

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION

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I. INTRODUCTION

Nowadays, corruption in Viet Nam is still complicated. Anti-corruption is a very important mission, related to the development of the country and the people's trust, but it is extremely difficult and complicated because it involves material interests, money and fame related to selfish individualism. Through regional and international cooperation, Viet Nam will learn and exchange experiences to apply in Viet Nam and improve its ability to fight corruption crimes with foreign elements as well, due to Viet Nam's deep integration into the global economy. Therefore, the State of Viet Nam has done and promoted international cooperation in anti-corruption, but there is still much work that must be done in the long term. Viet Nam's participation in the United Nations Convention Against Corruption is the correct policy, affirming the strategic vision of the State of Viet Nam for combating corruption. Viet Nam is an active participant in drafting and signing the United Nations Convention Against Corruption. According to the decision of ratification in 2009, Viet Nam officially became a party to this Convention, obligated to implement the commitments expressed in the provisions of the Convention, except for those declared reservations. Over more than 10 years, a comprehensive assessment of the results achieved and outstanding problems in the implementation of the Convention is essential, creating a basis for proposing appropriate solutions for the implementation of the Convention, practically contributing to improving the effectiveness of our country's anti-corruption work in the next period.

The United Nations Convention Against Corruption (referred to as the Convention) is the first international instrument to enter into force for members on a global scale in the field of anti-corruption. The Convention consists of 8 chapters and 71 articles providing for preventive and sanctioning measures, international cooperation and recovery of corrupt assets in order to create a comprehensive legal framework to promote the fight against corruption in all members states. The negotiation, signing and adoption of the Convention affirmed the determination and high consensus for efforts to address the challenge posed by corruption for all countries. As of 6 February 2020, the Convention has 187 members, of which 181 are Member States of the United Nations (193 countries are Member States of the United Nations). The Convention is increasingly becoming one of the universal treaties as it is referenced in many bilateral and multilateral international treaties, especially in the anti-corruption commitments in free trade agreements.

As State parties of the Convention, these countries, including Viet Nam, are obligated to perform certain actions, such as building and bettering an appropriate institutional system with the requirements of the Convention (enhancing compliance, especially for mandatory requirements); raising awareness, exchanging and providing information, as well as participating in cooperation activities within the framework of the Convention, on

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the basis of conformity with basic principles of national law; participating in a mechanism to evaluate the implementation of the Convention (including self-assessment and assessing other State parties). Viet Nam has performed its obligations as a member of the Convention; However, the implementation process also poses a number of problems that need to be analysed and evaluated in order to propose solutions to further improve implementation efficiency.

Firstly, on the propagation and dissemination of the Convention and Viet Nam's law on anti-corruption: To implement the Convention effectively, it is necessary to introduce the Convention to all subjects in society, to make all officials, public servants and citizens clearly aware of the purpose, content and meaning of the Convention: There must be a consensus of awareness before acting, and people need to understand the legal regulations, have high political will and social consensus to combat negative social phenomena. Aware of this, the Vietnamese Government and authorities at all levels have taken many measures in propagating and disseminating the content of the United Nations Convention Against Corruption as well as the provisions of Vietnamese law. In ten years, Vietnamese ministries, agencies and sectors held thousands of public conferences and legal training courses on anti-corruption, and published thousands of books, magazines and promotional materials. The Government Inspectorate built a website, and the Central Internal Affairs Committee has bulletins and reports on anti-corruption. Many Vietnamese press agencies at both central and local levels set up topics, special statuses, special journals and reports on anti-corruption work. The media has also contributed to uncovering many corruption cases. Corruption cases are reported accurately and timely such as the corruption case related to the East-West Highway Project in Ho Chi Minh City and the land corruption case in Do Son, Hai Phong.

Secondly, the State has issued a series of important legal documents to fight against corruption. In particular, the National Strategy against corruption until 2020 (issued together with the Government's Resolution No. 21/NQ-CP, dated 12 May 2009) is an important document, comprehensively defining the important points, objectives, groups of solutions, as well as a clear route to carry out anti-corruption work.

Thirdly, promoting the formulation and improvement of policies and laws: More than 10 years after joining the Convention, Viet Nam has achieved positive results in perfecting policies and laws on anti-corruption in the direction of improving the level of compliance with the requirements of the Convention, especially the mandatory requirements. The improvement of policies and laws is comprehensively focused on both prevention, detection and handling of corruption. Notable results to be mentioned are the passage of the Penal Code by the National Assembly in 2015 (amended and supplemented in 2017), which stipulates that it is a crime to commit acts of corruption in enterprises and organizations in the non-state sector (including: embezzlement, accepting bribes, brokering bribes and giving bribes); and the act of giving bribes to foreign public servants, public employees of international public organizations has been criminalized.

