

Ensuring the participation of society in the fight against corruption in Vietnam

*In 2003, Vietnam signed the United Nation Convention against Corruption (UNCAC) and was among the first member States to sign the Convention. **Article 13 of the Convention** provides details on “Participation of society” in the fight against corruption and highlights the responsibilities of **each State Party** to promote and ensure the participation of **individuals and groups outside the public sector**.*

*After nearly seven years since the Convention was ratified on 30 June 2009 by the President of the Social Republic of Vietnam and officially came into force for Vietnam on 18 September 2009, how far is Vietnam implementing the commitment to **the participation of society**? What should be done ensure the role of society in the fight against corruption in Vietnam?*

The participation of society in UNCAC

The Convention was adopted by the General Assembly of the United Nations on 31 October 2003 and came into effect on 14 December 2005.[i]

Article 13 of the Convention provides details on “Participation of society” in the fight against corruption and highlights

“Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption...”

In addition, Article 13 also provides measures to enhance the participation of society, such as:

- Increased transparency in the decision-making process
- Access to information of the people
- Dissemination of information and public education on anti-corruption

- Protection of national security and public health
- Information on anti-corruption agencies

The participation of society in the fight against corruption in the laws of Vietnam

In the statement on the implementation of the UNCAC submitted to UN, Ministry of Foreign Affairs of Vietnam confirmed that Vietnam shall not directly apply provisions of the UNCAC. Instead, the implementation of the UNCAC provisions shall be in compliance with the principles of Vietnam's Constitution and laws, and on the basis of bilateral or multilateral cooperation agreements with other countries.[ii] Therefore, Vietnam shall incorporate these provisions into **domestic law**.

Vietnam incorporated Article 13 of the UNCAC into the provisions of **the Anti-Corruption Law 2005** (amended in 2007 and 2012) and the legal documents guiding the implementation of the Law. Chapter VI of the Anti-Corruption Law provided the regulations on *"The role and responsibility of the society in preventing and combating corruption"*.

In particular, **Decree No. 47/2007 / ND-CP** dated 27 May 03 2007 issued by the Government specifies and guides the implementation of a number of articles of the Anti-Corruption Law, including the role and responsibility of the society in anti-corruption.

However, according to the provisions of Chapter VI of the Anti-corruption Law and Decree 47, the "Participation of society" is only referred to the responsibility of **four groups of subjects**: (i) *the Vietnam Fatherland Front and its member organizations*; (ii) *Press*; (iii) *Enterprise, business associations, professional associations*; (iv) *Citizens and People's Inspection Board*. These groups of subjects have not fully reflected the contents of Article 13 of the UNCAC since the participation of **civil society organizations, non-governmental organizations** in anti-corruption is not mentioned.

According to the provisions of Decree 47, social organizations shall [iii]

- Request state agencies to provide information, protect complainants and denouncers of corrupt acts
- Outline the responsibilities of state agencies in coordination with the Vietnam Fatherland Front at all levels to promote the participation of

citizens

- Implement grassroots democracy through propagation and legal dissemination.

Regarding the measures to strengthen the participation of society, the provisions of Decree 47 partly reflected the ones set forth in Article 13 of the UNCAC. However, both Chapter VI of Anti-Corruption Law and Decree 47 have **not demonstrated**: (1) *whether the role of society in the anti-corruption law is decisive or secondary*; (2) *the nature of the equal partnership between the State and society*; and (3) *the rights and conditions to ensure the participation of social actors in the fight against corruption*.

The role of society in the fight against corruption in practice

The Vietnam Fatherland Front

After ten years since the adoption of the Anti-corruption Law, the Vietnam Fatherland Front and its member organizations have conducted many legal dissemination activities and educated integrity for people; especially through the project “Promoting law observance in the community” launched across the country since 2006.

However, after ten years, the Vietnam Fatherland Front has **not yet developed regulations on coordination among its member organizations in the fight against corruption**. In particular, prior to 01 January 2016, the Vietnam Fatherland Front has no right to establish independent supervision teams (Clause 2 of Article 12 of the Law on the Vietnam Fatherland Front 1999).

The Law on the Vietnam Fatherland Front 2015 which came into effective on 01 January 2016 **granted the Vietnam Fatherland Front the right to form supervision teams**. Accordingly, the Vietnam Fatherland Front is entitled to proactively form a supervision teams when it find violations of the laws or acts of corrupt (Clause 2 of Article 27 of the Law on the Vietnam Fatherland Front 2015).

Besides, Law on Associations, or more precisely the Law on right to form associations has not yet been passed, despite the fact that many drafts have been discussed.[iv] This is also a significant limiting factor to the active participation of civil society organizations in the fight against corruption in Vietnam.

Press

In the last 5 years, communications on anti-corruption have been pushed up, **the frequency and volume of information is enormous**, forms is diversified and constantly renewed, such as specialized pages, categories on anti-corruption activities, public administration reform; online seminars on the Anti-corruption Law, supporting forums for people in detecting, denouncing corrupt behavior.

