

# SURVEY REPORT

IN SUPPORT OF THE GOVERNMENT'S SELF-ASSESSMENT OF THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) IN VIETNAM IN 2011



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Towards Transparency (TT) is a registered Vietnamese non-profit consultancy organisation that was established in 2008 to contribute to national efforts in promoting transparency and accountability for corruption prevention and fighting. In March 2009, TT became the National Contact of Transparency International (TI) in Vietnam. In this capacity, TT supports and coordinates emerging activities of TI in Vietnam, within the TI Vietnam programme “Strengthening Anti-corruption Demand from Government, Private Sector and Society, 2009- 2012.”

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This report was made possible by the financial support of the TI Vietnam Programme, which is funded by the UK Department for International Development (DFID), the Embassy of Finland, IrishAid and the Embassy of Sweden.

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The report was finalised by TI and TT, which are solely responsible for its content.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August 2011. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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# PART I: OVERVIEW

## ABBREVIATIONS

AGRIBANK	Vietnam Bank for Agriculture and Rural Development
ASEANAPOL	ASEAN Chiefs of Police
BIDV	Bank for Investment and Development of Vietnam
COSEVCO	Midland Construction Corporation
INTERPOL	International Criminal Police Organization
PMU18	Project Management Unit 18 (under the Ministry of Transport)
TI	Transparency International
TT	Towards Transparency
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Program
VINACONEX	Vietnam Construction and Import-Export Joint Stock Corporation
VINASHIN	Vietnam Shipbuilding Industry Group

### 1.1. CONTEXT AND PURPOSE

Along with the process of globalization, corruption has transcended national boundaries to become an international problem. In this context, the adoption by the United Nations General Assembly of the Convention Against Corruption (UNCAC) on 31 October 2003, has met the pressing need of States around the world for an international legal framework which serves as a basis for cooperation among countries in the prevention and elimination of corruption.

Vietnam is among the States that strongly support the emergence of the UNCAC. The Vietnamese State signed the UNCAC on 10 December 2003, ratified it on 30 June 2009, and became an official party to the Convention on 18 September 2009. Although the prevention and combat of corruption has received wide attention in Vietnam, the accession to the UNCAC has demonstrated the Vietnamese State's strong commitment to the international community in the combat of corruption while opening up a breakthrough in the country's international cooperation in this field.

While accession to the UNCAC has helped and will continue to help Vietnam receive more effective assistance from the international community in the prevention and combat of corruption, it has also given Vietnam the obligation to not only implement the articles of the Convention, but also to comply with the resolutions adopted by the Conference of the State Parties to the Convention. On 13 November 2009, the Conference of the State Parties to the UNCAC adopted Resolution 3/1 establishing a mechanism for reviewing the implementation of the Convention. Accordingly, the State Parties must formulate a self-assessment report and submit it to the Secretariat. Vietnam belongs to the group of States to conduct self-assessment in 2011, the second year of the first cycle of the UNCAC review (2010-2015). To implement this resolution, the Vietnamese Government (with the Government Inspectorate assuming the prime responsibility and acting as the coordinator) has conducted the self-assessment and formulated a country report on the implementation of the Convention. The content of this self-assessment, according to general provisions, focuses on the implementation of the provisions of Chapter III (Criminalization and Law Enforcement) and Chapter IV (International Cooperation) of the UNCAC.

The UNCAC review mechanism encourages the State Parties to consult broadly non-state actors (including social organizations, businesses and academia) when preparing their country reports. In close consultation with the Government Inspectorate and with the support and cooperation of UNDP, Towards Transparency (TT) - Transparency International's National Contact in Vietnam, in the capacity of a non-government organization engaged in corruption prevention and combat- has collected and analyzed inputs from selected experts working in a number of domestic universities, research institutes and social organizations to support the Government's UNCAC self-assessment. This is one of TT's activities to raise awareness about and stimulate broader society's participation in support of the Vietnamese Government's efforts to implement the UNCAC.

### 1.2. PROCESS AND METHODOLOGY

The collection and analysis of experts' inputs were carried out by TT-selected consultants from 10 May to 10 August 2011, by combining three research forms: questionnaire, in-depth interviews and consultation workshop.

The questionnaire survey was conducted first to collect general information and opinions on the issue (see the questionnaire form in Annex 1). After analyzing the completed questionnaires, the consultants selected a number of experts for interview, and identified issues to be collectively exchanged and discussed at a workshop. The workshop (organized on June 29, 2011, by the Comparative Law Center under the Law Faculty of the Hanoi National University) aimed at further clarifying aspects on which agreement was not yet reached or which were not thoroughly addressed through the questionnaire survey and in-depth interviews.

In addition to the above three main survey forms, the process of preparing the report also involved several working sessions between the consultants with representatives of TT, UNDP and the Government Inspectorate (detailed information on the process and method of producing the report is in Annex 3).

This report is an outcome of the summary and analysis of opinions collected from experts throughout the survey process combined with knowledge and information possessed by the consultants on the issue. To produce the report, many experts who currently work at universities, research institutes, state agencies and social organizations closely concerned with the issue of prevention and combat of corruption in Vietnam (see Annex 2) were consulted, with some participating in two or three survey forms.<sup>1</sup>

In general, the process of consultation and formulation of the report conformed to the plan set by the consultants. With regards to timing, one activity was adjusted. The in-depth interviews with experts in the central and southern regions of Vietnam were conducted after the workshop was organized (according to the plan, these interviews should be conducted before the workshop). Nevertheless, this adjustment did not affect the progress or quality of the report.

## 1.3. ADVANTAGES, DIFFICULTIES AND LIMITATIONS OF THE SURVEY

### 1.3.1. Advantages and difficulties

#### *Advantages*

As mentioned above, Vietnam is among many countries actively supporting the emergence of the UNCAC. Even before the country's accession to the Convention, the Vietnamese State has demonstrated high political determination in corruption prevention and combat. These political, legal and social foundations are favorable for TT and the consultants to conduct this survey.

As mentioned above, in the course of preparing and conducting the survey, TT consulted and received the support of the Government Inspectorate and UNDP Hanoi. In addition, TT gathered international experiences relating to civil society's participation in, and supervision of the implementation of the UNCAC shared by the TI Secretariat and a number of TI national chapters. For example, at the May 23, 2011 workshop held jointly by TT and UNDP, TT's representative shared experiences on and approaches to civil society's participation in Bangladesh and the Republic of Korea and etc.

All the above advantages proved very helpful for TT in conducting this survey.

#### *Difficulties*

Certain difficulties and problems were met in the process of conducting the survey. The first is related to seeking out relevant experts. Although numerous anti-corruption activities have been carried out in Vietnam, the number of experts

in corruption prevention and combat, particularly those specializing in criminalization and international cooperation remains limited, with few having comprehensive and in-depth knowledge. Meanwhile, not all identified experts were willing to participate in the survey, primarily due to time constraints and, in some cases, fear that corruption is a 'sensitive issue,' even after the consultants explained that the survey was to support the self-assessment by the Government of the implementation of the UNCAC. The second difficulty relates to the limited time available for the consultation process. Just over two months were available for implementing and concluding the project with three survey activities carried out not only in Hanoi but also in other two localities, Hue and Ho Chi Minh City. This affected both the scope and number of consulted stakeholders in the survey.

### 1.3.2. Limits of the survey

Due to the difficulties mentioned in Section 1.3.1, after consultation with TT, the consultants selected a number of stakeholders who personally give lectures or conduct research on corruption prevention and combat in a number of related state agencies and academic institutions to participate in the survey (see Annex 2). Most of them currently live or work in Hanoi, only a few are in Hue and Ho Chi Minh City.

With regards to the content, due to limited resources and the requirements of the resolution of the Conference of the State Parties to the UNCAC, this survey only touches upon the key articles in the two chapters of the Convention: Chapter III (Criminalization and Law Enforcement) and one article in Chapter IV (International Cooperation). In addition, the survey indirectly referred to two articles in Chapter II (Preventive measures).

#### **The articles surveyed in Chapter III include:**

- Article 15: Bribery of national public officials
- Article 16: Bribery of foreign public officials and officials of public international organizations
- Article 17: Embezzlement, misappropriation or other diversion of property by a public official
- Article 23: Laundering of proceeds of crime
- Article 26: Liability of legal persons
- Article 32: Protection of witnesses, experts and victims
- Article 33: Protection of reporting persons
- Article 36: Specialized authorities

#### **Chapter IV has one article surveyed:**

- Article 46(9)(b)&(c): Mutual legal assistance on the ground of absence of dual criminality

#### **Chapter II has two articles touched upon in the survey:**

- Article 10: Public reporting
- Article 11. Measures relating to the judiciary and prosecution services

## 1.4. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

### *Regarding publicity and consultation of civil society organizations in the process of the self-assessment of the UNCAC implementation by the Vietnamese Government:*

- (1) Regarding consultation, in the process of formulating this report on the self-assessment of the UNCAC implementation, the Vietnamese government has paid attention to and held consultations with a number of civil society organizations through sending questionnaires and inviting them to workshops. These efforts deserve appreciation. However, in order to enhance the effectiveness (political, legal and social) of consultation activities, the Government should hold consultations from the beginning stage of preparation with all civil society organizations and employ other modes such as consultation via the Internet, sending questionnaires, in-depth interviews with experts, etc and In addition, the Government should also pay attention to taking measures to assure consultation quality. To expand the consulted groups and increase the quality of consultations, the Government should call and create conditions for a number of international organizations and Vietnamese civil society organizations which have expertise and show interest in conducting or supporting surveys and assessments of all or some of the contents of the self-assessment report.
- (2) Regarding publicity, in the process of formulating this report on the self-assessment of the UNCAC implementation, the Vietnamese government has endeavored to publicize the process of self-assessment by posting the name and address of the responsible agency and implementation plan on the Government's e-portal. However, for the purpose of enhancing the effectiveness (political, legal and social) of this activity, the Government should further publicize the process of self-assessment through the mass media and through other forms (e.g. press conferences, workshops, etc).

