

# CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

*Vu Thi Hai Yen\**  
*Nguyen Hoanh Dat†*

## I. INTRODUCTION

Although tremendous efforts have been made and convincing results have been achieved in anti-corruption, Viet Nam is still struggling to deal with this plague. The Vietnamese Government always reaffirms its commitment and determination to prevent and combat acts of corruption of any kind, and it utilizes various approaches to seek success. As corrupt acts increasingly have the nature of borderless crime, the country has considered international cooperation as important and effective activities, and it is now paying proper attention to this approach to not only bring the perpetrator to justice but also recover corruption-related assets. This paper will briefly discuss Viet Nam's international obligations, anti-corruption legal and institutional framework and its current international cooperation channels in connection with the fight against corruption. After that, some actual cases are introduced and analyzed to show difficulties and challenges before suggesting some solutions to better deal with the problem.

## II. VIET NAM'S INTERNATIONAL OBLIGATIONS

Viet Nam signed the United Nations Convention against Corruption (UNCAC) in 2003 and ratified it in 2009. The position of UNCAC in the Vietnamese legal system is one level below the Constitution and one level above other sources of laws. UNCAC, like any international legal instruments, can be applied directly, in whole or in part, or through incorporation into domestic laws and regulations. In addition, Viet Nam partners with international stakeholders which contribute to anti-corruption such as the Asia Pacific Group (APG), the Financial Action Task Force (FATF), etc.

## III. THE ANTI-CORRUPTION LEGAL AND INSTITUTIONAL FRAMEWORK IN VIET NAM

The institutions most relevant to the fight against corruption in Vietnam are the Central Steering Committee on Anti-Corruption, the Government Inspectorate, the Ministry of Public Security, the Supreme People's Procuracy, the Supreme Court, the State Bank of Vietnam, and the

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\* Vice Director General of the Department for International Cooperation and Mutual Legal Assistance in Criminal Matters, Supreme People's Procuracy of Viet Nam.

† Vice Head of MLA Division of the Department for International Cooperation and Mutual Legal Assistance in Criminal Matters, Supreme People's Procuracy of Viet Nam.

Vietnam Fatherland Front. Other relevant stakeholders include the National Assembly representatives, the National Lawyer Association, civil society, etc.

In terms of legislation, there are various legal documents that constitute the anti-corruption legal framework. The most important and relevant legislation is the Act on Anti-Corruption and the Penal Code. The Act on Anti-Corruption sets out policies and measures to prevent, discover and deal with corrupt conduct and stipulates the responsibility of governmental agencies, organizations and individuals in anti-corruption. The Penal Code stipulates numerous corrupt offences and punishments imposed on corruption-related acts and assets.

#### **IV. VIET NAM'S INTERNATIONAL COOPERATION CHANNELS IN THE FIGHT AGAINST CORRUPTION**

##### **A. Mutual Legal Assistance (MLA)**

MLA is regulated by the MLA Act and partly by the Criminal Procedural Code. Viet Nam has concluded several bilateral treaties on MLA with foreign countries, and it is also the member of the ASEAN Treaty on MLA. In the absence of an MLA treaty, assistance may be granted under the principle of reciprocity. The scope of assistance generally consists of things currently being applied worldwide including the transfer of criminal proceedings. Both the MLA Act of Viet Nam and MLA treaties stipulate adequately the purposes for which MLA may be granted and the content that an MLA request should contain. MLA treaties often specify that MLA requests should be executed in accordance with the procedures set out in the request, provided that they do not contradict Vietnamese laws. The spontaneous transmittal of information is allowed under Vietnamese law and is regulated by several MLA treaties. According to Vietnamese law, when refusing an MLA request, the requesting State shall be informed of the reasons for refusal. A detailed timeline for the execution of mutual legal assistance requests is set out in the MLA Act. The Act also provides for the postponement of the execution of a request if such execution would interfere with an ongoing investigation, prosecution or trial of an offence or the enforcement of a judgment in Viet Nam. Viet Nam would generally consult with requesting States prior to refusing a request, although consultations are not mandatory. The absence of dual criminality is a mandatory ground for refusing MLA requests. Confidentiality of MLA requests is respected in a manner consistent with domestic law and MLA treaties. There are no provisions in the legislation of Viet Nam permitting the hearing of witnesses by video conference; however, this kind of assistance can be granted on a case-by case basis. According to the MLA Act and MLA bilateral treaties, the Supreme People's Procuracy is designated as the Central Authority for MLA in criminal matters. Most recently, it has been designated as the Central Authority for Asset Recovery according to UNCAC. Any foreign MLA request made under an MLA treaty shall be directly sent to the Central Authority while non-treaty MLA requests should be sent to both the Central Authority and the Ministry of Foreign Affairs.

Viet Nam has executed a few MLA requests related to corruption crimes, and it has sent a number MLA requests related to corruption crimes to foreign countries. Most of these requests are to collect evidence and confiscate corrupt assets.

