

ANTI-CORRUPTION IN VIETNAM

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I. INTRODUCTION

Corruption is a global challenge, a very serious matter for many countries, including Vietnam. Vietnam has to face the serious effects of corruption, specifically: great damage to property of the State, community and citizens; obstacles in the development process; effects on ethical standards; negative influence on civil servants; and a decrease in the people's trust in the State. In the face of these challenges, the State of Vietnam has taken specific actions, and expresses the determination to struggle against this type of crime. On 10 December 2003, by the order of the Prime Minister, the General Inspector of the State of Vietnam signed the United Nations Convention Against Corruption (UNCAC), affirming with the international community that Vietnam is willing to co-operate with related countries within the framework of the Convention and bilateral treaties. On 30 June 2009, the President of Vietnam signed a document approving the UNCAC and it became effective from 18 September 2009.

In its anti-corruption efforts, Vietnam has implemented many measures including policies, administrative measures and criminal settlement measures. This paper addresses only the regulations of Vietnamese criminal law against corruption and the reality of the judgments of these cases in Vietnamese courts.

II. CONCEPT OF CORRUPTION AND CORRUPT ACTS UNDER VIETNAMESE LAW

According to Article 1(2) of the Anti-Corruption Law: ¹ “‘Corruption’ means acts committed by persons with positions and/or powers which abuse such positions and/or powers for self-seeking interests.”

A. Corrupt Acts

1. Corruption: Acts committed by Persons with Positions and/or Powers

“Persons with positions and/or powers” shall include: ²

- (i) Public servants;
- (ii) Officers, professional army men, defence workers in agencies or units of the People's Army; officers, non-commissioned officers, professional-technical officers, non-commissioned officers in agencies or units of the People's Police;
- (iii) Leading, managerial officials in state enterprises; leading, managerial officials being representatives of the State's contributed capital portions at enterprises;
- (iiii) Persons assigned tasks or official duties who have powers while performing such tasks or official duties.

2. Making Corrupt use of Job Title or Rights to Commit a Crime.

Government Decree No 64/1998/ND-CP, dated 17 August 1998, detailing and guiding the implementation of the Ordinance Against Corruption:³ “Taking advantage of one's position and power is an act committed by a position and power holder who uses his/her working position, working relations, his/her agency or organization's name or uses the working position or influence of another position and power holder to gain

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¹ This Code was passed by the National Assembly of the Socialist Republic of Vietnam, XIth Legislature, at its 8th session on 29 November 2005.

² Article 1(3) of the Anti-Corruption Law.

³ The Ordinance Against Corruption was replaced by the Anti-Corruption Law.

illegal benefits or act against law.”

3. Corrupt Acts must be Motivated by Profit

Article 2(5) of the Anti-Corruption Law provides: “Self-seeking interests mean material and/or spiritual interests which are obtained or can be obtained by persons with positions and/or powers through corrupt acts.”

B. Corrupt Acts

Corrupt acts include:⁴

- Embezzling properties;
- Taking bribes;
- Abusing positions or powers to appropriate properties;
- Taking advantage of positions or powers while performing tasks or official duties for self-seeking interests;
- Abusing powers while performing tasks or official duties for self-seeking interests;
- Taking advantage of positions or powers to influence other persons for self-seeking interests;
- Committing forgeries in work for self-seeking interests;
- Offering bribes or bribe brokerage by persons with positions and/or powers to settle affairs of agencies, organizations, units or localities for self-seeking interests;
- Taking advantage of positions or powers to illegally use state properties for self-seeking interests;
- Harassment for self-seeking interests;
- Failure to perform tasks or official duties for self-seeking interests;
- Taking advantage of positions or powers to cover up law violators for self-seeking interests; illegally hindering, intervening in examinations, inspections, audits, investigations, prosecutions, adjudications or judgment executions for self-seeking interests.