### *Regarding incorporation into domestic law and implementation of a number of articles in the UNCAC:*

- (3) The 1999 Penal Code of Vietnam (amended and supplemented in 2009), through Articles 279, 289 and 290, shows compatibility to a basic extent with Article 15 of the UNCAC (on bribery of public officials); however, Vietnam's Penal Code defines a bribe merely as 'material benefits' (Article 289), narrower than the definition provided in Article 15 of

the UNCAC, under which a bribe is understood as 'any undue advantage.' In order to increase the effectiveness of the prevention and combat of this offense, the State should revise the Penal Code toward defining a bribe as "any undue benefit" in accordance with Article 15 of the UNCAC.

- (4) Vietnam's Penal Code is not compatible with Article 16 of the UNCAC (on bribery of foreign public officials and officials of public international organizations) because the criminal offenses of giving and receiving bribes (Articles 279 and 289 of the Penal Code) are applicable only to Vietnamese persons. In order to perform the international legal obligations under Article 16 of the UNCAC, the State should add to the Penal Code the offense of bribing foreign public officials or officials of public international organizations.
- (5) Vietnam's Penal Code, through Articles 278 and 280, show compatibility to a high extent with Article 17 of the UNCAC (on embezzlement, misappropriation or other diversion of property by a public official). Yet, the 2003 Criminal Procedure Law does not impose on suspects in corruption cases the burden of proof of the lawfulness of their properties, which has causes difficulties in the investigation and handling of corruption cases, especially when the Vietnamese legal framework on management and supervision of incomes and properties remains incomplete. Therefore, the State should study experiences of other countries to revise the Criminal Procedure Code toward laying the burden of proof on suspects to prove the transparency of their incomes and properties.
- (6) Through Articles 250 and 251, Vietnam's Penal Code shows compatibility to a certain extent with Article 23 of the UNCAC (on laundering of proceeds of crime). However, there are still legal constraints causing difficulties to the prevention and handling of money laundering. Therefore, the State should revise Article 251 of the Penal Code toward (i) replacing the provision that the suspect must clearly know that the property is acquired from the commission of crime with the provision that the suspect knows that the property comes from an unlawful source, which is sufficient for constituting an offense; (ii) clearly providing that legalized money and properties may be proceeds of crime acquired by the suspect himself/herself, and (iii) regarding involvement of a foreign element in money laundering as an aggravating circumstance. In addition, the State should also (i) promulgate documents guiding in detail the value of legalized money and properties sufficient for

constituting a money laundering offense under Article 251 of the Penal Code; and (ii) study and formulate a law against money laundering, a law on cash transactions in the economy, a law on checks and a law on promissory notes.

- (7) Although Vietnam announced its reservation not to abide by Article 26 of the UNCAC (on liability of legal persons), this Article has been in fact partially incorporated into the domestic law. This is manifested in the provisions that legal persons must bear administrative and civil liabilities (according to the 2002 Ordinance on Handling of Administrative Violations, the 2005 Civil Code and the 2009 Law on Compensation Liability of the State, etc.). However, the fact that the laws do not stipulate that legal persons shall bear administrative liability for all acts of corruption and does not regard them as subjects of penal liability (Article 72 of the 1992 Constitution and Article 2 of the Penal Code), is impeding the prevention and combat of corruption cases of abusing the names of legal persons, which are on the rise in Vietnam. Therefore, the State should study revision of relevant legal documents toward requiring legal persons to bear administrative liability for all acts of corruption rather than only money laundering as currently provided. In addition, the State should also refer to experiences of many countries across the world in order to withdraw its reservation with regard to Article 26 of the UNCAC, and amend the Penal Code toward regarding legal persons as subjects of criminal offenses.
- (8) Vietnamese law, through Article 71 of the 1992 Constitution and Article 7 of the 2003 Criminal Procedure Code, is compatible to a certain extent with the provisions of Article 32 of the UNCAC (on protection of witnesses, experts and victims). Yet, the State should add specific provisions on mechanisms and measures to protect experts, witnesses or victims, including those on (i) signing agreements with other states to enable resettlement of experts, witnesses or victims facing high dangers; (ii) changing their personal information or identities; (iii) transferring them to other workplaces or working posts, etc.
- (9) Vietnamese law, through a series of regulations, including Article 74 of the 1992 Constitution, Article 132 of the 1999 Penal Code, Article 65 of the 2005 Anti-Corruption Law (amended and supplemented in 2007), the 1998 Law on Complaints and Denunciations (amended and supplemented in 2004 and 2005), is substantially compatible with Article 33 of the UNCAC (on the protection of reporting persons). However, these regulations

are insufficient to effectively protect corruption-reporting persons and their relatives. Therefore, the State should accelerate the formulation and adoption of new relevant legal documents, including a joint circular guiding the protection of witnesses, reporting persons and victims in criminal investigations; regulations on the protection of witnesses, reporting persons and victims in criminal investigations; regulations on protection of corruption-reporting persons; the Law on Protection of Witnesses and Providers of Information Relating to Crimes; the Law on Denunciations and the Law on Complaints (for further details, refer to the report on TI/TT inputs on the 5th draft of the Law on Denunciations sent to the Government Inspectorate in July 2011).

***Regarding legal mutual assistance on the ground of absence of dual criminality:***

- (10) Through the provisions of the 2007 Mutual Legal Assistance, the 2003 Criminal Procedure Code and bilateral agreements on mutual legal assistance signed between Vietnam and many other countries, it can be seen that Vietnamese law is compatible with Article 46(9)(b)&(c) of the UNCAC (on refusal to render mutual legal assistance on the ground of absence of dual criminality). In coming time, the State should maintain and study further expansion of the scope and measures of mutual legal assistance with regard to corruption crimes in the spirit of Article 46(9)(b)&(c) of the UNCAC and in accordance with relevant principles of Vietnamese law.

***Regarding the apparatus of anti-corruption agencies, including judicial agencies:***

- (11) Through relevant provisions of the 2003 Criminal Procedure Code, the 2002 Law on Organization of the People's Courts, the 2002 Law on Organization of the People's Procuracies and the 2005 Anti-Corruption Law (amended and supplemented in 2007), it can be seen that Vietnamese law is compatible to a certain extent with Article 11 (measures relating to the judiciary and prosecution services) and Article 36 (specialized authorities) of the UNCAC. However, Vietnamese anti-corruption agencies (including judicial agencies) have not yet fulfilled their important role in the prevention and combat of corruption for a number of reasons, such as (i) they have not yet enjoyed true independence in operations; (ii) the force of officers is inadequate and their technical equipment is limited; (iii) the ethical qualities of a number of officers, particularly those in justice agencies, are not high; and (iv) the functions and tasks of some

agencies remain unclear and overlapping. Therefore, the State should study and further improve relevant legal documents in order to increase operational independence and effectiveness for specialized anti-corruption agencies, including the system of steering committees for corruption prevention and combat. To increase the independence of this system, the State should study establishing an anti-corruption body directly under the National Assembly. At the same time, the State should also study improving the mechanism of coordination among the existing anti-corruption agencies in order to bring into full play and tap every resources and advantages of each agency, thereby raising the effectiveness and efficacy of operations of the system of these agencies.

***Regarding access to information on cases of corruption:***

- (12) Access to information held by state agencies, including information on corruption cases, is a human right under the international law on human rights. To a certain extent, this right has been enshrined in Vietnamese law (Article 69 of the 1992 Constitution, the 2005 Anti-Corruption Law, the 2007 Ordinance on Exercise of Democracy in communes, wards and townships, the 1989 Press Law, etc.) and is now codified into a separate law (Law on Access to Information- already included in the national strategy for prevention and combat of corruption through 2020). In Vietnam, a number of major corruption cases occurring over the past five years were reported in the mass media. Nevertheless, publicized information remains general, while complete records on these cases are only circulated internally in competent state agencies, and information on confirmed or suspected corruption cases is still slow. Limitations and constrains in access to information have reduced the people's trust in the anti-corruption fight. Therefore, the State should early adopt the Law on Access to Information, ensuring that the content of this Law is compatible to the highest extent with international norms and practices, especially concerning the scope of information possibly not to be publicized and the obligation of state agencies and officials in publicizing and providing information to the people and the press.

***Regarding recent remarkable developments in corruption prevention and combat in Vietnam:***

- (13) Over the last five years, the Vietnamese State has expressed its strong political will and determination to fight corruption. This is demonstrated in its promulgation and implementation of many projects, policies and initiatives on (i) simplification of administrative procedures (Project 30); (ii) property

and income transparency (Decree No. 37/2007/ND-CP, amended and supplemented under Decree No. 68/2011/ND-CP); (iii) regular rotation of cadres, civil servants and public employees in certain working posts (Decree No. 158/2007/ND-CP); (iv) the national strategy for corruption prevention and combat (Resolution No. 21/NQ-CP of May 12, 2009); (v) inclusion of the content of prevention and combat of corruption in the education, training and retraining programs (Decision No. 137/2009/QD-TTg); (vi) the UNCAC implementation plan (Decision No. 445/QD-TTg); (vii) launching of the annual program on anti-corruption initiatives; (viii) organization of annual national conferences to praise individuals recording achievements in the prevention and combat of corruption; (ix) accession to and implementation of the UNCAC, etc.

