

# **IMPLEMENTATION OF AND COMPLIANCE WITH THE UNITED NATIONS CONVENTION AGAINST CORRUPTION IN VIETNAM: DIFFICULTIES AND SOLUTIONS**

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## **I. CORRUPTION IN VIETNAM**

According to Transparency International (TI) in 2018, Vietnam's Corruption Perceptions Index (CPI) has dropped by 2 points compared to 2017, to 33/100 points and ranking 117/180 countries and regions in the world.<sup>1</sup> Although Vietnam has made great efforts in fighting corruption. However, Vietnam's 33 score is still considered extremely serious. The current situation of corruption in Vietnam is bringing a lot of harm; corruption is no longer just the behaviour of an authorized person, but it is gradually spreading and becoming the behaviour of leadership of agencies. Corruption not only takes place internally within an agency, but it is also a connection with several other agencies.

According to the Supreme People's Procuracy, the results of dealing with corruption cases in 4 years in the whole country (2008-2010) are:

- 2007: prosecuted 427 cases, 960 accused; prosecution 391 cases, 1030 accused; trial of 350 cases, 843 defendants.
- 2008: 282 cases of prosecution, 622 accused; prosecution 394 cases, 914 accused; trial of 36 cases, 785 defendants.
- 2009: prosecuting 289 cases, 631 accused; prosecuting 321 cases, 819 accused; trial of 308 cases, 718 defendants.
- In the first 9 months of 2010, prosecuted 188 cases, 3373 accused; prosecuted 253 cases, 631 accused and 211 cases of trial, 479 accused.

(These figures only reflect the status of corruption crimes that have been clearly identified and dealt with.)<sup>2</sup>

The most prominent is the case of Dinh La Thang's conviction of the crime of "Deliberately acting against the State regulations on economic management causing serious consequences", Dinh La Thang's behaviour and his accomplice has led to the loss of the entire amount of VND 800 billion (36 million USD) of Vietnam Oil and Gas Group. Criminal acts of Dinh La Thang and co-criminals not only caused particularly large amounts of damage but also seriously harmed the moral reputation of public officials in the state management in general and management of enterprises and State corporations in particular.

## **II. THE IMPLEMENTATION AND COMPLIANCE WITH THE UN CONVENTION AGAINST CORRUPTION (UNCAC)**

On June 30, 2009, the President of Vietnam signed Decision No. 950/2009 / QD-CTN approving the UN Convention on Anti-Corruption. On August 19, 2009, the Ministry of Foreign Affairs of Vietnam issued a Declaration on the implementation of the Convention and sent a reservation document to the United Nations.

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<sup>1</sup> Transparency International < <https://www.transparency.org/cpi2018>> accessed 30 August 2019.

<sup>2</sup> Hanoi Procuracy University, < <http://tks.edu.vn/WebThongTinKhoaHoc/Detail/2?idMenu=120> > accessed 30 August 2019.

Vietnam is a country actively involved in drafting and signing the UN Convention against Corruption. Under the 2009 approval decision, Vietnam officially became a member of this Convention, obliged to enforce the commitments expressed in the provisions of the Convention, except for the terms of the reservation. Along with ratifying UNCAC, Vietnam has implemented many anti-corruption measures in accordance with UNCAC regulations, as follows:

1. Model of anti-corruption institutions and coordination among anti-corruption agencies:

- \* Central Steering Committee for Anti-Corruption: chaired by the General Secretary of the Communist Party, established and directed the handling of serious, complicated cases, inspection and supervision, urging anti-corruption work.
- \* Anti-corruption agencies and coordination among agencies in anti-corruption: Inspection agencies, State Audit, Investigation, Procuracy, and the Courts have actively coordinated work, detected many corruption cases, contributed to preventing, deterring and strictly handling corruption crime. Coordination among functional agencies on anti-corruption through exchanging information, documents and experiences on anti-corruption, transfer corruption case files to handle according to its competence, synthesize, evaluate, forecast the corruption situation, policy recommendations, anti-corruption solutions, etc...
- \* Specialized anti-corruption agencies: The specialized anti-corruption agencies are organized inside the Government Inspectorate, the Supreme People's Procuracy, and the Ministry of Public Security, which were established and put into operation in early 2007, contributing positively to anti-corruption work.

