

CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES IN VIETNAM

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I. OVERVIEW

Corruption is a phenomenon that affects virtually every country in the world. Corruption not only causes serious damage to public resources but also reduces people's trust in the government and laws. Along with globalization, corruption beyond the country's borders and anti-corruption efforts have become urgent and critical missions that require joint efforts of the whole international community.

Vietnam has been promoting the fight against corruption. The guidelines, policies and laws of Vietnam express a strong determination to prevent and eliminate corruption. In 2005, the government adopted the Anti-Corruption Law, which criminalizes several types of corruption, establishes asset disclosure requirements for governmental officials, and establishes whistleblower protection. Vietnam ratified the United Nations Convention against Corruption (UNCAC) in 2009, adopting an implementation plan in the following year. The country has participated in several regional and world forums against corruption, has endorsed the Anti-Corruption Action Plan for Asia and the Pacific in July 2004, and has joined the South-East Asian Parliamentarians against Corruption (SEA-PAC).

However, Vietnam still suffers from a poor ranking in the Corruption Perceptions Index. In the 2011 Corruption Perceptions Index, which measures the perceived levels of public sector corruption, Vietnam performed below average with a score of 29 on a 0 (highly corrupt) to 100 (highly clean) scale. Vietnam ranked 112 out of 182 assessed countries worldwide and 21st out of 35 countries in the Asia Pacific region. Vietnam has performed poorly in its control of corruption, showing little or no improvement over a year. Specifically, the ranking of Vietnam in the Corruption Perceptions Index has not changed significantly from 2012 to 2013. In 2012, Vietnam ranked 123rd out of 174 assessed countries worldwide with a score of 31 on a 0 to 100 scale. The 2013 Corruption Perceptions Index sees Vietnam up just seven spots to 116th out of 177 countries and territories with the same score as 2012. In Southeast Asia, it ranks seventh behind Singapore, Brunei, Malaysia, the Philippines, Thailand, and Indonesia. Transparency International's comment that poorer countries have higher corruption rates is accurate in the case of Vietnam.

The National Anti-Corruption Strategy 2020 by the government highlighted that the system of policies and laws has not been well synchronized or well aligned; especially there is the lack of a comprehensive long-term strategy or plan for preventing and combating corruption. This

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means that, Vietnam does not have a strong judiciary and that investigation, prosecution and adjudication face many difficulties and obstacles.

II. ACTUAL CORRUPTION CASES AND PROBLEMS IN VIETNAM

A. Actual Corruption Cases

In Vietnam, corruption happens in many areas, many levels, and many industries with similarities as well as differences from corruption of other countries. Corruption is widespread, which means that it happens mainly in the economic sector, but it spreads to other areas which are considered as standards of morality, such as education, healthcare, social policy implementation, humanitarian issues and so on. Corruption even occurs in the Police, Prosecutor's Office and in Court. Sectors most affected by corruption in Vietnam are public administration; the judiciary; the police; the health sector; education; environment, natural resources and extractive industries; and land management.

In the area of management and usage of lands, minerals, and other natural resources, some people were abusing their positions and powers while on duty by acting *ultra vires*. The complexity, discretion and secrecy involved in the process of issuance of the Land User Certificate could encourage corrupt behaviour, as investors resort to paying bribes to land officials in exchange for information privileges and for expediting procedures. For example, abuse of power while on duty occurs in urban-infrastructure projects. For example, in Bac Thang Long – Van Tri, Ha Noi, damage is estimated at 14 billion VND (about 700,000 USD); another case happened in Ben Cat district, Binh Duong province, causing nearly 11 billion VND in damages. The most infamous case in Vietnam this year is Duong Chi Dung, the Chairman of the Board of the Vietnam National Shipping Lines (Vinalines Group). He raised the price of marine materials, adjusted the total price of project investment and then embezzled 1,660 billion USD.

In the field of finance and banking, some bank officials, especially in commercial banks, collude with outside persons through activities such as lending, guarantees, financial leasing, financial investment, entrusted loans, investment committees and so on to appropriate property. For instance, Huyen Nhu, Head of Dien Bien Phu Trading Division, Viettinbank – Ho Chi Minh City branch, had created eight fake seals to set up contracts, vouchers, and pay high interest to mobilize capital of organizations and individuals. He then appropriated nearly 4,000 billion VND (approximately 200 million USD). In another case, Thu Ha, Director of the northern branch of Saigon Jewelry Corporation (SJC), abused her position and power while on duty in the amount of 19 billion VND.

In the area of capital construction investment, the majority of construction projects result in financial losses because of corruption and other violations of the law. Violations occurred in most stages, from project planning, design, cost estimates to bidding, consulting, supervision, construction, testing and finalization of the project. In many cases, companies fail to comply with procedures of capital construction investment; commit fraud and lack of transparency in the bidding; use poor quality materials and equipment or use unreasonable or improper methods and processes to reduce costs. For instance, Huynh Ngoc Si, Director of Avenue East-West Project Management, Ho Chi Minh City, took a bribe of 260,000 USD to review the bid and accepted the bid to the benefit of the person offering the bribe.