***Recommendations on prioritized actions to be taken by the State in the coming time:***

- (14) In addition to the recommendations made from Points 1 through to 13 above, in the coming time the State should prioritize other actions to step up the fight against corruption in Vietnam, specifically:
  - (i) Withdrawing the reservation not to abide by Article 20 and concurrently studying amendments to the 1999 Penal Code to regard illicit enrichment as a criminal offense;
  - (ii) Amending and supplementing relevant legal documents for the realization of declaration and publicity of properties and incomes of civil servants and public employees not only within agencies and organizations but also to the public;
  - (iii) Quickly, promptly and strictly handling newly arising corruption cases, especially those with major damage or impact;
  - (iv) Completing the mechanism to recover properties acquired from corruption, including carrying out international cooperation in the recovery of these properties;
  - (v) Consolidating and improving mechanisms to ensure participation of the public and civil society organizations in fighting corruption;
  - (vi) Increasing forms, measures and raising effectiveness of education in ethics and laws on the prevention and combat of corruption in combination with improving living and working conditions for state officials and civil servants;
  - (vii) Further increasing publicity and transparency by further stepping up administrative and judicial reforms;
  - (viii) Increasing physical foundations and professional qualifications and skills for specialized anti-corruption personnel;
  - (ix) Further expanding international cooperation in the prevention and combat of corruption.



# PART II: PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS IN THE PROCESS OF THE GOVERNMENT'S SELF-ASSESSMENT OF THE IMPLEMENTATION OF UNCAC

As mentioned in Part I, the mechanism for the review of implementation of the UNCAC encourages the state parties to broadly consult non-state actors (including social organizations, businesses and academia, collectively referred to as civil society organizations)<sup>2</sup> when preparing the country report.

On this issue, the survey results show that:

- In general, the self-assessment has been conducted in a serious manner; with basic information made public. Specifically, the Government has issued a document to form a group to review the implementation of the UNCAC (this document is posted on the Government website),<sup>3</sup> announcing the name of the agency in charge of the self-assessment and its contact information.
- UNDP, UNODC (Hanoi office) and a number of key donors for programs on public administration and corruption prevention and combat in Vietnam, including the Swedish Embassy, the UK Department for International Development and the AusAid, were invited to contribute inputs on the conduct of the self-assessment and on the draft country report.
- The questionnaire prepared on the basis of the self-assessment checklist was sent out by the coordinating agency - the Government Inspectorate- to domestic ministries and sectors for comment.
- The Government's coordinating agency, the Government Inspectorate, created conditions for and supported TT (TI's National Contact in Vietnam) in conducting this survey to assist the Government in formulating a self-assessment report. Specifically, a representative of the Government Inspectorate attended workshop jointly held by TT and UNDP on 23 May 2011, to share information and brief on the implementation of the self-assessment plan and the formulation of the country report. At the meeting, the Government Inspectorate representative expressed support for TT's initiative to launch this consultation. In the process of conducting the survey, TT also received the active cooperation of many Government Inspectorate experts.

- On 26 July 2011, the Government Inspectorate held a workshop in Hanoi to consult a number of agencies, social organizations, donors and experts on the draft country report.<sup>4</sup> According to information received by the consultants, the Government Inspectorate will hold another workshop with the same purpose in the first fortnight of August and will publicize the finalized country report. However, by the time of completion of this report, the consultants did not yet receive details on the plan for the second workshop and publicization of the Government's report once finalized.

Despite not having obtained official access to the draft country report on the UNCAC implementation yet and having no opportunity to participate in the 26 July workshop, from the above information and events, a number of general comments can be made that in the course of undertaking this self-assessment, the Government showed great attention and considerable efforts to make public the self-assessment process and consult civil society organizations according to the recommendations in the 2009 resolution of the Conference of the State Parties to the UNCAC.

Nevertheless, according to the consultants and many experts and from the experiences of many countries in the world, the Government should and can:

- Consult civil society organizations from the stage of preparing for the self-assessment process rather than only after the draft report is available, so that these actors can provide inputs on not only the draft report but also the Government's self-assessment plan.
- Further increase the publicity of the self-assessment process by announcing the name and address of the responsible agency and the self-assessment plan not only on the Government's website but also in other mass media (including radio, television and newspapers), or through holding thematic workshops or press conferences. These would all contribute to informing the public in the broadest manner with of the

responsible agency and the plan of the self-assessment so that the public can observe activities and contribute inputs on the self-assessment process at all stages.

- Expand the scope of consulted stakeholders in the self-assessment process. At present, according to information available to the consultants, only a number of state agencies were sent the questionnaires. For the workshop, only the Vietnam Fatherland Committee, Vietnam Chamber of Commerce and Industry, Vietnam Lawyers' Association, Vietnam Lawyers' Federation, Vietnam Farmers' Association, Vietnam Veterans' Association and a number of international organizations and donors such as UNDP, UNODC, UK Department for International Development, AusAid, Swedish Embassy were invited to attend. Meanwhile, many other international organizations (including international non-governmental organizations operating in Vietnam) and particularly many other civil society organizations in Vietnam (non-governmental organizations, professional and umbrella organizations, community organizations, mass media agencies, universities, law, policy, administrative research institutes) are also capable and willing to contribute useful and constructive opinions for improving the Government's self-assessment plan and report from various aspects and at different levels depending on their own functions, duties and practical experiences. However, these stakeholders were unable to contribute their inputs in the process of self-assessment of the UNCAC implementation this time in Vietnam.
- Diversify the methods of collecting inputs: Realities show that, in addition to sending out questionnaires and invitations to the workshop as mentioned above, consultation with international agencies and organizations and civil society organizations in Vietnam may be conducted through many other means such as the internet (posting the questionnaire and draft report on the website for stakeholders to directly give inputs, like the National Assembly Office seeking public opinions on draft laws), sending questionnaires directly to and

holding in-depth interviews with experts. In order to reduce the workload for the Government Inspectorate, the coordinating agency, as well as the financial burden on the state budget while still expanding the scope of consulted stakeholders, the Government can call and create conditions for several international organizations and other civil society organizations in Vietnam that are concerned about and experienced in corruption prevention and combat to conduct or support the conduct of surveys and evaluations on all or some of the issues in the report.

- Attach importance to the quality of consultancy activities: Realities show that sending questionnaires according to the self-assessment checklist to related agencies and organizations is necessary but measures should also be taken to assure that these questionnaires are completed in a careful and serious manner by responsible persons who have the best expertise or knowledge about the issues. Similarly, experiences show that the organization of consultation workshops can yield goods results only when measures are taken to assure that invited agencies appoint officials with deep knowledge about this issue to attend and that attendants be provided with the draft report or related documents at the earliest time before the workshop opens.
- According to the consultants and many experts, increased publicity and broader scope of consulted stakeholders as recommended above will not only help the Government formulate the self-assessment report but also, to a deeper extent, increase the people's trust, support and involvement in the anti-corruption combat undertaken by the State in Vietnam.

## PART III

# INCORPORATION OF KEY ARTICLES IN CHAPTER III OF UNCAC INTO DOMESTIC LAW

## ARTICLE 15: BRIBERY OF NATIONAL PUBLIC OFFICIALS

*This Article sets a compulsory obligation for the State Parties to the UNCAC to criminalize intentional acts of: (a) promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

Survey results show that corresponding to Article 15(a) of the UNCAC, Vietnam's 1999 Penal Code (amended and supplemented in 2009) has Article 289 covering the criminal offense of offering bribes. The objective act is to make it an offense to give or offer to give money, property or other material benefits to a person holding a post or power for this person to perform or refrain from performing a job as requested by or in the interest of the bribe giving. According to Article 277 of the Penal Code, a person holding a post or power is a person appointed, elected, contracted or otherwise assigned, paid or unpaid, to perform a certain public duty and have a certain power while this public duty. Objectively, the offense of giving a bribe is considered completed when there is an act of giving a bribe. However, because this offense belongs to the group of post-related criminal offenses, with the infringed object being a judicious activity of an agency or organization (Article 277 of the Penal Code), even when the person merely promises or offers a bribe, if there is proof that such act will affect the judicious activity of the agency or organization, such person can still be examined for penal liability for preparing for the commission of a criminal offense (Articles 289 and 17 of the Penal Code) or for uncompleted commission of a criminal offense (Article 18 of the Penal Code).

Corresponding to Article 15(a) of the UNCAC, Vietnam's Penal Code contains Article 279 on the criminal offense of receiving bribes. The objective element of the act of receiving a bribe is the abuse of one's post or power to receive (has received or will receive), directly or indirectly, money, property or any other material benefit in whatever form to perform or refrain from performing a job in the interest of or as requested by the bribe giver. Similar to the offense of giving a bribe, a person holding a post or power is a person appointed, elected contracted or otherwise assigned, paid or unpaid, to perform a certain public duty or have a certain power while performing this public duty. This offense is regarded to be completed when there is an act of receiving

a bribe. However, for the object of this offense is also a judicious activity of an agency or organization, even when a person just accepts (to receive) the bribe, he or she can still be examined for penal liability for preparing for the commission of a criminal offense (Articles 289 and 17 of the Penal Code) or for uncompleted commission of a criminal offense (Article 18 of the Penal Code).

In addition to Articles 279 and 289, Vietnam's Penal Code also includes Article 290 (acting as intermediaries for bribery) which, from a certain angle, is also related to Article 15 of the UNCAC. Therefore, it can be affirmed that Vietnam's Penal Code is basically compatible with the provisions of Article 15 of the UNCAC.