2. The implementation of measures to prevent corruption:

- \* Enact the provisions of the UNCAC;
- \* Implementation of rules that have been enacted;
- \* Cooperation with other countries on the basis of bilateral or multilateral agreements;
- \* Implement administrative reforms, openly and transparently in the operation of government, organizations, innovating management technology: Institutional systems continue to be supplemented, completed, meeting the requirements of fast and sustainable development, creating a legal corridor for socio-economic development.
- \* Build and implement regimes, norms and standards: promote the review of mechanisms and policies; amending, supplementing and promulgating new regulations on regimes, norms and standards in all fields, especially some easily-arising areas of corruption such as land, finance, construction investment, management and use of public assets; Attach importance to the inspection and supervision of the observance of regulations on regimes, norms and standards.
- \* Transparent assets and income of public officials: Provisions on asset transparency and income are important institutions to prevent corruption. Government and its officials have actively implemented asset and income declaration along with inspection and handling of authorities, so asset declaration has made significant progress. Over 10 years, 4,859 cases have been identified, discovered and disciplined 17 people declare dishonestly. In addition, there are 70 people disciplined due to violations of regulations on organization of asset and income declaration.
- \* Return gifts: The implementation of this regulation is not strict, low efficiency and is in fact very difficult to control due to the high dependence on the self-consciousness and morality of civil servants. From 2006-2015, there were 879 public officials and civil servants returning gifts with a total value of VND 3.3 billion; there are 10 cases of violations discovered and processed.
- \* Build and implement codes of conduct and ethical rules: promulgating code of conduct of civil servants and officials. Many agencies, businesses, social and professional organizations have built and launched

the implementation of professional ethics rules. Through checking the implementation of the code of conduct of 48,411 agencies and organizations in the last 10 years, there are 3,376 violations of civil servants and officials were discovered and dealt with.

- \* Changing positions periodically of civil servants and officials: the change of working position is considered an important solution to prevent collusion and connection to form a negative corruption. Agencies, organizations according to their management competence, shall have to perform periodic transformation of officials, public servants and employees working in a number of positions related to the management of budgets and properties of the State, directly contacting and dealing with the work of organizations and individuals to actively prevent corruption.
- \* Handle the responsibilities of the heads of organization where corruption occurs: in the last 10 years, there were 918 heads and deputies of the head being dealt with due to lack of responsibility led to corruption, in which 118 criminal cases were handled and 800 cases resulted in discipline. The handling of the responsibility of the head when corruption occurs according to regulations have the effect of promoting the responsibility of the head and at the same time has a certain deterrent effect.
- \* Promote non-cash payment methods: The State Bank strengthens the implementation of the scheme on promotion of non-cash payment; building legal frameworks in the payment field, to promote the safe and effective operation of the payment system, contributing to limiting cash transactions in the economy. Payroll via accounts for the beneficiaries of the state budget salary to be expanded.

### **III. DIFFICULTIES AND SOLUTIONS IN INVESTIGATING AND PROSECUTING CORRUPTION CASES**

#### **A. Difficulties**

The workload is too large,<sup>3</sup> while the human resources are inadequate, some of the public officials are limited in capacity and responsibility has not been enhanced, in the process of investigation has not closely followed the progress of the investigation, lack of orientation for investigation.

Cases of corruption crimes usually have a very large volume of documents, the collection of documents and evidence is prolonged, the economic sector has many regulatory documents; therefore, leading to checking, verifying, investigating prolonged. Views of assessing evidence, determining criminal charges still have many different opinions, thus, these cases must be divided into stages to solve each part; many cases are returned for additional investigation to avoid omission of no infractions.