The Law on Anti-corruption in 2018 also demonstrates the strong determination of the Party and State in the fight against corruption and demonstrates Viet Nam's commitment to improving the level of compliance with the Convention when there are challenges. Significant progress has been made in perfecting the institution on anti-corruption. The Law introduces a series of new measures based on the results of the evaluation of Viet Nam's implementation of the Convention, such as expanding the subject matter of people

with positions and powers, accompanied by corrupt acts in law, enterprises and organizations in the non-state sector (embezzlement, accepting bribes, giving bribes and brokering bribes), thereby stipulating appropriate anti-corruption mechanisms and measures effectively; strengthening the preventive measures required by the Convention, such as publicity, implementing accountability, controlling conflicts of interest in combination with a proactive mechanism to closely control assets and income of powerful people; supplying additional measures to handle violations of the law.

Fourth, raising awareness, exchanging, sharing, providing information and participating in activities within the framework of the Convention: Since becoming a State party, Viet Nam has carried out many activities to raise awareness for civil servants, public employees, businesses and people about the Convention (including information on the results of the review and assessment of the compatibility and compliance with Vietnamese laws); at the same time, Viet Nam has been exchanging, sharing and providing information on Viet Nam's anti-corruption policies, laws and enforcement to the Secretariat of the Convention and its members at official meetings.

Fifth, participating in the evaluation mechanism of the implementation of the Convention: As an assessed country, Viet Nam was recognized by the Convention Secretariat and foreign experts for its serious, straightforward and responsible implementation process, especially the preparation of the self-assessment report and the organizing of the field assessment activities. Currently, the evaluation activities on the implementation of the Convention for Viet Nam in the second evaluation cycle are about to end. Particularly in the first assessment cycle, Viet Nam is one of the earliest countries to complete the preparation of the self-assessment report and complete the assessment activities. The summary and full version of Viet Nam's national assessment report on the implementation of the Convention have been published in full on the Web Portal of the United Nations Office on Drugs and Crime (UNODC). Besides that, the assessment results in the first assessment cycle (the period 2010 – 2012) are important information for the relevant agencies of Viet Nam in the process of comprehensive revision to the 2015 Penal Code (amended and supplemented in 2017) and the 2018 Law on Anti-Corruption.

As a reviewer country, over the past 10 years, Viet Nam has been one of the member countries that has actively sent government experts to participate in the assessment for other countries. In the first review cycle, Viet Nam twice participated in the assessment for the Republic of Austria (in 2011) and China (in 2015); In the second assessment cycle, Viet Nam participated in the assessment for Solomon Islands (in 2017) and the Republic of Austria (in 2020). Experts from the Government of Viet Nam have affirmed their professional competence and professional working skills, especially in the China assessment, where experts from the Government of Viet Nam took the lead role in carrying out the assessment together with the experts from the Convention Secretariat and Bahamas. The results of experts of the Government of Viet Nam have been recognized by the partners and the Convention Secretariat, thereby contributing to affirming Viet Nam's position in multilateral cooperation forums.

However, the problems are the ability to implement the Convention by the civil servants and experts of law enforcement agencies. Unfortunately, the actual result is, there has not been a real and proactive connection between participating in activities within the framework of the Convention and improving the effectiveness of domestic law enforcement on anti-corruption.

II. RECOMMENDING SOME SOLUTIONS TO INCREASE VIET NAM'S ROLE IN INTERNATIONAL COOPERATION ON THE PREVENTION OF CORRUPTION

Firstly, it is necessary to be properly aware of the position and role of the Convention, thereby being more proactive in the process of completing and enforcing the law on anti-corruption. Similar to many other international treaties, Viet Nam affirms that it does not apply the provisions of the Convention directly but must apply those provisions in accordance with the basic principles of the domestic legal system. However, when some of the Convention's anti-corruption standards are referenced in new-generation free trade agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), it is necessary to take a more proactive stance in perfecting policies and laws in order to improve compliance with the Convention. Viet Nam has actively reviewed, planned and taken necessary steps in perfecting the institution and enforcing the law as required by the Convention. In the coming time, this work should be focused and implemented more proactively, especially in terms of ensuring the implementation of requirements related to the implementation of commitments on transparency and anti-corruption in new-generation free trade agreements such as the CPTPP.

Accordingly, it is necessary to study measures to ensure the implementation of regulations on enhancing integrity and transparency in agencies, organizations and enterprises in the State and non-state sectors (as defined in Chapter 2 of this Decree), such as controlling conflicts of interest and dealing with conflicts of interest; developing and implementing business integrity compliance programmes; measures to identify beneficial owners' benefits) because this content is attached to the commitments in Article 26.6 of the CPTPP, when the parties commit to ensure compliance with the principles of conduct of APEC (Asia-Pacific Economic Cooperation Forum) for public officials (July 2007). Similarly, it is necessary to take measures to handle the legal liability of organizations and enterprises in the non-state sector when there is an act of bribery or related to the act of bribery (Article 21 of the Convention).

In addition, the Convention also provides many provisions that are not mandatory for members, but implementation helps promote priorities in the fight against corruption in our country today, such as the mechanism for recovering corrupt assets through international cooperation in confiscating and recovering corrupt assets. These regulations need to continue to be studied to come up with specific measures to enforce in accordance with the basic principles of Vietnamese law in the near future.