In management, a major problem is the misuse of state funds and assets, and a number of people still use public property for private purposes or convert state property into private property, as in the case Bui Tien Dung, Unit Highway 18 Project Management (PMU 18), to lend ten expensive cars.

In the area of justice, some judicial officers abuse their positions and powers to accept bribes in order to remove or mitigate crime in the process of investigation, prosecution, trial and execution. For example, Ha Cong Tuan, Judge of the People's Court of Quang Ninh province, was arrested when accepting 200 million VND in bribes to mitigate a punishment for the defendant. The latest case, Le Sy Thuan, a judge's assistant in Thanh Hoa province, was prosecuted for accepting a bribe of 30 million VND to falsify evidence.

In addition to the above areas, corruption happens quite commonly in the relationship between State agencies, public officials with enterprises and individuals, such as with the traffic police, in education, in the health sector, with tax officials and so on. According to the perceptions of Vietnamese urban citizens, the police are perceived to be the sector most affected by corruption, followed by education, public officials, the judiciary and the business sector (Transparency International 2010). Citizens also often report paying between USD 10 to USD 30 as bribes to the traffic police when they violate traffic laws to avoid enforcement. In addition, nepotism and favouritism are also widespread within the police. The education sector is also perceived as one of the most corrupt sectors in Vietnam, including corruption in the construction of schools and in the provision of school books and other teaching supplies; payment of bribes by schools and teachers in exchange for awards recognizing false achievements and credentials; payment of bribes by students and parents to obtain good marks and enrolment in desired schools and classes; misappropriation of money intended for student support, among others.

B. Problems in Investigation, Prosecution and Adjudication

1. Difficulties in Identifying Corrupt Acts and Individuals

Corruption is a white-collar crime along with fraud, bribery, insider trading, cybercrime, copyright infringement, money laundering, identity theft and forgery. However, it does not mean that every police officer, prosecutor or judge can identify them. Most of corruption cases are often hidden for a long time before being discovered. Vietnam has been changing from a socialist command economy to a market economy with both private and public ownership of the factors of production. Offenders often abuse this situation to convert state money into their private money. Furthermore, corruption cases often occur in many fields of governance such as education, economics, justice, infrastructure construction and so on. It requires investigators, prosecutors, lawyers, judges and juries to have wide knowledge and skills to handle such cases. Corruption crimes are committed by people who have expert knowledge and skills in their job and wide knowledge of the law as well. So they are able to figure out loopholes that help them perform criminal acts. In Vietnam, we face many difficult problems with investigation of corruption crimes because of the lack of experts and experience.

In the case of Huyen Nhu, she is very good at finance, which allowed her to link customers in many banks, and she built an illegal lending system between them. By opening fake accounts with fake signatures, she defrauded her clients, and she made over 127 fraudulent documents;

deprived her clients of 4,000 billion VND (approximately 200 million USD) in deposit accounts of three companies, four banks and 50 billion VND of more than 30 people. This case was a typical Ponzi scheme—a fraudulent investment operation where the operator, an individual or organization, pays returns to its investors from new capital paid to the operators by new investors, rather than from profit earned by the operator. In Vietnam, people rarely know about this kind of fraud, and it was very difficult to find evidence among huge numbers of victims.

2. Difficulties in Investigation, Prosecution and Adjudication of Corruption Cases

Firstly, there are many problems in collecting and protecting evidence in corruption cases because most of these cases concern powerful leaders in government who abuse their positions and conceal their crimes. It is a fact that many corruption cases have not been discovered for this reason. Offenders often use technology to conceal their crimes. After being detected, offenders hide, falsify or destroy documents, making it difficult to collect evidence. After charging suspects, prosecutors must continue to handle evidence in such a way that it is admissible and persuasive in court. It is very important to protect evidence because it impacts whether or not corruption crimes will result in conviction. Offenders often deny guilt or keep silent in court. If evidence is not strong enough to incriminate offenders, prosecutors will lose the case.

In the case of Duong Chi Dung, he had good relationships with leaders in the government, and his brother was a senior policeman in the city in which his company was located. He committed a crime and escaped easily. He had been engaging in corruption for seven years. According to the investigation agency, the Ministry of Public Security: “this case caused serious damages, [was] very complex and affected [the] reputation of the Vietnamese government”. After being detected, he fled to Cambodia with the help of his brother and a senior officer in the Ministry of Public Security. The investigation agency arrested him by an international arrest warrant with the Interpol Notice. The Vietnamese government had lost a lot of time, effort and money to solve this case.