However, some experts point to a limitation in Vietnam's Penal Code (Article 289) which merely defines a bribe as material benefits (namely money, property or other material benefits which can be calculated in money). Thus, bribery under Vietnam's Penal Code has a more narrow meaning than the definition provided in Article 15 of the UNCAC, which defines bribe as 'any undue advantage', either corporeal or incorporeal. According to many experts, whilst Vietnamese law penalizes acts of giving non-material benefits as bribes under non-criminal sanctions (administrative sanction or disciplining), the Penal Code's limited definition of a bribe has reduced in practice the deterrent effect of the law on acts of giving and receiving bribes which, in increasing cases, include also non-material benefits (such as promise for promotion, appointment to a certain post, transfer to a new position or workplace; finding a job for a relative of the related person). Therefore, in order to increase the effectiveness of the prevention and combat of this offense, the State should study revision of the Penal Code in the direction of expanding the definition of a bribe in accordance with Article 15 of the UNCAC.

## ARTICLE 16: BRIBERY OF FOREIGN PUBLIC OFFICIALS AND OFFICIALS OF PUBLIC INTERNATIONAL ORGANIZATIONS

*Article 16 sets a compulsory obligation for the State Parties to the UNCAC to criminalize acts of bribery of foreign public officials or officials of public international organizations (Clause 1). However, for acts of solicitation by a foreign public official or an official of a public international organization of an undue advantage (Clause 2), the state parties are encouraged but not obliged to criminalize them (optional provision).*

Survey results show that Vietnam's Penal Code's provisions on the criminal offenses of giving and receiving bribes (Articles 279 and 289) are in practice applicable only to Vietnamese persons (bribes given to or solicited by persons holding posts and powers in the Vietnamese state apparatus), but not to foreign public officials and officials of public international organizations. This is because these offenses belong to the group of post-related offenses, which under Article 277 of the Penal Code, are understood as acts infringing upon judicious activities of agencies or organizations committed by persons holding posts while performing their public duties; while persons holding posts are understood as persons appointed, elected, contracted or otherwise assigned, paid or unpaid, to perform a certain public duty and have certain powers while performing these public duties. Therefore, Article 277 of the Penal Code excludes foreigners from the application of Articles 279 and 289, though, on principle, foreigners may be punished under the provisions of Vietnam's Penal Code. Specifically, as per Article 5 of the Penal Code, this Code applies to foreigners committing criminal offenses within the territory of the Socialist Republic of Vietnam. For foreigners committing criminal offenses within the territory of the Socialist Republic of Vietnam but entitled to diplomatic immunities or consular privileges and immunities under Vietnamese laws, treaties which the Socialist Republic of Vietnam has acceded to or international practices, their penal liabilities shall be handled through diplomatic channels. In addition, according to Article 6 of the Penal Code, foreigners committing criminal offenses outside the territory of the Socialist Republic of Vietnam may still be examined for penal liability under Vietnam's Penal Code in the cases provided in international treaties which Vietnam has acceded to.

Yet, some viewed that Article 277 of the Penal Code does not impede the application of Articles 279 and 289 to foreign public officials or officials or public international organizations because the terms 'agency' and 'organization' may be construed to include both Vietnamese ones and foreign ones based in Vietnam. This view, however, remains controversial, so it cannot be affirmed that Vietnamese law is fully compatible with the provisions of Article 16 of the UNCAC.

As far as international legal obligations are concerned, the above legal loophole poses a requirement for the Vietnamese State to amend relevant articles or make separate articles in the Penal Code to establish as criminal offenses the acts mentioned in Article 16 of the UNCAC, especially bribing foreign public officials or officials or public international organizations (compulsory provision). In practice, in the context that Vietnam is widely and profoundly integrating in the world, it is very necessary to incorporate Article 16 of the UNCAC into domestic law in a more specific way in order to effectively prevent and combat all acts of corruption.

## ARTICLE 17: EMBEZZLEMENT, MISAPPROPRIATION OR OTHER DIVERSION OF PROPERTY BY A PUBLIC OFFICIAL

*Article 17 sets a compulsory obligation for all state parties to establish as criminal offences acts, when committed intentionally, of embezzlement, misappropriation or other diversion by a public official. However this Article does not require but only encourages the states to impose the obligation on suspects to prove their property not stemming from corruption (optional provision).*

Survey results show that, corresponding to Article 17 of the UNCAC, Vietnam's Penal Code has two articles, Article 278 (embezzlement of property) and Article 280 (abuse of one's post and power to misappropriate property). Under Article 278, any person who abuses his/her post and power to misappropriate property which he/she is responsible for managing and is valued at VND 2 million (USD 100) or more or which is valued at under VND 2 million (USD 100) but results in serious consequences, and this person has been disciplined for this act or has committed this act more than once, will be examined for penal liability. Under Article 280, any person who abuses his/her post and power to misappropriate property of another person which is valued at VND 2 million (USD 100) or more or at under VND 2 million (USD 100) but results in serious consequences, and this person has been disciplined for this act or has been convicted for corruption offense and has not yet had his/her criminal record remitted, will be examined for penal liability. Subjectively, criminal acts specified in both Articles 278 and 280 are committed directly and intentionally. So, Vietnam's Penal Code is fully compatible with Article 17 of the UNCAC. According to some experts, concerning the objective elements of this offense, the provisions of Vietnam's Penal Code are broader than those of Article 17 of the UNCAC. While infringed objects under Articles 278 and 280 of the Code may be property directly or indirectly managed by offenders, infringed objects defined in Article 17 of the UNCAC are only property entrusted to this public official by virtue of his/her position.

Yet, the Vietnamese penal law does not oblige the suspects to prove the legality of their property (according to Article 63 of the 2003 Criminal Procedure Law, the burden of proof for all types of crimes rests with criminal procedure-conducting agencies, which is regarded as a principle of criminal procedures). Meanwhile, in any country the investigation and proof of illicit property for accusing a person of corruption are very difficult and time consuming, resulting in omission of many cases of corruption. These difficulties are more widely felt in Vietnam because its regulations on management and supervision of citizens' incomes and property remain rather obsolete compared to other countries (such as payments for civil transactions are more often made in cash than via bank). Therefore, a number experts stated that in order to create a turning point in the investigation of cases of corruption in general and embezzlement, misappropriation and other diversion of property by public officials in particular, the State should study and apply experiences of other countries and territories, typically Hong Kong, to revise the Criminal Procedure Code toward putting the burden of proof on suspects in certain corruption offenses. This does not mean abolition but adjustment of the principle of burden of proof resting with criminal procedure-conducting agencies to suit the reality of anti-corruption work.



## ARTICLE 23: LAUNDERING OF PROCEEDS OF CRIME

*Clause 1 of Article 23 sets a compulsory obligation for the state parties to the UNCAC to criminalize acts, when committed intentionally, of conversion or transfer of property, concealment or disguise of the illicit origin of the property; receipt, ownership or use of property which is the proceeds of crime. Clause 2 of this Article provides that each state party shall seek to apply Clause 1 of this Article to the widest range of predicate offences; and include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention committed both within and outside the jurisdiction of the state party in question.*

Survey results show that, corresponding to Clause 1, Article 23 of the UNCAC, Vietnam's Penal Code contains Article 250 (harboring or consuming property acquired through the commission of crime by other persons) and Article 251 (money laundering). According to Article 250, the objective elements of the offense of harboring or consuming property acquired from the commission of a crime by other persons include: 'harboring or consuming, without prior promise, property with the full knowledge that it is acquired from the commission of a crime by other persons.' According to Article 251, the objective elements of the offense of money laundering includes:

- a) Directly and indirectly participating in financial or banking transactions or other transactions related to money which they clearly know are acquired from the commission of a crime in order to conceal the illegal origin of such money or property;
- b) Using money or property which they clearly know is acquired from the commission of a crime in conducting business or other activities;
- c) Concealing information on the origin, true nature, location, process of movement or ownership of money or property which they clearly know are acquired from the commission of a crime, or obstructing the verification of such information;
- d) Committing one of the acts specified at sub-section a, b and c of this Clause with regard to money or property which they clearly know are acquired from the movement, transfer or conversion of money or property acquired from the commission of a crime.

In relation to Clause 2, Article 23 of the UNCAC, according to Vietnam's Penal Code predicate offenses of those specified in Articles 250 and 251 of the Code may be any criminal acts

aiming to earn illicit material benefits, including corruption offenses. In cases related to predicate offenses, persons committing such offenses shall bear penal liability for these predicate offenses without being punished under Articles 250 and 251.

Thus, it can be concluded that Vietnam's Penal Code is compatible to a certain extent with the provisions of Article 23 of the UNCAC. However, according to a number of experts, the legal framework against money laundering, namely the provisions of Articles 250 and 251 of the Penal Code, still contain a certain constraints failing to meet the requirement of the practical prevention of this crime in Vietnam, specifically seen in the following aspects:

Firstly, there is now no document specifically guiding the application of Article 251, such as guiding on the value of laundered money and properties in an offense (in spite of the prescribed value of transactions to be reported under Article 9 of Government Decree No. 74/2005/ND-CP of June 7, 2005, against money laundering). The absence of such guidance has rendered the application of Article 251 inconsistent and problematic.

Secondly, as per Article 251, the offense is committed only when the suspect has 'full knowledge that the property was proceeds of crime.' This has caused difficulties to the application of law because the concept 'full knowledge that the property is proceeds of crime' is highly abstract. In many other countries, the Russian Federation for example, the penal code provides that an offense is committed when the suspect knows that the property is illegal.