## **B. Extradition**

Extradition provisions are set out in the MLA Act. Extradition requests are handled in accordance with Vietnamese law, bilateral treaties on extradition, and the principle of reciprocity. Viet Nam has concluded numerous bilateral MLA treaties which also deal with extradition as well as separate treaties that solely deal with extradition. The absence of dual criminality is an optional ground for refusing extradition under Vietnamese legislation. Almost all treaties make extradition conditional on the existence of dual criminality. No foreign extradition is executed in Viet Nam if it seeks to extradite Vietnamese nationals. In such cases a domestic prosecution will be considered by the Vietnamese authorities. Recent extradition treaties contain provisions on the mandatory prosecution of non-extradited nationals at the request of the other party to the treaty. Viet Nam would also consider the enforcement of a sentence imposed in a requesting State against a national of Vietnam whose extradition is refused. The MLA Act sets out in detail the procedure to be followed and the deadlines to be met by competent authorities when deciding on extradition requests. It also permits the person sought to be taken into custody while the extradition request is considered. Moreover, the guarantees of fair treatment and respect of fundamental rights for all persons subject to criminal proceedings provided for by Vietnamese law also apply to extradition proceedings. Extraditable offences are those punishable by imprisonment of at least one year, where the remaining imprisonment term is at least six months, or by the death penalty. Viet Nam shall refuse extradition if it has reasonable grounds to believe that the person sought is being prosecuted or punished on account of his or her race, religion, sex, nationality, social status, or political opinions. The Central Authority for extradition is the Ministry of Public Security.

## **C. Transfer of Sentenced Persons**

The transfer of sentenced persons is regulated by the MLA Act. Viet Nam has concluded several bilateral treaties in this field. These legal documents provide for conditions, procedures to send, receive and execute requests for the transfer of the sentenced person.

Most recently, the Criminal Procedural Code amended in 2015 provides for international cooperation in joint investigations and special investigative techniques. In practice, Vietnamese law enforcement authorities cooperate regularly with their counterparts abroad in this matter.

## **D. INTERPOL and ASEANAPOL**

The cooperation channels of INTERPOL and ASEANAPOL are considered to be frameworks for quick and efficient exchange of information in preventing and combating crime.

# **V. CASE STUDY**

## **A. The Bio-Rad Case**

In November 2014, domestic and international newspapers reported that the United States' competent authorities were conducting an investigation against Bio-Rad Laboratories, Inc., which is accused of making improper payments to some Vietnamese government officials during its operation in Viet Nam. Reports from the media show that, during the period between 2005 and 2009, the country manager of Bio-Rad's sales representative office in Viet Nam authorized cash payments to officials at government-owned hospitals and laboratories to obtain sales contracts for Bio-Rad

products. This manager utilized a scheme that employs a middleman to make the payments to Vietnamese officials. Specifically, Bio-Rad Singapore would sell Bio-Rad products to a Vietnamese distributor at a deep discount, which the distributor would then sell to government-owned hospitals and laboratories at full price, and pass through a portion of the profit as improper payments. During the above-said period, Bio-Rad's sales representative office in Viet Nam had made improper payments of 2.2 million USD to the middleman or distributor, which was transferred to Vietnamese officials, generating a turnover of 23.7 million USD to Bio-Rad Singapore.

Dealing with this allegation, the Supreme People's Procuracy of Viet Nam (SPP) sent a letter to the US Department of Justice, asking it to share further information on the case. The US later provided the Vietnamese authorities with a report that was available on the website of the US Securities and Exchange Commission (SEC). The SEC has jurisdiction to deal with the case in the US. As the information contained in the report was insufficient, the SPP again asked the US to provide specific information on who made and received the improper payments and when/how the improper payments were conducted. The US responded by asking the Vietnamese authorities to submit a formal MLA request to the US Department of Justice and the Department of State. Up to now, there has been no response from the US side concerning this request. The SPP had several meetings with a liaison officer of the US Department of Justice located in Bangkok to deal with the request, and, in his position, he stated that it is difficult for the US to execute the request because the US law considers the information sought as confidential and that the purpose of the Vietnamese request is not clear enough as Viet Nam has not yet initiated a formal criminal investigation about the allegation.

This case study, like other cases that Viet Nam has experienced, shows some common challenges, specifically as follows:

- Differences among legal systems: Some foreign countries ask that the content of MLA requests follow their own domestic laws. It is practically and technically impossible to fulfill this requirement.

- Lack of coordination among relevant authorities: In Viet Nam, international cooperation channels and fields are in charge of various authorities. While the Ministry of Public Security handles extradition, the transfer of sentenced persons and police-to-police cooperation, the Supreme People's Procuracy deals with MLA in criminal matters and the Ministry of Justice deals with MLA in civil matters. In this regard, these institutions work quite independently, which may cause overlap or may undermine international cooperation.

- Lack of frequent meetings among law enforcement agencies of countries. Elements such as international legal instruments and mechanisms cannot themselves bring about success in international cooperation. Goodwill, friendship and willingness must be built up before countries can cooperate to deal with a criminal matter, and this is only improved through more frequent meetings among judicial practitioners.

## **VI. CONCLUSION**

Although there have been numerous things to work on, international cooperation in anti-corruption still has many opportunities to be successful, and it is strongly believed that the plague of corruption is being curbed and eradicated by the international community.