One of the other difficulties is that the defendants in corruption cases are often those in positions of power, high levels of education, especially professional qualifications in their field of expertise. Therefore, taking their testimony is very difficult because they always know how to hide criminal acts.

Difficulties in collecting evidence for crimes using new methods and tricks, using high technology and social networks. They often use virtual phone numbers and accounts (use and delete accounts, lock phone numbers right after committing crimes), making it difficult to collect documents and evidence proving crimes, especially electronic evidence seizure.

Corruption cases involving foreign elements will make the investigation and settlement more difficult and prolonged because Vietnam has not signed legal assistance agreements with many countries.

Besides, although the Constitution stipulates that the Judges are independent and only follow the law, but in fact, judges are more or less affected by other factors such as: regulations on appointment terms, the salary of a judge is equivalent to that of a civil servant.

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<sup>3</sup> According to the report of Supreme People's Procuracy of Vietnam to Assembly, corruption prosecution rates in 2017 increased by 20.8%. The report downloaded at: <http://quochoi.vn/hoatdongcuaquochoi/cackyhophquochoi/quochoikhoaXIV/Pages/kyhophthutu/van-kien-tai-lieu.aspx?ItemID=3903>

## B. Solutions

Firstly, renovating the management and administration of professional activities in the direction of “clearly assigning people, clarifying jobs and fixing completion time”. Promote personal responsibility of Department Leaders and Procurators, select and assign Procurators to suit each specific case.

Secondly, Prosecutors have to actively build a detailed plan of investigation. In the plan, the specific contents and measures must be clearly defined and the completion time must be clearly determined as well as the quality, efficiency and investigation activities. On that basis, closely coordinate with investigators, keep abreast of the settlement of the case from the beginning; proactively request investigation, participate in investigation activities and directly conduct some investigation activities to quickly collect documents, direct evidence and indirect evidence, evaluate documents and evidence objectively; If deemed necessary, the Investigation Agency must immediately apply detention measures to serve the investigation and settlement of the case.

Thirdly, create a group of Prosecutors from different Departments to deal the same case; Since then, Prosecutors have approached the case by different objective perspectives, thus there are opinions of multifaceted evaluation of the case, helping leaders have suitable ways to deal with the nature of the case. The results showed that many shortcomings in the case were detected in a timely manner and corrected right from the investigation stage.

An example is the case of Trinh Xuan T. This is one of the cases in the first stage of the case of abuse of position and power of property appropriation that occurred at Vietnam National Oil and Gas Group (PVN). [for reasons of human resource and limited time of investigation, we divided the case into stages; after finishing a stage, we open other cases].

At the end of 2009 and early 2010, Vietnam National Oil and Gas Group (PVN) had a policy of transferring all real estate investment and investment companies to PVC for management. Le Hoa B. (Chairman of Construction and Services Joint Stock Company) wanted to buy the Nam Dan Plaza project of PVP Land (a subsidiary of PVC). Through the brokerage, on March 27, 2010, Le Hoa B. and the five shareholders of the Trans-Pacific Company signed a deposit contract to buy 24 million shares at a price of more than VND 20,000/share (of which 12 million shares are owned by PV Land). The total contract value is nearly VND 500 billion.

Thai Kieu H. (shareholder of Trans-Pacific Company) asked Dinh Manh T. (Chairman of Song Da Petroleum Joint Stock Company) to connect with Trinh Xuan T. (Chairman of PVC’s Board of Directors) to propose to PVP. Land sold Nam Dan project. Trinh Xuan T. agreed and decided to transfer more than 12 million shares of PVP Land at 13,578 VND/share, *lower than the actual value* of the project of 20,000 VND / share. From there, creating a difference to steal more than 87 billion VND (equivalent to 3.7 million USD).