Thirdly, Article 251 does not specifically mention money laundering involving foreign elements (through foreign financial institutions, by foreign legal or natural persons on their own or jointly with Vietnamese legal persons or citizens, etc.). These offenses have been committed in Vietnam and are on the rise.

Fourthly, Article 251 fails to make clear whether the owner of the legalized property can be the offender himself/herself. On this issue, the Penal Code of the Russian Federation makes a clear distinction between laundering of money or properties illegally acquired by others and laundering of money or properties acquired by the offender himself/herself through the commission of a crime.

From the above analyses and other related issues, a number of recommendations can be made to improve Vietnam's legal framework against money laundering to be more compatible with Article 23 of the UNCAC. Specifically:

- To amend Article 251 of the Penal Code toward providing that an offense is committed when the suspect knows that the property is illegal. Moreover, it should be more clearly stipulated that legalized money and properties may be acquired by the suspect himself/herself through the commission of a crime and that involving foreign elements is an aggravating circumstance.

- To promulgate a document guiding the application of Article 251, especially the value of legalized money or property to be regarded as a criminal offense.
- To study the formulation a law against money laundering in replacement of Government Decree No. 74/2005/ND-CP of June 7, 2005, in order to increase the effect and effectiveness of anti-money laundering measures in reality.
- To study the formulation of a new law or revising current laws pertaining to transactions and payments to restrict the use of cash, thereby better controlling money-laundering activities. Specifically, to formulate a law on transactions in cash in the economy to replace Government Decree No. 64/CP of September 20, 2001, on payment activities through payment service providers; to formulate a law on checks and a law on promissory notes to replace the 2005 Law on Negotiable Instruments.

## ARTICLE 26: LIABILITY OF LEGAL PERSONS

*Article 26 sets a compulsory obligation for the state parties to the UNCAC to establish the liability (criminal, civil or administrative) of legal persons for the offences established in accordance with the Convention. However, the imposition of the criminal liability on legal persons related to activities of corruption is not compulsory (optional provision).*

In reality, Article 26 is one of the two articles of the UNCAC (together with Article 20 on criminalization of illicit enrichment) which Vietnam announced its reservation not to abide by upon its ratification of the Convention.<sup>5</sup> However, this does not mean that Vietnam's current legal system contains no provision concerning Article 26 of the UNCAC. Therefore, this report still explores the compatibility between Vietnamese law and Article 26 of the Convention for consultation purposes.

Survey results show that according to Vietnamese law, legal persons shall bear administrative and civil liabilities for illegal acts, including violations of anti-corruption law. Administrative and civil liabilities of legal persons in corruption cases are provided in Articles 6 and 12 of the 2002 Ordinance on Handling of Administrative Violations (amended and supplemented in 2007 and 2008); Article 618 of the 2005 Civil Code; and Articles 7, 30, 31 and 32 of the 2009 Law on Compensation Liability of the State and etc.

With specific regards to civil liability, Article 618 of the Civil Code clearly states that a legal person shall compensate for damage caused by its employees when performing tasks assigned by the legal person. If the legal person has compensated for the damage, it may request the person at fault in causing the damage to refund a sum of money in accordance with law. In addition, according to Article 624 of the Civil Code, a legal person that pollutes the environment and thereby causes damage must pay compensation as provided by law.

Regarding administrative liability, according to Article 6 of the 2002 Ordinance on Handling of Administrative Violations "organizations shall be administratively sanctioned for all administrative acts they have performed." Article 12 of this Ordinance states that for each act of administrative violation, a legal person must be subject to either of the two principal sanctions: caution and fine. It may also face either of the two additional sanctions, including deprivation of the right to use

permits, professional practice certificates and confiscation of material evidence and means used in the commission of administrative violations. In addition, a violating legal person may be subject to the application of one or many of the following remedies: (i) forcible restoration of the initial state altered due to the administrative violation or forcible dismantlement of an illegally constructed work; (ii) forcible application of measures to overcome the environmental pollution or epidemic transmission caused by the administrative violation; (iii) forcible bringing out of the Vietnamese territory or forcible re-export of goods, articles and means; (iv) forcible destruction of articles which cause harm to human health, domestic animals and cultivated plants, and harmful cultural products; and (v) other measures prescribed by the Government. However, also under current relevant regulations, legal persons' acts of receiving bribes and giving bribes are not regarded as administrative violations (together with acts of joining organized criminal gangs and obstructing justice). Only the act of money laundering of legal persons is regarded as a violation for which they shall bear administrative liability under Decree No. 74/2005/ND-CP. Therefore, it can be concluded that Vietnam's current provisions on the administrative liability of legal persons have little impact on the prevention and combat of corruption.

Moreover, Vietnamese law has not yet regarded legal persons as subjects of criminal liability. Specifically, according to Article 72 of the 1992 Constitution (amended and supplemented under the National Assembly's Resolution No. 51/2001/QH10 of December 25, 2001), no one shall be regarded as guilty and be subject to punishment before the sentence of the court becomes legally effective. While according to Article 2 of the Penal Code (basis of penal liability), only a person who has committed a crime defined in the Penal Code shall bear penal liability.

Since Vietnamese law has not yet regarded legal persons as criminal offenders, in cases of corruption only individuals working for legal persons may bear penal liability. According to many experts, this has impeded the prevention and combat of many crimes in which offenders acted in the name of legal persons, including corruption crimes. Specifically, these cases include acting in the name of a legal person to misappropriate property through swindling (typically the EPCO Minh Phung case in 1997); to smuggle, evade tax and commit trade frauds (typically the case of Southeast Asia & Associates limited liability company in 2006); and to commit corruption (typically PMU18 and Vinashin cases). The problem is that these cases of abusing the names of legal persons to commit criminal offenses often cause serious consequences not only economic but also political, cultural and social, to Vietnam.

Concerning this problem, international experiences show that provisions on penal liability of legal persons will help increase the effectiveness of the prevention and combat of crimes, including corruption. Therefore, many countries, like the UK, US, France, Canada, Australia, Netherlands, Belgium, Switzerland, Japan, Singapore, China and Malaysia, have enacted laws establishing legal persons as subjects of crime.<sup>6</sup>

From the above analyses and seeing that the number of corruption cases of abusing the names of legal persons in on the rise in Vietnam, the consultants and many experts hold that the State should early amend and supplement relevant legal documents toward providing that legal persons shall also bear administrative liability for all acts of corruption rather than only acts of money laundering under current regulations, and legal persons are also subjects of criminal offenses in the Penal Code (though this is just an optional provision in Article 26 of the UNCAC).

# ARTICLE 32: PROTECTION OF WITNESSES, EXPERTS AND VICTIMS

*Article 32 sets a compulsory obligation for the state parties to the UNCAC to protect witnesses and persons who give testimony concerning offences established in accordance with this Convention. It also requires the state parties, to protect, as appropriate, their relatives and other persons close to them, experts and victims in corruption cases.*

Survey results show that Vietnamese law contains provisions on the protection of witnesses, experts and victims in the prevention and combat of crimes, including corruption. These persons, regardless of gender, are all protected under general provisions on the right to inviolability of their bodies, lives, health, honor and dignity. In addition, there are also separate regulations on the protection of the lives, health, honor, dignity, property and other rights and legitimate interests of witnesses and their relatives, specifically as follows:

- Citizens enjoy inviolability of their bodies and the protection by law of their lives, health, honor and dignity (Article 71 of the 1992 Constitution, and Article 7 of the Criminal Procedure Code).
- Victims of criminal cases, their relatives and persons close to them also enjoy the protection by law of their lives, health, honor and dignity. Witnesses, victims or their relatives who face threats to their lives, health, honor or dignity have the right to request help and protection from the investigative agency, Procuracy, court or other agencies and organizations (Article 7 of the Criminal Procedure Code).
- According to Article 7 of the Criminal Procedure Code, witnesses have the right to request the investigative agency that has summoned them to protect their lives, health, honor, dignity, property and other rights and legitimate interests when they participate in legal proceedings. They have the right to complain about procedural decisions and acts of agencies and persons with procedure-conducting competence; and the right to have travel costs and other expenses paid by summoning agencies under law. In case witnesses as well as their relatives face threats to their lives and health or have their honor, dignity or property infringed upon, agencies with procedure-conducting competence shall take necessary measures to protect them under law. In necessary cases, safety must be assured for witnesses and their relatives. The trial panel shall decide to take protective measures under law.

- As per Article 13(1) of the 2005 People's Police Law, the State protects and keeps confidential agencies, organizations and individuals participating in, collaborating, cooperating with and assisting the people's police in protecting national security and preserving social order and safety.

Vietnamese law contains rather specific provisions on the protection of witnesses, reporting persons and victims in the two fields of national security and drug prevention and combat. Specifically, in the field of protection of national security, the 2004 National Security Law requires specialized national security agencies to “take necessary measures to protect collaborators, reporting persons, witnesses and victims in cases of infringement upon national security” (Article 24 (1,h)). This provision was later solidified and guided in Government Decree No. 151/2005/ND-CP of December 14, 2005. In the field of drug prevention and combat, the 2000 Law on Drug Prevention and Combat also clearly states that specialized drug prevention and combat agencies shall “take necessary measures to protect reporting persons, witnesses and victims in drug-related cases” (Article 13 (1,e)). This provision was later specified and guided in Government Decree No. 99/2002/ND-CP of November 27, 2002, and the Minister of Public Security’s Circular No. 09/2004/TT-BCA of June 16, 2004, guiding the application of a number of measures to protect reporting persons, witnesses and victims in drug-related cases.