In addition, the press has contributed positively to the fight against corruption through the **supervision of anti-corruption law enforcement** or the **involvement in the investigation of potential corruption cases**. Some prominent cases involving the press were publicized such as the cases of bribery in the East-West highway project, land corruption case in Do Son (Hai Phong), or the case of Song Hau farm etc.

However, press agencies in Vietnam act **the voice of public sector** (Article 1 of the Press Law 1989, amended in 1999, Clause 1 of Article 4 of the Press Law 2016). Therefore, it is considerably **difficult for Vietnamese press to be objective and independent when opposing violations** of the law of agencies, organizations and individuals in public sector.

In fact, press agencies are facing **pressure** by public agencies in reporting prominent corruption cases, especially those involving high-profile public employees. In practice, journalists reporting corruption have been intimidated, victimized, assaulted or obstructed in doing their works. This leads to psychological fears or avoidance of disclosure of information relating to the corruption of some journalists, reporters and press agencies.

Enterprises, business associations, professional associations

The National anti-corruption strategy towards 2020, Anti-corruption Law and Decree 47 emphasized and regulated the role and responsibility of enterprises and business associations in the fight against corruption. However, these provisions focus primarily on promoting propaganda and legal dissemination and building a fair and corruption-free business culture. In addition, these activities are only carried out within state associations, groups, corporations and some large corporations.

Since 2010, **the Chamber of Commerce and Industry of Vietnam (VCCI)** has carried out the project "Building consistency and transparency in business relations in Vietnam" to mobilize the business community in improving the business environment, cooperating with relevant government agencies to reduce corruption risk, and making specific policy recommendations.

Particularly, in recent years, **Towards Transparency (TT)**, the national contact of Transparency International (TI) in Vietnam, introduced the **Business Principles for Countering Bribery** to small and medium-sized enterprises in economic centers such as Hanoi, Ho Chi Minh City and Da Nang.

However, there is still a big proportion of Vietnam enterprises involved in corruption. The underlying cause is deemed most of the enterprises **still attach the great importance to their own self-interests**.

Preventive measures against corruption have not been yet widely adopted in business communities. There is almost no **mechanism** to encourage the detection, denunciation of acts of corrupt and no other forms of rewarding individuals who make efforts in detecting and combating corruption.

Besides, measures to enhance the open and transparency in the business environment of the state agencies are still limited. **70% of enterprises in Vietnam** needs personal connections to access the relevant information held by the state agencies.
[v]

People's Inspection Board

In accordance with the provisions of the Anti-Corruption Law and Decree 47, the People's Inspection Board shall supervise the implementation of the anti-corruption law in **communes, wards, towns and at state agencies, public service units and State-owned enterprises across the country**.

To date, People's Inspection Boards have been established in 63 provinces and cities nationwide. They have conducted many activities such as: thematic discussion and sharing experience, allocating works of people's inspection boards in each group of communes and assigning specific supervising staff; organizing professional training for members of People's Inspection Boards; placing suggestion boxes in the residential areas to collect people's reflection on the negative cases; organizing the policy dialogues between the government and the people etc.

However, **the capacity of the People's Inspection Boards are limited** as members of the Boards are directly elected among citizens in the residential areas rather than the qualified and professional ones on anti-corruption. Meanwhile, there are no specific and clear provisions on the responsibilities of any **agency who can provide technical and professional guiding** on anti-corruption for the Board's Inspection

People.

People's Inspection Boards in offices, business administrative units, state-owned enterprises are difficult to exercise its right to supervision due to **the subjects to the supervision** are the heads, leaders of that agencies, units, executive board at enterprises.

At a number of agencies and organizations, the leaders do not support and facilitate the performance of the People's Inspection Boards. This restricts the People's Inspection Boards to perform their functions and tasks as **a democratic independent institution**. Operational funding is also a drawback of the People's Inspection Boards.

Citizens

The Anti-corruption Law and Decree 47 specifies the responsibilities of citizens in the fight against corruption in general and in denunciation of acts of corrupt in particular; as well as confirms **the denouncers of corruption** shall be protected by the authorized state agencies when there appear signs of intimidation, revenge or retaliation against them. **The Law on Denunciation 2011** also has a chapter regulating the protection of people who report corruption.

To encourage people reporting and fighting corruption, the Government Inspectorate issued **Circular No. 07/2014/TT-TTCP** accepting **anonymous** written complaints; the Government Inspectorate and the Ministry of Home Affairs also issued **Joint Circular No. 01/2015/TTLT-GI-BNV** regulating the reward towards individuals who have made outstanding achievements in denouncing acts of corrupt.

According to 2013 Global corruption barometer – views and experiences from Vietnam citizens[vi], only 38% of Vietnamese citizens who were surveyed are willing to report an incident of corruption; this is the **lowest** among surveyed countries in Southeast Asia.

"It wouldn't make any difference" (51% of respondents) and "I am afraid of the consequences" (28% of respondents) are the most common reasons that preclude Vietnamese citizens from reporting corruption.