After Le Hoa B. paid 50% of the value of the transfer contract, Thai Kieu H. asked Le Hoa B. to give VND 14 billion (equivalent to USD 600,000) to Trinh Xuan T. In the evening of the same day, Thai Kieu H. brought money to Dinh Manh T.’s house. The next day, Dinh Manh T. put the money in a small suitcase and put it in the car Trinh Xuan T. often used. In addition to the above amount, Le Hoa B. also transferred to P. 10 billion dong, Dang Sy H. 20 billion dong, Dinh Manh T. received 5 billion dong.

The case occurred in 2010 but until 2018, it was brought to trial; proving the crime is very difficult, especially collecting evidence, because after a long time, the witnesses did not remember the facts of the case, some of them died. The defendants in the case are those with high positions and high levels of education. Before being in custody, defendants coordinated their testimonies. However, by special professional measures such as isolating the defendants, clarifying the contradictions in the accused’s testimonies has proven the criminal acts of the accused.

In this case, in order to accuse Trinh Xuan T., investigator must prove that Trinh Xuan T. has received 14 billion. However, Trinh Xuan T. did not recognize the 14 billion dong but only received 5 billion in the bag from the driver but then returned it to Dinh Manh T. Defendant Dinh Manh T. said that he gave Trinh Xuan T. VND 14 billion (about 90,000 bills) in a small suitcase (in fact the amount of VND 14 billion did not fit a small suitcase; he tried to give false evidence to mislead).

Conducting a confrontation between defendants Trinh Xuan T. and Dinh Manh T. showed that these two men and Thai Kieu H. discussed how to hide the crime and agreed to declare the amount of VND 19 billion in bribes just stopped at Thai Kieu H. without giving them to Trinh Xuan T. and Dinh Manh T. By professional measures to fight for Dinh Manh T's testimony, he acknowledged that Trinh Xuan T. instructed him not to declare the receipt of money, considering that the money was still with Thai Kieu H. But in fact the money was given to defendant Trinh Xuan T. in a bag. After proving that defendant Trinh Xuan T. received an amount of 14 billion dong, defendant Trinh Xuan T. had to return the money to the investigating agency.

After finishing the case, we have gained some experience in solving corruption cases as follows:

- As soon as criminals are detected, property related to corruption must be distrained and immediately sealed off.
- For officials with positions and powers suspected of committing crimes of corruption, during the pre-prosecution period, administrative isolation must be taken to serve the initial verification (not detention)
- Fight fiercely with the defendants by using one defendant's testimony to prove the offence of another defendant and vice versa.
- It is necessary to legalize surveillance so that documents collected from secret investigation methods such as speech recordings, photos and videos will be considered as evidence.
- The Prosecutor actively coordinated with the Investigator to interrogate the accused, struggling to gather evidence to prove the receipt of money by clarifying each detail of the money delivery, such as location, time, method of delivery and receipt of money and documents and evidence to identify the subjects to receive money, to assess whether the claim of bribers is appropriate and objective. From there, proactively request and coordinate with the Investigation Agency to prosecute the accused and immediately apply detention measures to the accused.

#### **IV. CONCLUSION**

Although the situation of corruption in Vietnam is very complicated, Vietnam has also made efforts in fighting corruption. However, Vietnam has little experience, lack of capacity to participate in international efforts to fight against corruption. Vietnam's economy is a transitional economy, although the market mechanism in Vietnam has formed, but in its primitive form, Vietnam's civil servants are mostly trained in the country, have limited language skills, and have low access to international experiences in anti-corruption. Some provisions of the UNCAC are relatively new to Vietnam. In order to prevent corruption effectively in the coming time, Vietnam needs to promote research, learn from foreign experiences and international experience in anti-corruption; research and learning from foreign experiences can be done in many ways such as document translation, organization of conferences, seminars, dispatching officials to study abroad or inviting foreign experts to support education.