From the above provisions, it can be seen that Vietnamese law is compatible to a certain extent with the provisions of Article 32 of the UNCAC. However, Vietnamese law does not contain specific provisions on the protection of witnesses, victims and experts in the prevention and combat of corruption. Meanwhile, in reality witnesses, victims and experts in these cases often face special threats and dangers. Therefore, the consultants and most experts held that the State should study and strengthen the provisions and legal documents relating to the protection

of witnesses, experts and particularly victims acting as witnesses in corruption cases as well as their relatives. Amendments and supplements should focus on mechanisms and measures to protect experts, witnesses or victims referred to in Article 32 of the UNCAC but not yet specified in the domestic law, or never or rarely been implemented in Vietnam, for example signing agreements with other states on the resettlement of experts, witnesses or victims facing high dangers, changing their personal information or identities or transferring them to other workplaces or working posts, etc. According to many experts, although the UNCAC merely makes recommendations on this issue, the State should consider incorporating them into domestic law and investing resources in order to mobilize wide involvement of the public, thereby increasing the effectiveness of the prevention and combat of corruption in the coming time.



## ARTICLE 33: PROTECTION OF REPORTING PERSONS

*This Article sets a compulsory obligation to the State Parties to the UNCAC to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to competent authorities any facts concerning offences established in accordance with this Convention.*

Survey results show that, similar to the protection of witnesses, experts and victims, Vietnamese law contains many provisions on the protection of reporting persons in the prevention and combat of crimes, including corruption. Typical documents and regulations are listed below:

- Article 74 of the 1992 Constitution affirms the right of citizens to make complaints and denunciations and the obligation of related state agencies to consider and settle them. It stipulates: "Citizens have the right to lodge complaints and denunciations with competent state agencies about illegal acts of state agencies, economic organizations, social organizations, units of the armed forces or any individuals. Complaints and denunciations shall be considered and settled by state agencies within the time limits prescribed by law." This right is detailed in the 1998 Law on Complaints and Denunciations (amended and supplemented in 2004 and 2005), which provides a rather complete legal framework with specific provisions on the rights and obligations of complainants and denunciators (reporting persons) as well as complained and denounced persons; and management and supervision of the settlement of complaints and denunciations. According to Vietnamese law, the right to lodge complaints and denunciations is also granted to people whose freedom is deprived of (Article 29 of the Regulation on prisons promulgated together with the Government's Decree No. 113/2008/ND-CP of October 28, 2008).
- Article 74 of the 1992 Constitution also strictly prohibits all acts of intimidating, maltreating and revenging on complainants and denunciators. This provisions is specified in Article 76 of the 1998 Law on Complaints and Denunciations, which stipulates: "Strictly prohibited are all acts of obstructing the exercise of the right to make complaints and denunciations; intimidating, revenging on or retaliating the complainants and denunciators; disclosing names, family names, addresses and autographs of denunciators; deliberately unsettling or settling illegally complaints and denunciations; covering and protecting the complained and denounced; illegally intervening in the settlement of complaints and denunciations; inciting, forcing, inducing or buying off other people to make false complaints or denunciations; intimidating or offending persons competent to settle complaints and denunciations; and taking advantage of the making of complaints or denunciations to make distortions or slanders or to cause disorder."
- Article 132 of the 1999 Penal Code establishes as a criminal offense infringement upon the right to make complaints or denunciations, under which any persons who abuse their posts and powers to obstruct the making of complaints or denunciations, the consideration and settlement of complaints and denunciations or the handling of complained or denounced persons or have the duty to abide by but deliberately refrain from abiding by decisions of agencies competent to consider and settle complaints and denunciations, causing damage to complainants or denunciators, shall be served a warning, subject to non-custodial reform for up to one year or imprisoned for between three months and three years. Those who revenge on complainants or denunciators shall be subject to non-custodial reform for up to three years or imprisoned for between six months and five years. In addition, offenders may be banned from holding certain posts for between one year and five years.
- Article 72 of the 1998 Law on Complaints and Denunciations provides the protection of denunciators' identities, under which denunciation-receiving and-handling agencies, organizations and persons shall keep secrets for denunciators, may not disclose their names, surnames, addresses and autographs as well as other information harmful to them.
- Article 65 of the 2005 Anti-Corruption Law provides the handling and protection of persons reporting acts of corruption. Accordingly, heads of competent agencies or organizations, when receiving reports on acts of corruption, shall consider and handle them according to their competence; keep full names, addresses, signature and other information of reporting persons anonymous as requested; promptly apply all necessary measures to protect reporting persons when there appear signs of intimidation, revenge or retaliation against them or when so requested by reporting persons; and notify the results of settlement to reporting persons as requested. This provision

is detailed in Chapter V (on competence, procedures for receiving, accepting and settling reports on acts of corruption; provisions on protection, commendation of persons reporting acts of corruption) of the Government's Decree No. 120/2006/ND-CP of October 20, 2006, detailing and guiding a number of articles of the 2005 Anti-Corruption Law.

- Regulations on commendation of persons reporting on acts of corruption: Joint Circular No. 03/2011/TTLT-BNV-TTCP of May 6, 2011, of the Ministry of Home Affairs and the Government Inspectorate on the commendation of individuals making outstanding achievements in the reporting and detection of acts of corruption.

Apart from the above regulations, Prime Minister Decision No. 445/QĐ-TTg of April 7, 2011, approving the Plan on the implementation of the United Nations Convention Against Corruption assigned the Ministry of Public Security to draft a regulation on the protection of persons reporting on acts of corruption and the Law on Protection of Witnesses and Persons Providing Information relating to Crimes for passage during 2011-2016.<sup>7</sup> In addition, under the 2011 program on elaboration of legal documents,<sup>8</sup> a joint circular of the Ministry of Public Security, the Ministry of National Defense, the Supreme People's Procuracy and the Supreme People's Court is being drafted to guide the protection of witnesses, reporting persons and victims in criminal investigations (expected to be issued in June 2011, but still not yet finalized by the end of July 2011). Moreover, the 1998 Law on Complaints and Denunciations is being revised toward separation into two laws (Law on Complaints and Law on Denunciations) aiming to receiving and better protecting reporting persons. The two draft laws were submitted to the National Assembly on May 30, 2010, discussed at the 8th session of the XIIth National Assembly (in October 2010) and expected to be passed at the 2nd session of the XIIIth National Assembly (in November 2011).<sup>9</sup>

From the above information, it can be concluded that Vietnam has a legal framework with basic foundations to protect corruption-reporting persons and it is making great efforts to strengthen this legal framework. However, all experts agreed that at present, corruption-reporting persons are not yet protected and cannot be protected effectively

because current regulations on such protection are scattered in many legal documents, causing difficulties to their application. More importantly, most regulations on the protection of reporting persons are general, lacking specific guidance. There are no regulations on protective measures much needed by reporting persons such as those on arranging guards for them, especially during investigation and trial activities, and those on weapons and funds for such guards; temporary relocation, change of residence, workplace and personal identity papers for reporting persons and their relatives; ways of handling when reporting persons refuse protection, etc. This is the main reason why the number of reporting persons in Vietnam is not high while the situation of corruption remains complicated. Therefore, all experts held that the State should speed up the formulation of legal documents mentioned above (joint circular guiding the protection of witnesses, reporting persons and victims in criminal investigations; regulations on the protection of persons reporting acts of corruption, the Law on Protection of Witnesses and providers of information relating to crimes, the Law on Denunciations and the Law on Complaints), with a view to strengthening and further improving the protection of corruption-reporting persons and their relatives. Regarding this issue, experts emphasized that these legal documents should attach special importance to the practicality and feasibility of implementation mechanisms to guarantee that they be implemented effectively, protecting corruption-reporting persons and encouraging people to actively participate in the anti-corruption combat.

The survey also shows that to assist the Government in drafting the Law on Denunciations, a consultant group formed by TI and TT already studied and prepared a meticulous report containing specific recommendations on this draft, aiming at providing the best protection for corruption-reporting persons in accordance with international legal standards and experiences on this issue (the report was sent to the Government Inspectorate in July 2011). The consultants and many experts hold that in order to further improve the legal framework on the protection of corruption-reporting persons, the Government may refer to that report.

## PART IV: LEGAL MUTUAL ASSISTANCE ON THE GROUND OF ABSENCE OF DUAL CRIMINALITY

*Article 46 (Chapter IV) of the UNCAC details the obligation of the state parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. However, due to the limits of time and resources, this survey only focused on an important aspect, that is mutual legal assistance on the ground of absence of dual criminality (Article 46(9)(b)&(c)) from the perspective and practice of Vietnam.*

*Article 46(9)(b)&(c) states that a state party may refuse to render mutual legal assistance on the ground of absence of dual criminality provided that it must take into account the purposes of the Convention defined in Article 1. Such refusal will not be accepted if the mutual legal assistance does not involve coercive action. Even in the case of absence of the ground of dual criminality, the state parties should still consider expanding the scope of assistance pursuant to this Article.*

Survey results show that Vietnamese law is compatible with the provisions of Article 46(9)(b)&(c). Specifically, the 2007 Law on Mutual Legal Assistance, the Criminal Procedure Code and relevant documents, as well as treaties which Vietnam has signed or acceded to all contain the provisions on the refusal of mutual legal assistance on the ground of absence of dual criminality. However, in reality, stemming from the policy and determination of the Vietnamese State to prevent and combat corruption, information relating to acts already established as offenses under the UNCAC but not yet criminalized by Vietnam may still be provided to concerned countries, particularly through the channels of INTERPOL and ASEANAPOL, on the condition that such information is not detrimental to the independence, sovereignty, territorial integrity of Vietnam and not contrary to the fundamental principles of Vietnamese law. Moreover, the 2007 Law on Mutual Legal Assistance (Article 25) provides that persons who are serving their imprisonment sentence in Vietnam may be transferred to competent authorities of requesting countries for supply of evidence in criminal cases in the requesting countries, given certain conditions are

met, such as such persons agree with the transfer and competent authorities of the requesting countries commit in writing to ensure their life safety, health, accommodation and meal, travel conditions, duration and mode of receipt and return as well as other specific conditions related to the transfer as proposed by competent Vietnamese authorities. This is also stipulated in the mutual legal assistance agreements between Vietnam and many countries, including the Russian Federation (1981), Czechoslovakia (1982), Cuba (1984), Hungary (1985), Laos (1998), China (1998), Belarus (2000), the People's Democratic Republic of Korea (2002), the Republic of Korea (2003), India (2007), the UK (2009) and Algeria (2010).