**III. PENAL CODE PROVISIONS AND INSUFFICIENCY IN MEETING
REQUIREMENTS OF THE UNCAC**

A. Provisions of the Penal Code of Vietnam on Crimes of Corruption

The Penal Code of the Socialist Republic of Vietnam, approved by the 10th National Assembly on 21 December 1999, being effective as from 1 July 2000, contains a chapter (Chapter XXI) to regulate crimes relating to position (including crimes of corruption and other crimes relating to position). The crimes of corruption regulated in the Penal Code include seven articles (from Article 278 to Article 284) regulating the crime and punishment for the following crimes: embezzling property (Article 278); receiving bribes (Article 279); abusing positions and/or powers to appropriate property (Article 280); abusing positions and/or powers while performing official duties (Article 281); abusing powers while performing official duties (Article 282); abusing positions and/or powers to influence other persons for personal profits (Article 283); forgery in the course of employment (Article 284). On 19 June 2009, the 12th National Assembly approved the Law on Amendment and Supplement of some Articles of the Penal Code in order to amend, supplement, abrogate or replace some articles, items, and word phrases of the Penal Code 1999. According to the Law, the minimum amount of money to hold a person criminally responsible for embezzling property, receiving bribes, abusing positions and/or powers to appropriate property, or abusing positions and/or powers to influence other persons for personal profits increased from 500,000 dong to 2,000,000 dong.

B. Insufficiency in the Vietnamese Criminal Law

The United Nations Convention against Corruption requires the States Parties to criminalize the specified acts in the Convention from Article 15 to Article 25, consisting of bribery of national public officials; bribery of foreign public officials and officials of public international organizations; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; bribery in the private sector; embezzlement of property in the private sector; laundering of proceeds of crime; concealment; and obstruction of justice. Comparing provisions on crimes of corruption and related acts in the Vietnamese criminal law with the requirements of the UNCAC, there are some insufficiencies, outlined below.

⁴ Article 3 of the Anti-Corruption Law.

1. Illicit Enrichment

Article 20 of the UNCAC requires that each State Party, subject to its constitution and the fundamental principles of its legal system, shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

According to Article 2 of the Penal Code of Vietnam, only those persons who have committed crimes defined by the Penal Code shall bear the penal liabilities thereunder. Reviewing criminal offences established in the Penal Code of Vietnam, “illicit enrichment” has not yet been established as a criminal offence in Vietnam.

2. Bribery and Embezzlement of Property in the Private Sector

According to Article 21 and Article 22 of UNCAC, each State Party shall consider adopting such legislative and other measures as may be necessary to establish bribery and embezzlement of property in the private sector as criminal offences, when committed intentionally in the course of economic, financial or commercial activities.

Existing Vietnamese legislation has not yet admitted bribery and embezzlement of property in the private sector as a criminal offence in any legal documents.

IV. CRIMES OF CORRUPTION IN THE VIETNAMESE COURTS

According to data of the Vietnam Supreme People’s Court, from 2008 to the first three months of 2010, the courts handled 690 cases at first instance, with 1,624 offenders committing crimes of corruption, in which:

- In 2008 there were 332 cases with 789 offenders;
- In 2009 there were 302 cases with 710 offenders;
- The first three months of 2010 there were 56 cases with 125 offenders.

Among the 1,624 offenders, 36% were sentenced but placed on probation, 28% were sentenced to imprisonment for less than three years, 18% were sentenced to imprisonment for between three to seven years; 8% were sentenced to imprisonment for between seven to 15 years; and 2% were sentenced to imprisonment from between 15 to 20 years.

Among seven corruption crimes, the majority of offenders embezzled property, received bribes and abused positions and/or powers while performing official duties. Only a few offenders abused powers while performing official duties; abused positions and/or powers to influence other persons for personal profits; or committed forgery in the course of employment.

See the specific figures in the chart below.