Secondly, to ensure compliance with UNCAC, in the current context of increasing international cooperation, the 2015 Penal Code (amended and supplemented in 2017) has added the scope of corruption in enterprises and regional organizations in the non-state sector into the chapter on official corruption. However, the current regulations are still conflicting between the Criminal Code, the Enterprise Law, and the Anti-Corruption Law, making it difficult to apply. In the current period, corruption crimes in the private sector are on the rise. Therefore, it is necessary to have an adjustment and unification of relevant legal documents to increase criminal sanctions on corrupt crimes in the private sector, contributing to improving the effectiveness of anti-corruption work in the near future, such as internet fraud.

Thirdly, it is necessary to focus on promoting more substantive cooperation mechanisms within the framework of the Convention and consider it as a means of supporting effective enforcement of domestic laws on anti-corruption. It is necessary for Viet Nam to clearly emphasize that the performance of the obligations of members within the framework of the Convention will help Viet Nam to improve the effectiveness of law enforcement in preventing and combating corruption in the country, because this is the ultimate goal of countries when joining Conventions. Therefore, it is necessary to create a close connection between participating in activities within the framework of the Convention and the requirements on improving the effectiveness of domestic law enforcement on anti-corruption. At present, working groups have been established as mentioned above to assist State parties in implementing the Convention, especially in promoting information exchange, sharing of experiences and agreeing on implementation measures. Participating in such working groups will help members find and establish more substantive cooperation mechanisms, including bilateral cooperation mechanisms among members to remove practical difficulties or barriers. Past experience shows that, in many cases, the consideration, investigation and handling of corruption cases is often difficult or somewhat prolonged because of these obstacles. Therefore, Viet Nam can overcome this situation through promoting more substantive cooperation within the framework of the Convention.

In addition, access to State parties' updated information and data (including information on policies, laws, implementation results, difficulties, problems and practices) is shared. Sharing in the activities of working groups is very necessary for Viet Nam.

Fourth, it is necessary to focus on building the capacity of implementing the Convention for the contingent of civil servants and experts of law enforcement agencies. The results achieved in the implementation of the Convention recently have initially confirmed the professional capacity and working skills of the contingent of civil servants and experts of Vietnamese law enforcement agencies, especially the Government's expert, who participated in the implementation review mechanism of the Convention. However, it is necessary to build capacity for implementing the Convention among the contingent of civil servants and experts of law enforcement agencies to improve the effectiveness of domestic law enforcement on anti-corruption.

To overcome this situation, the contingent of civil servants and experts of law enforcement agencies must grasp the requirements and obstacles that are posed, or difficulties and advantages, in the practice of fighting against corruption in Viet Nam to proactively propose measures to promote domestic law enforcement through cooperation mechanisms within the framework of the Convention. For example, sharing difficulties in recovering corrupt assets in cases and cases with foreign elements to discuss with representatives of members within the framework of meetings of the Group on asset recovery; then finding common solutions or specific solutions with relevant members, and promoting exchange or negotiation in order to promote the process of supporting the settlement of domestic corruption cases and cases. Similarly, it is necessary to promote the exchange of information, cooperation in investigation, coordination in verification etc. among the competent authorities in order to support other law enforcement activities in the country.

Fifth, promote e-government, administrative reform, publicity and transparency in public administration; standardization of civil servant titles; building professional ethics.

Viet Nam has added regulations on the information system and national database on public investment and strengthened the monitoring, supervision, inspection and examination of public investment activities and the use of public investment capital by promoting the application of information technology in public investment management. Other important initiatives include e-Government and moving towards Digital Government, actively contributing to the fight against corruption; implementing the overall plan to simplify administrative procedures, citizenship papers and databases; establishing and publishing the national database on administrative procedures on the Internet; focusing on ethical standards and codes of conduct for people with positions and powers in agencies, organizations, such as prohibiting the giving and receiving of gifts.

Sixth, strengthen the capacity of specialized agencies in anti-corruption, especially legal proceedings agencies. The reform of self-governing bodies must be carried out synchronously, associated with public and transparent activities, and democracy implementing in society.

Seventh, promote the important role of the mass media in the supervision of the people to actively participate in the fight against corruption, especially honouring those who dare to fight against corruption.

Eighth, continue to research and propose to promulgate a new National Strategy for Anti-Corruption of Viet Nam for the next period from 2021 to 2030. It is necessary to add some stronger solutions, such as: controlling power to prevent and fight corruption; illegal property recovery; preventing and combating corruption crimes with foreign elements etc. Supplementing solutions on national assessment criteria and indicators on corruption in the direction of diversifying assessment forms to ensure accuracy and objectivity. Refer to the results of sociological investigations, official and objective assessments and recommendations of international organizations for Viet Nam's anti-corruption policy.

In order to promote the effectiveness of international cooperation in the fight against corruption in the coming time, it is necessary to implement all of the above-mentioned solutions. The most important issues are focusing on promoting more substantive cooperation mechanisms within the framework of the Convention and considering it as a means of supporting effective enforcement of domestic laws on anti-corruption and building the capacity of implementing the Convention for the contingent of civil servants and experts of law enforcement agencies. Besides that, promoting e-government, administrative reform and building professional ethics are also essential methods.