According to experts, in the coming time, the State should maintain and study further expanding the scope and measures of mutual legal assistance with regard to corruption crimes in this spirit of Article 46(9)(b)&(c) of the UNCAC and in accordance with relevant principles of Vietnamese law.

## PART V: ENFORCEMENT OF THE LAW AGAINST CORRUPTION

*Law enforcement is a broad term referred to in many articles of the UNCAC. However, due to limited time and resources, this survey only focused on some important aspects mentioned in Articles 11 and 36 of the Convention.*

*Article 11 of the UNCAC sets an obligation for the state parties to assure the independence of courts and prosecuting agencies in the fight against corruption. Moreover, this Article also requires the state parties to take measures to strengthen integrity among members of the judiciary. Article 36 sets a requirement for the state parties to establish a body or a force of persons specialized in combating corruption, and ensure that they have necessary qualification, resources and independence to be able to carry out their tasks effectively and without any undue influence.*

The survey shows that Vietnamese law is basically compatible with the provisions of Articles 11 and 36 of the UNCAC. Specifically, in relation to Article 11, the Criminal Procedure Code contains provisions affirming and assuring the independence of courts and procuracies in legal proceedings (Articles 16, 23, 36, 37, 181, 195, 196 and 232). In addition, the Penal Code contains one article (Article 297 on the offense of coercing judicial officers to act against the law) to protect, prevent and handle acts infringing upon the independence and objectivity and abidance by law of members of judicial agencies in investigations, prosecutions and trials. In addition, the independence of courts and procuracies is also demonstrated through many provisions of the 2002 Law on Organization of the People's Courts and the 2002 Law on Organization of the People's Procuracies.

Concerning Article 36 of the UNCAC, the 2005 Anti-Corruption Law and some other legal documents provide the establishment of agencies and units specialized in preventing and combating corruption, including: a) central- and provincial-level Steering Committees for Anti-Corruption; b) the Anti-Corruption Bureau of the Government Inspectorate; c) the Corruption-related Crime Investigation Police Department of the Ministry of Public Security; d) the Department for Prosecution and Supervision of Investigations of Corruption Cases of the Supreme People's Procuracy.

According to relevant legal documents, these specialized agencies and units shall perform their functions and tasks in accordance with law and abide by law only. Legally, this helps these agencies resist all illegal obstructions, influence and interventions of any individuals, agencies, organizations and units in investigations, prosecutions, supervision and adjudications of cases of corruption.

However, most experts hold that the system of agencies engaged in corruption prevention and combat in Vietnam (including judicial agencies) have not yet fully played their important and necessary role in preventing and combating corruption. There are various reasons, mainly: (i) Though enjoying legal independence, due to many objective and subjective factors, activities of judicial agencies and anti-corruption agencies are not truly independent in reality; (ii) the anti-corruption knowledge and skills of these agencies' members remain limited, especially in investigating, prosecuting and adjudicating complicated cases; (iii) the force of officers, especially full-time officers in charge of preventing and combating corruption is inadequate and their technical equipment is limited; (iv) the ethic qualities of a number of officers, particularly those in judicial agencies, are not high, resulting in the commission of acts of corruption right in judicial activities; and (v) the functions and tasks of some agencies remain unclear and

# PART VI: ACCESS TO INFORMATION ON CORRUPTION CASES

overlapping, and there isn't any mechanism for effective coordination.

From the above analyses, many experts view that strengthening and improving the system of anti-corruption agencies in Vietnam, specifically re-organizing the system of law enforcement agencies, to ensure organizational and personnel independence in investigations and prosecutions is the urgent task the State should perform in the coming time. To do this, the State should study and refer to models and experiences of countries which have succeeded in

combating corruption, especially experiences on the organization and operations of, as well as mechanism of coordination between, specialized agencies in charge of preventing and combating corruption, for strengthening and improving the organization and operation of these agencies in Vietnam. In addition to sending officers to study abroad, the State should encourage related universities and research institutions in the country to develop and implement specialized training and research programs to train and raise qualifications for personnel of anti-corruption agencies.

Access to information is a human right under the international law on human rights, known as the right of access to information. This right is acknowledged in Article 19 of the 1948 Universal Declaration on Human Rights and the 1966 International Convention on Civil and Political Rights (which Vietnam acceded to in 1982).

In the Global Corruption Report 2003, TI affirmed that access to information is ‘the most important weapon in the fight against corruption.’<sup>10</sup> A similar affirmation was made by Privacy International, another leading international organization in this field.<sup>11</sup>

The right of access to information is also emphasized in many articles of the UNCAC. Specifically, the Convention requires its State Parties to implement measures to ensure the public's right to access to information (Article 10) and at the same time makes specific provisions on transparency and openness in activities of public agencies (Article 5, 7, 9, 10, 12 and 13).

As access to information is considered by the international community as an indispensable instrument in the fight against corruption, at national level, by September, 2009, 140 countries worldwide had promulgated laws on access to information.<sup>12</sup> In Vietnam, though the right to information is recognized in the Constitution (Article 69) and concretized in many laws, such as the 2005 Anti-Corruption Law, the 2007 Ordinance on Exercise of Democracy in Communes, Wards and Townships, the 1989 Press Law, Vietnam's legal framework on this issue remains incompatible with international standards and practices. Therefore, the national strategy for prevention and combat of corruption through 2020 (promulgated together with Government Resolution No. 21/NQ-CP of May 12, 2009) has identified one of specific measures for preventing and combat corruption in the coming period: ‘... formulate and promulgate a law on access to information...’ (Section III, 1(e)). Stemming from this requirement, the Ministry of Justice is, together with other agencies and organizations, drafting a first ever law on access to information of Vietnam.

This survey does not aim to assess Vietnam's whole legal framework on access to information. It only contributes to

analyzing the issue in one aspect- access to information on cases of corruption that have actually occurred. It shows major corruption cases occurring in Vietnam in the last 5 years, which are recorded by the consultants and experts (the number of cases and proceedings are updated by July 30, 2011). These cases include:

**1.** The case of PMU18: A criminal case was instituted on March 1, 2006, with 8 persons, including Bui Tien Dung (former general director of PMU18), accused of deliberately acting against state regulations on economic management, causing serious consequences at PMU18. Another criminal case was also instituted on August 7, 2007, with 13 persons, including Bui Tien Dung, accused of embezzling property in the project on construction of Bai Chay bridge. After three court hearings (the latest held on July 6, 2011), Bui Tien Dung alone was sentenced to a total of 23 years in prison.<sup>13</sup>

**2.** The case of Huynh Ngoc Sy (former director of the management unit of the project on East-West Avenue and water environment in Ho Chi Minh City) and his accomplices: A criminal case was instituted on February 9, 2009, with 2 persons (Huynh Ngoc Sy and Le Qua) accused of abusing posts and powers while performing public duties in the course of implementation of the project on East-West Avenue and water environment in Ho Chi Minh City. This case was brought to first-instance trial on September 25, 2009, and appellate trial on March 16, 2010. According to the appellate sentences, Huynh Ngoc Sy and Le Qua were sentenced to 6 years and 5 years in prison, respectively. A criminal case of offering and receiving bribes was instituted on December 9, 2008, with Huynh Ngoc Sy accused on September 25, 2010, of the offense of receiving bribes. This corruption case is being further investigated.<sup>14</sup>

**3.** The case of Luong Phuong Cac (former deputy director of the provincial-level Culture and Information Department of Dien Bien province and former head of the management unit of the project on Dien Bien historical relic) and his accomplices: A criminal case was instituted on June 7, 2007, with 10 persons accused of embezzling



property; deliberately acting against state regulations on economic management, causing serious consequences; and abusing posts and powers while performing public duties in the course of implementation of the project on Dien Bien historical relic. The first first-instance court hearing was held on March 29, 2010 (the trial panel later ruled to postpone the court hearing and returned the case file for additional investigation). The second first-instance court hearing was held on January 11, 2011, sentencing Luong Phuong Cac to 44 months and 25 days in prison, Le Van Vien to 44 months and 25 days in prison, Vo Thi Hong to 25 months and 4 days in prison and Nguyen Duc Sung to 24 months of suspended sentence, and admonishing Le Huyen before court.<sup>15</sup>

**4.** The case of Tran Ngoc Suong (former director of Song Hau agricultural farm) and her accomplices: A criminal case was instituted on August 9, 2008, with 5 persons accused of establishing illegal funds in Song Hau agricultural farm. The first-instance trial was held on August 15, 2009, the appellate trial on November 19, 2009, and the cassation trial on May 27, 2010 (as protested by the Supreme People's Procuracy, the first-instance and appellate sentences were quashed for re-investigation).<sup>16</sup>