Secondly, another difficulty in investigating and prosecuting corruption cases is international cooperation because many corruption cases are related to foreigners or international organizations. Vietnamese police and prosecutors have to ask other countries for help to gather evidence. Much key evidence can only be collected abroad, but we do not have authority to investigate overseas so we need help from other countries. However, the results of international cooperation were not what we had expected, or it took a long time to get the results and so on. It was easier working with countries that we had entered into treaties with on Mutual Legal Assistance in Criminal Matters and Extradition than it was with countries that we had not entered into treaties with.

Also in the case Duong Chi Dung, there was key evidence that Dung signed an approval decision of buying a floating dock named 83M from Russia. He bribed intermediary companies to falsify contracts of sale and payment and then raised the price to twice the normal amount. This means that he converted state property into his private property. We had to ask for help from the Internal Affairs Department of Russia to collect this information. After arresting Dung in Cambodia, we had to have him extradited to Vietnam based on the Vietnam-Cambodia Treaty on Mutual Legal Assistance.

Thirdly, the use of expert witnesses suffers from many inadequacies because determining loss of property is the first thing to prove in a corruption case. If we cannot demonstrate damage to property, then no crime has occurred. Investigators must have financial and accounting expertise, technical expertise and quality construction expertise and so on. These are important sources of evidence to prove the crime, and sometimes they are the only source of evidence. However, agencies which are needed for their expertise are often uncooperative or are afraid of testifying in open court.

Lastly, corruption cases in Vietnam often involve accomplices, which means that there are at least two people who committed the crime. In some cases, this number can be larger. Offenders often have colluded closely using sophisticated tricks. The more people that are involved in the crime, the more successful the crime is. This problem is also difficult for investigators and prosecutors in Vietnam. In a corruption case, we have to select investigators and prosecutors who have the experience and knowledge of measures for dealing with this type of crime, but we do not have enough people who meet those requirements. Moreover, anti-corruption in Vietnam is quite sensitive, and it directly attacks powerful people in the government so that investigators and prosecutors refuse to investigate because they do not want the corrupt conspirators to retaliate against them. Additionally, some judicial officers have been bribed, and they continue to abet corruption crimes.

III. SOLUTIONS TO AND NEW IDEAS FOR ANTI-CORRUPTION IN VIETNAM

To improve preventing and combating corruption in Vietnam, we suggest the following solutions:

Firstly, it is necessary to promote education, improve awareness and establish a sense of responsibility within the Communist Party and among all citizens, the state and the unions. They should have a comprehensive and deep understanding that corruption is a crime and that it is also an indicator of degenerating morality and personality, degrading lifestyle, and is the internal enemy existing inside each person. The employees and civil servants must be trained in the courses of servant morality before working. Raising social pressure to severe criticism for corruption and reporting cases of corruption through the media is an example.

Secondly, the Government has to strive to improve its legal systems and promote the lives of public servants. We should make changes, adjustments and amend legal provisions which are inaccurate or unclear in order to minimize the abuse of loopholes. Corruption crimes must be considered as crimes; we must punish the evil to protect the good. Corruption must be punished; the higher positions and powers they have, the heavier punishment they will get when they engage in corruption; there must be no restricted areas, no exceptions.

Thirdly, Vietnam needs to have policies to protect whistleblowers and their families from defendants and violators. At present, legal protection for whistleblowers is insufficient; whistleblowers are afraid of retaliation; thus would-be whistleblowers do not dare to denounce the criminals. Likewise, it is necessary to impose strict penalties against persons responsible for their behaviour. Vietnam should have a "resignation mechanism" for those who do not deserve

to stay in office, make mistakes or are guilty of crimes. The result of Vietnam's anti-corruption efforts has been ineffective; however, no one takes responsibility or resigns as a result.

Furthermore, Vietnam should add provisions about forfeiture of corruption proceeds to the Act on Prevention and Combating Corruption. That would help to verify and trace the appropriated property in order to increase the percentage of recovered property and corruption proceeds.

Next, Vietnam must have an independent organization created and coordinated by the National Assembly which is given full rights to fight against corruption. This organization should include elite, talented, fair and responsible persons. This organization should be put under the supervision of the People, and officials of this organization can be dismissed by vote of the People.

Finally, Vietnam should reinforce international cooperation in identifying and handling corruption acts by delegating investigations or requesting foreign agencies to verify, freeze and confiscate corruption proceeds originated in those foreign countries or sent to those countries from Vietnam. Vietnam should reinforce cooperation in preventing money laundering activities, enhance mutual assistance in investigation, and detect and identify money laundering offences.

Fighting against corruption is a difficult, long-term battle that requires strategic measures. It is hoped that these measures will reverse the increasing trend of corruption in Vietnam, which will improve Vietnam's ranking in the Corruption Perceptions Index in the near future.