Crime	2008	2009	First Three Months of 2010
Embezzling property	436	335	53
Receiving bribes	123	37	10
Abusing positions and/or powers while performing official duties	157	206	41
Abusing powers while performing official duties	7	23	6
Abusing positions and/or powers to influence other persons for personal profits	0	1	0
Abusing positions and/or powers to appropriate property	55	105	15
Forgery in the course of employment	11	3	0

V. CURRENT SITUATION OF AND CHALLENGES IN ANTI-CORRUPTION MEASURES

A. Investigation

A specialized investigation agency against corruption was established in Vietnam. This is the Investigation of Corruption Department of the Ministry of Public Security. The duties of this agency consist of: assisting the Director General of Police and Head of Police Agency in directing and guiding police in the investigation of corruption cases; directly investigating particularly serious corruption cases; and organizing prevention and fighting of crimes of corruption.

However, this agency is not capable enough to be relied upon. It seems that the investigators do not deal with corruption properly. This is because the Ministry of Public Security is a governmental agency and it may be open to informal influence by high-ranking officials from several levels of hierarchical bureaucracy. If the investigators do not adhere to the decision of their superiors they may lose their jobs.

B. Adjudication

Although Article 16 of the Criminal Procedure Code stipulates that: "During trial, judges and jurors are independent and abide by law only," in fact the judiciary is not sufficiently independent to make fair judgments in corruption cases. Sometimes even the judiciary itself is corrupt.

C. Low Salaries of Government Officials and Employees

Low government wages combined with weak monitoring systems are breeding grounds for corruption and misuse of public resources.

In Vietnam, public servants' incomes are insufficient for living and are relatively low or perceived as unfair in comparison to private sector salaries. The average take-home pay of an ordinary government employee is barely enough to meet their periodic expenses. For this reason, in order to ensure their daily needs, some government officials and employees have committed corrupt acts.

However, it is posited that the low salary of government employees should not be underscored as a major cause of corruption since corruption is even more rampant and on a larger scale when it comes to high-ranking officials.

D. Lack of Personnel in Anti-Corruption Agencies

Anti-corruption agencies lack personnel. Consequently, investigators, prosecutors and inspectors must deal with more than the number of cases they can effectively handle.

The lack of personnel is caused by the following main reasons: low salaries, thankless work, and a pressurized working environment with a high risk of job loss.

E. Lack of Training and Skills in Anti-Corruption Investigation, Prosecution and Adjudication

Investigators, prosecutors and adjudicators who deal with corruption cases should have deep knowledge and specialist skills. Unfortunately, most often, they merely learn the rudiments of investigation, prosecution and adjudication in their work. Therefore, they work mainly in accordance with their experience. The lack of trained personnel is due to lack of budgetary support.

F. Difficulty in Supervision and Transparency of Income and Property of Public Officials

Supervision and transparency of income and property of public officials is an effective anti-corruption measure. However, it is difficult to implement.

According to Government Decree No 64/1998/ND-CP dated 17 August 1998, detailing and guiding the implementation of the Ordinance Against Corruption, declaration forms shall be studied and referred to only in cases where declarants commit corruption acts by inspecting agencies, investigating agencies, procuracies and courts. The declaration forms shall be considered by the competent officials as one source of information before appointment or task allocation. According to this regulation, the declaration is irregularly enforced; purpose, scope and object declaration are limited. Again, if the declarants are not honest, they will not be disciplined or examined for penal liability. Consequently, prevention of corruption is not efficient.

G. Lack of Co-operation between the Citizens and the Government in Anti-Corruption Measures

In order to mount an efficient response to corruption, anti-corruption agencies should have the full co-operation of the citizenry. Unfortunately, this is not true in Vietnam. The general public does not co-operate with anti-corruption measures because of the fear of possible negative repercussions and because of the lack of encouragement. In fact, there are many cases of the general public discovering corrupt acts but they do not dare denunciate because of the fear of the retaliation. Thus, it is very important to build protection and encouragement measures for whistleblowers.

Article 55 (3) of the Criminal Procedure Code of Vietnam stipulates:

“3. Witnesses shall have the following rights:

- (a) To ask the bodies which have summoned them to protect their life, health, honor, dignity, property and other legitimate rights and interests when participating in the procedure;
- (b) To complain about procedural decisions and acts of agencies and persons with procedure-conducting competence;
- (c) To be paid by the summoning agencies the travel and other expenses as prescribed by law.”

