the appeal of Mr Quan.



**First,** the 2 October 2013 judgment is internally inconsistent. The judgment ordered the company of Mr Quan---Solution Co., Ltd. Vietnam--- to pay a fine. This implies that the alleged 'tax evasion' was legally imputed upon the company of Mr Quan and not on Mr Quan himself. It is a fundamental principle of Vietnamese corporate law that a company has a separate and distinct personality from its directors. Since Mr Quan is not personally liable for the alleged 'tax evasion' legally imputed upon his company by the 2 October 2013 judgment, he should be acquitted.



**Second,** the signatory organisations would like to stress the importance of upholding the rule of law. The decision of this Honourable Court on Mr Quan's appeal will send an important signal to the international community on Vietnam's adherence to this principle.



It is well-known that Mr Quan has been critical of the policies of the Vietnamese government. In lawful exercise of his right to freedom of expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Mr Quan had raised public awareness on important issues such as human rights abuses, commonly ignored by Vietnamese state media. Just recently, the UN Working Group on Arbitrary Detention (UNWGAD) concluded that Mr Quan's detention and prosecution might eventually be to punish him for exercising his right to freedom of expression under Article 19 of the ICCPR. As concluded by the UNWGAD:

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.<sup>1</sup>

We fervently hope that this Honourable Court will uphold the rule of law by deciding Mr Quan's appeal based solely on the law and the proven facts, without fear of or influence from the Executive Branch of Vietnam.

**Third**, it is essential that, during the appeal, the Honourable Court ensures Mr Quan's right to a fair trial under Article 14 of the ICCPR. Vietnam is a state party to the ICCPR and the obligation to uphold and guarantee this right extends to all branches of government, including the judiciary. Now that Vietnam is a recently elected member to the UN Human Rights Council, the international community will be following Mr Quan's appeal with increased interest. This Honourable Court's decision on Mr Quan's appeal will signal to the international community the measure in which Vietnam respects international human rights standards.

Mr Quan's fair trial rights have been consistently ignored by the Lower Court. For example, the bail application Mr Quan filed on 29 December 2012 has not been resolved in writing, while the right to pre-trial release is guaranteed under Article 9 of the ICCPR. The absence of any written resolution by the Lower Court on Mr Quan's application for bail is a clear indication that he has not been accorded his right to a fair trial under international law.

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<sup>1</sup>Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013, No. 33/2013 (Viet Nam), A/HRC/WGAD/2013.

Further, one essential condition of a fair trial under international law is a public hearing. This was not fulfilled during the October 2013 trial of Mr Quan before the Lower Court. A foreign observer from signatory organization ASF Network was in Hanoi to attend the October trial of Mr Quan. Regrettably, the foreign observer was formally informed that she was not allowed to attend Mr Quan's trial. The Vietnamese public was also strictly kept outside of the October 2013 trial of Mr Quan.

Moreover, Vietnam has failed in its legal obligations to protect Mr Quan from arbitrary detention, to protect his right to liberty, to ensure his right to the presumption of innocence and his right to pre-trial release. Vietnam also failed to ensure Mr Quan's right to reparation for suffering caused by his unlawful detention. These legal duties are examined in the review prepared by signatory organization Lawyers' Rights Watch Canada, "*Statement regarding the matter of Mr. Le Quoc Quan and the Government of the Socialist Republic of Viet Nam: Violation of rights to pre-trial release.*"<sup>2</sup>

More importantly, the UNWGAD has concluded that Mr Quan's continued detention is arbitrary for contravening Articles 9 and 10 of the Universal Declaration of Human Rights and Articles 9 and 14 of the ICCPR. As concluded by the UNWGAD on Mr Quan:

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.<sup>3</sup>

**Hence**, we respectfully call upon this Honourable Court to order the immediate release of Mr Quan, or to ensure that Mr Quan's right to a fair trial is respected during the appeals process by giving him and his counsels the opportunity to be adequately heard, and by rendering an impartial judgment. In this regard, we invoke the conclusion of the UNWGAD on Mr Quan:

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.<sup>4</sup>

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<sup>2</sup><http://www.lrwc.org/ws/wp-content/uploads/2013/11/LRWC.Statement-regarding-the-matter-of-Le-Quoc-Quan.21.Nov.2013.pdf>

<sup>3</sup>Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013, No. 33/2013 (Viet Nam), A/HRC/WGAD/2013.

<sup>4</sup>Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013, No. 33/2013 (Viet Nam), A/HRC/WGAD/2013.

**Fourth,** Mr Quan’s profession as a qualified lawyer, and his activities as human rights defender and blogger in pursuit of his professional functions, must be respected by Vietnam in accordance with Principle 16 of the UN Basic Principles on the Role of Lawyers, which provides that Governments should ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”

The Honourable Court can ensure that Vietnam acts in accordance with Principle 16 of the UN Basic Principles on the Role of Lawyers by ensuring that Mr Quan is not subjected to malicious prosecution and arbitrary detention.

We petition this Honourable Court to seriously consider the legal issues highlighted in this request in deciding Mr Quan’s appeal. We ultimately petition this Honourable Court to acquit Mr Quan, in accordance with the Rule of Law and International Human Rights standards.

Most respectfully,

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