Although the role of the citizens in the fight against corruption is regarded as a key pillar; to date there are **no specific statistics** about the corruption cases

which were detected, reflected and denounced by **citizens**.

Recommendations to ensure the participation of society in the fight against corruption in Vietnam

After 10 years of implementation of the anti-corruption law, in order to continue promoting the role of society in the fight against corruption and ensuring the effective implementation of the provisions of UNCAC, Vietnam needs to focus on key issues as follows:

Strengthening the cooperation between the State and society in fighting against corruption

Currently, the anti-corruption law and the relevant legal documents only reflect the views and general orientation rather than specific and feasible guidelines to encourage social organizations and citizens to involve in the fight against corruption.

The Vietnam Fatherland Front should also promote the development of **coordination mechanisms among the Vietnam Fatherland Front, its member organizations and the competent State agencies** in anti-corruption; as well as to be more active in **forming the supervision teams** when corruption cases are detected.

The press agencies also need to develop mechanisms for coordination with the Anti-corruption authorities in order to **enhance the access to information**, sharing and use of information in a timely and accurate manner.

In particular, there is still lack of **effective mechanisms for coordination** amongst the State agencies with organizations and individuals outside the public sector; as well as the **lack of legal guarantees** for the promotion of the role of civil society organizations other than the Vietnam Fatherland Front, enterprises and professional associations, press, People's Inspection Boards.

The push for early adoption of the **Law on Associations** shall create a favorable legal framework and further promote the role of civil society organizations in fighting against corruption.

Improving mechanisms for receiving and handling denunciations and protection of corruption whistleblowers

The legal provisions on the protection of whistleblowers **disperses** in too many legal documents with different legal effect; these provisions are deemed fundamental, rather than the specific, clear and guiding regulations. Therefore, there is an urgent need to establish or **specifically assign a competent and specialized authority** in charge of protecting whistleblowers and continue to improving procedures for handling the request of protection from whistleblowers and applying specific measures to protect their relative, property, honor, dignity, work, health and their lives.

In Vietnam and other countries in the world, **anonymous denunciations** made up of a considerable percentage and regarded as an important source of information. Solving or not solving denunciations in which the names and addresses of the denouncers remained unknown is a complex issue. In order to solve these problems, the law should classify the anonymous denunciations into categories: not considered, subject to handle and may be handled.

Besides, Vietnam Journalist Association should also have mechanisms and specific measures to promote and protect those journalists who have been bravely fighting against corruption; report objectively, promptly and effectively on corruption cases.

Promoting the development of the Anti-corruption culture in the political system and in all-people

One of the important and urgent requirements is to **institutionalize** and strictly implement the provisions of **responding to citizens' comments, recommendations and reflections related to corruption**; timely notify the results of the denunciation handling to the denouncers and concerned people. Thus, people will send their comments to the right place, avoiding sending to the echelons higher than the law-prescribed ones, meandering and overlapping. At the same time, people **trust** in the handling of complaints, petitions, denunciation of acts of corrupt will be strengthened.

Besides, **the responsibilities of the heads** of state agencies to account for their authorized powers in receiving and handling complaints and denunciations of corruption should be stipulated.

Enterprises establish and practice **a fair and corruption-free business culture**; develop, adopt and implement code of conduct for officers and employees, staff;

develop and implement supervision mechanism and internal anti-corruption system.

Continue to promote and **diversify forms of communication** with innovative, flexible contents on policies, laws and the actual work of anti-corruption to citizens, raising awareness of **defense and proactively take actions against corruption**. In particular, integrity education for the youth should be taken into account to ensure the efficiency and sustainability in anti-corruption.

(*) The article was written by TT and first published in Vietnam Law magazine and Legal Forum on April, 26th, 2016

[i] Special legal dissemination issue No. 09/2010, the United Nations Convention on Anti-Corruption in relation to the anti-corruption law in Vietnam Session, Hanoi – 2010.

[ii] Colonel, Dr. Tran Van Luyen, The actual situation of the implementation, compliance of the UN Convention against Corruption in Vietnam and a number of recommendations, at <http://tks.edu.vn/WebThongTinKhoaHoc/Detail/2?idMenu=120> [Access 08 April 2016].

[iii] Cecodes, *Anti-Corruption in Vietnam: What can be seen after two years of the implementation of the Law?*, 2008 pg.33.

[iv] Cecodes, *Anti-Corruption in Vietnam: What can be seen after two years of the implementation of the Law?*, 2008 pg.35.

[v] *Voice of Vietnam online newspaper*, “70% of enterprises in Vietnam needs personal relationships and connections to access the relevant information held by the state agencies”, dated 11 May 2015 at (<http://vov.vn/kinh-te/70-doanh-nghiep-can-quan-he-ca-nhan-de-tiep-can-thong-tin-nha-nuoc-400302.vov>) [access 12 April 2016].

[vi] Towards Transparency (TT), Transparency International (TI)’s national contact in Vietnam, *2013 Global Corruption Barometer – Views and Experiences from Vietnamese citizens*.