However, this provision is too general and difficult to implement. It should be worded concretely. The Supreme People’s Court, The Supreme People’s Procuracy and Ministry of Public Security were assigned to draft a Joint Circular guiding the protection of witnesses. But, at present, it has not been published.

V. CONCLUSION

Corruption is an evil that exists not only in a specific regime or country, but in all places where power is not checked and supervised. Corruption prevention is both an urgent duty and long-term duty. In the face of more and more complex occurrences of this type of crime, Vietnam has been taking dynamic actions aiming at executing effectively the criminal law of Vietnam as well as the UNCAC. On 12 May 2009, the Prime Minister of Vietnam signed the Resolution promulgating the national strategy on corruption prevention until 2020; it further affirms the determination of Vietnam in the war against this dangerous type of crime.

APPENDIX A:
PROVISIONS OF THE PENAL CODE OF VIETNAM ON
CRIMES OF CORRUPTION

Article 278. Embezzling property:

1. Those who abuse their positions and/or powers to appropriate the property which they have the responsibility to manage and which is valued between two million dong and fifty million dong, or which is under two million dong but falls into one of the following cases, shall be sentenced to between two and seven years of imprisonment:
 - a) Serious consequences are caused;
 - b) The offenders have already been disciplined for such acts but continue to commit them;
 - c) The offenders have already been sentenced for one of the offenses stipulated in Section A of this Chapter, not yet entitled to criminal record remission but continue to commit them.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:
 - a) In an organized manner;
 - b) Employing treacherous and dangerous tricks;
 - c) Committing the offense more than once;
 - d) Appropriating property valued between fifty million dong and two hundred million dong;
 - e) Causing other serious consequences.
3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between fifteen and twenty years of imprisonment:
 - a) Appropriating property valued between two hundred million dong and five hundred million dong;
 - b) Causing other very serious consequences.
4. Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment:
 - a) Appropriating property valued at five hundred million dong or more;
 - b) Causing other particularly serious consequences.
5. The offenders may also be banned from holding certain posts for one to five years, be subject to a fine of between ten million dong and fifty million dong, the confiscation of part or whole of their property.”

Article 279. Receiving bribes:

1. Those who abuse their positions and/or power, have accepted or will accept directly or through intermediaries money, property or other material interests in any form valued between two million dong and ten million dong, or under two million dong but in one of the following circumstances in order to perform or not to perform certain jobs for the benefits or at the request of the bribe offerers, shall be sentenced to between two and seven years of imprisonment:
 - a) Serious consequences are caused;
 - b) The offenders have already been disciplined for such acts but continue to commit them;
 - c) The offenders have already been sentenced for one of the crimes stipulated in Section A, this Chapter, not yet been entitled to criminal record remission but continue to commit them.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:
 - a) In an organized manner;

- b) Abusing positions and/or powers;
 - c) Committing the offense more than once;
 - d) Knowing clearly that the bribes are the State's property;
 - e) Asking for bribes, harassing or employing treacherous tricks for bribes;
 - f) The bribe is valued between ten million dong and under fifty million dong;
 - g) Causing other serious consequences.
3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between fifteen and twenty years of imprisonment:
- a) Appropriating property valued between fifty million dong and under three hundred million dong;
 - b) Causing other very serious consequences.
4. Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment:
- a) Appropriating property with valued at three hundred million dong or more;
 - b) Causing other particularly serious consequences.
5. The offenders shall also be banned from holding certain posts for one to five years, may be subject to a fine between one and five times the value of the bribe, and/or the confiscation of part or whole of property.”

Article 280. Abusing positions and/or powers to appropriate property:

1. Those who abuse their positions and/or powers to appropriate other persons' property valued between two million dong and under fifty million dong or under two million dong but causing serious consequences, have been disciplined for such act or sentenced for one of the offenses defined in Section A, this Chapter, not yet entitled to criminal record remission but continue to commit it, shall be sentenced to between one and six years of imprisonment.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between six years and thirteen years of imprisonment:
- a) In an organized manner;
 - b) Employing perfidious and dangerous tricks;
 - c) Committing the crime more than once;
 - d) Dangerous recidivism;
 - e) Appropriating the property valued between five million and under two hundred million dong;
 - f) Causing other serious consequences.
3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between thirteen and twenty years of imprisonment.
- a) Appropriating the property valued between two hundred million dong and under five hundred million dong;
 - b) Causing other very serious consequences.
4. Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment or life imprisonment..
- a) Appropriating property valued at five hundred million dong or more;
 - b) Causing other particularly serious consequences.
5. The offenders shall also be banned from holding certain posts for one to five years, and/or may be subject to a fine of between ten million to fifty million dong.”

Article 281. Abusing positions and/or powers while performing official duties:

1. Those who, for self-seeking or other personal motivation, abuse their positions and/or powers to act contrarily to their official duties, causing damage to the interests of the State and the society and/or the legitimate rights and interests of citizens shall be sentenced to non-custodial reform for up to three years or from one year to five years of imprisonment.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and ten years of imprisonment:
 - a) In an organized manner;
 - b) Committing the offense more than once;
 - c) Causing serious consequences.
3. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between ten and fifteen years of imprisonment.
4. The offenders shall also be banned from holding certain posts for one to five years, may be subject to a fine of between three million dong and thirty million dong.”

Article 282. Abusing powers while performing official duties:

1. Those who, for self-seeking or other personal motivation, act beyond their powers contrarily to their official duties, causing damage to the interests of the State and the society, and/or to the legitimate rights and interests of citizens, shall be sentenced to between one and seven years of imprisonment.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and twelve years of imprisonment:
 - a) In an organized manner;
 - b) Committing the offense more than once;
 - c) Causing serious consequences.
3. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between ten and twenty years of imprisonment.
4. The offenders shall also be banned from holding certain posts for one to five years, may be subject to a fine of between three million dong and thirty million dong.”

Article 283. Abusing positions and/or powers to influence other persons for personal profits:

1. Those who abuse positions and/or powers, have accepted or will accept directly or through intermediaries money, property or other material interests in any form valued between two million dong and under ten million dong, or under two million dong but causing serious consequences, have already been disciplined for such act but continue to commit it, to use their influence and incite persons with positions and powers to do or not to do something within the sphere of their responsibility or directly related to their work or to do something they are not allowed to do, shall be sentenced to between one and six years of imprisonment.
2. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between six years and thirteen years of imprisonment:
 - a) In an organized manner;
 - b) Committing the offense more than once;
 - c) The money, property or other material interests are valued between ten million dong and under fifty million dong;
 - d) Causing other serious consequences.
3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between thirteen and twenty years of imprisonment:

- a) The money, property or other material interests are valued between fifty million dong and under three hundred million dong;
 - b) Causing other very serious consequences.
4. Committing the offense in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment or life imprisonment:
- a) The money, property or other material interests are valued at three hundred million dong or more;
 - b) Causing other particularly serious consequences.
5. The offenders shall also be banned from holding certain posts for one to five years, may be subject to a fine of from one to five times the amount of money or the value of the property they have earned for their personal profits.”

Article 284. Forgery in the course of employment:

1. Those who, for self-seeking or other personal motivation, abuse their positions and/or powers to commit one of the following acts, shall be sentenced to between one and five years of imprisonment:
 - a) Amending or falsifying contents of papers, documents;
 - b) Making and/or granting counterfeit papers;
 - c) Forging signatures of persons with positions and powers.
2. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:
 - a) In an organized manner;
 - b) The offenders are persons responsible for making or granting the papers and/or documents;
 - c) Committing the offense more than once;
 - d) Causing serious consequences.
3. Committing the crime and causing very serious consequences, the offenders shall be sentenced to between seven and fifteen years of imprisonment.
4. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to between twelve and twenty years of imprisonment.
5. The offenders shall also be banned from holding certain posts or doing certain jobs for one to five years, may be subject to a fine of between three million dong and thirty million dong.”

APPENDIX B

COURT SYSTEM OF THE SOCIALIST REPUBLIC OF VIETNAM