**5.** The case of Tran Van Khanh (former director of the Agricultural Supplies Corporation of the Ministry of Agriculture and Rural Development) and his accomplices: A criminal case was instituted on November 30 2007, with 4 persons accused of embezzling property and deliberately acting against state regulations on economic management, causing serious consequences at the Agricultural Supplies Corporation. The first-instance trial was held on March 1, 2011, ruling on postponement of the court hearing and return of the case file for additional investigation.<sup>17</sup>

**6.** The case of Cao Minh Hue (former director of the Natural Resources and Environment Department of Binh Duong province) and accomplices: A criminal case was instituted on October 29, 2009, with 4 persons accused of abusing posts and powers while performing public duties. This case is under investigation.<sup>18</sup>

**7.** The case of Tay Nguyen Forest Agriculture Joint-Stock Company of Vietnam Forestry Corporation: A criminal case was instituted on March 5, 2009, with 5 persons accused of abusing posts and powers while performing public duties in Tay Nguyen Forest Agriculture Joint-Stock Company. This case is under investigation.<sup>19</sup>

**8.** The case of Luong Hoai Nam (former general director of Jetstar Pacific Airlines): A criminal case was instituted on January 7, 2010, with Luong Hoai Nam accused of neglecting responsibility, causing serious consequences at Jetstar Pacific Airlines Joint-Stock Company. This case is under investigation.<sup>20</sup>

**9.** The case of Doan Tien Dung (former deputy general director of BIDV) and Le Thi Thanh Binh (former deputy general director of BIDV, Hai Phong branch): A criminal case was instituted on February 4, 2010, with Doan Tien Dung and Le Thi Thanh Binh accused of receiving bribes and abusing posts and powers to influence other persons for personal profits at the Bank for Investment and Development of Vietnam. The first-instance trial was held on September 30, 2010 (the trial panel later ruled to return the case file for additional investigation).<sup>21</sup>

**10.** The case of Nguyen Anh Tuan (former deputy director of the provincial-level Capital and Foreign Currency Management and Trading Department of the Bank for Agriculture and Rural Development of Vietnam - AgriBank) and his accomplices: A criminal case was instituted on May 15, 2007, with 5 persons accused of deliberately acting against state regulations on economic management, causing serious consequences (VND 401 billion) in the provincial-level Capital and Foreign Currency Management and Trading Department. This case is under investigation.<sup>22</sup>

**11.** The case of Nguyen Dinh Than (former director of Vinaconex 10 company of Vinaconex Corporation) and his accomplices: A criminal case was instituted on May 15, 2007, with 8 persons accused of offering and receiving bribes in Vinaconex 10 company. In March 2010, the Supreme People's Procuracy issued an indictment to prosecute the accused and forwarded the case to the People's Court of Da Nang city for preparing a trial.<sup>23</sup>

**12.** The case of Tran Xuan Dinh (former general director of the Central Vietnam Construction Corporation - Cosevco) and his accomplices: A criminal case was instituted on February 27, 2008, with 9 persons accused of deliberately acting against state regulations on economic management, causing serious consequences, at the Central Vietnam Construction Corporation of the Ministry of Construction. This case is under investigation.<sup>24</sup>

**13.** The case of Tran Le Thuy, Hoang Trung Thong (officials of the Bank for Investment and Development of Vietnam - Dong Do branch (BIDV Dong Do) and their accomplices: A criminal case was instituted on April 25, 2008, with 11 persons accused of embezzling property and appropriating property through swindling (VND 204 billion) at BIDV Dong Do. The first-instance trial was held on July 10, 2011 (the trial panel later ruled to return the case file for additional investigation).<sup>25</sup>

**14.** The case of Dang Nam Trung (former director of the Tourist, Scientific and Technical Development Investment Company of the National Center for Natural Sciences and Technology) and his accomplices: A criminal case was instituted on April 10, 2002, with 8 persons accused of embezzling property at the Tourist, Scientific and Technical Development Investment Company. After 4 first-instance trial court hearings, Dang Nam Trung was sentenced to 10 years in prison at the last court hearing on November 15, 2007.<sup>26</sup>

**15.** The case of Vu Dinh Thuan (former deputy director of the Government Office, former head of the administration unit of the State Administrative Management Computerization Project (Project 112)) and his accomplices: A criminal case was instituted on September 13, 2007. The first-instance trial was held on January 25, 2010, handing down a total of 9 imprisonment sentences, 12 suspended sentences and 2 non-custodial reform sentences against Vu Dinh Thuan and 22 other persons for abusing posts and powers while performing public duties and taking advantage of one's influence over persons with posts and powers to acquired personal benefits.<sup>27</sup>

**16.** The case of Vinashin economic group: A criminal case was instituted on August 4, 2010, against former chairman of the Board of Directors Pham Thanh Binh who was arrested and detained on the same day, for investigation into violations which brought Vinashin to the brink of bankruptcy with a debt of nearly VND 86 trillion. International "wanted" warrants were issued on June 18, 2011, against Giang Kim Dat, former head of the Business Division of the Ocean Shipping Company, and Ho Ngoc Tung, former financial general director of Vinashin (who had absconded overseas before the criminal case was instituted).<sup>28</sup>

In addition to the aforesaid cases, the experts also mentioned other serious corruption cases occurring in the recent years, such as the case of Nguyen Lam Thai (former general director of CIP corporation) and 45 accomplices, who were prosecuted and tried for two offense of misappropriating property through swindling and evading tax, with Nguyen Lam Thai alone sentenced to 26 years in prison at the first-instance court hearing on May 21, 2008;<sup>29</sup> the case of Nguyen Duc Chi (former chairman of the Board of Directors of the Tourism Investment and Development Company – RIT) who was sentenced to 4 years in prison for illegally using property in the purchase of rice (on deferred payment) from Imex Tra Vinh for sale overseas, and also sentenced to 1.5 years in prison for forging document of agencies and organizations related to the building of Rusalka resort in Bai Tien beach, Nha Trang city, Khanh Hoa province;<sup>30</sup> the case of Nguyen Quoc Son and accomplices, who were prosecuted for abusing posts and powers while performing public duties related to land administration in Hai Boi commune, Dong Anh district, Hanoi city;<sup>31</sup> the case of Duong Van Mai (from Tu Son, Bac Ninh province) and Tong Van Du (from Tan Yen, Bac Giang province) who were prosecuted for offering and receiving bribes (valued at over VND 10 billion) in Ho Chi Minh City;<sup>32</sup> the case of Cong Phuong Toan and accomplices who were prosecuted for misappropriating property through swindling in Nam Thang Long urban center project, Phu Thuong ward, Tay Ho district, Hanoi city;<sup>33</sup> the case of the Aviation Petrol and Oil Company with 18 persons prosecuted for abusing posts and powers while performing public duties;<sup>34</sup> the case of Phu Rieng Rubber Company (Binh Phuoc province) with three persons prosecuted and tried for embezzling property;<sup>35</sup> the case of Duong Xuan Tuy who was prosecuted and tried for deliberately acting against state regulations on economic management, causing serious consequences in Vietnam Mulberry, Worm and Silk Company;<sup>36</sup> the case of Nguyen Thanh Thuy and accomplices who were prosecuted for embezzling property and neglecting responsibility, causing serious consequences in Nguoi Cao Tuoi (the Elderly) newspaper editorial office;<sup>37</sup> the case of Nguyen Van Huan and accomplices who were prosecuted and tried for misappropriating property through swindling in the Seagoing Ship Supply Joint-Stock Company (Quang Ninh);<sup>38</sup> and the suspicious case of Securrency Company (Australia) offering bribes to senior officials of the State Bank of Vietnam for winning the polymer banknote printing contract.<sup>39</sup>

## PART VII: RECENT KEY DEVELOPMENTS AND RECOMMENDATIONS

As cited, most information on the aforesaid corruption cases has been published in the mass media (in addition to the cited online newswires, such information has been also published on many printed newspapers and information on some cases has been also broadcast). This shows that most major corruption cases in Vietnam have been made public. Procedural proceedings in most of these cases have been updated in the mass media.

However, the survey also shows that information on corruption cases has been publicized only in a summarized manner. According to some experts, complete case files are still internally accessible within certain competent state agencies, and access to detailed information on corruption cases, i.e. indictments or detailed case files, remains difficult. In fact, only some categories of persons, including lawyers, reporters and researchers, can have access to complete files of corruption cases. While most of these documents are in principle not treated as state secrets, not every information they managed to access can be publicized. Moreover, in some major cases of corruption or suspicious corruption (for example, the case of East-West Avenue and the suspicious case of Securrency involving offering of bribes for winning the polymer banknote printing contract), information was published on the domestic press only after it was reported by foreign press.

Many experts hold that the main reason for this reality is Vietnam's incomplete legal framework on the right to access information. Though the publicity and transparency of information held by state agencies, including information on corruption cases have been provided in the Anti-Corruption Law, the Press Law and many relevant legal documents, *there is still a lack of specific provisions on limits of information disallowed to be publicized as well as responsibilities of and penalties to be imposed on state agencies and employees that fail to comply with the obligation to publicize or provide information to the press and the public.*<sup>40</sup> To put an end to this situation, the Government (with the Ministry of Justice assuming the prime responsibility) has drafted the Law on Access to Information. It was planned to be submitted it to the National Assembly for discussion and comment at the 6th session of the XIIth National Assembly (October 2009) and passage at the 7th session of the XIIth National Assembly (May 2010). However,

by the end of July 2011, this Law is still awaiting debate and passage by the National Assembly.<sup>41</sup>

The above limitations on information access constitute one of the reasons for the people's low confidence in the Vietnamese State's anti-corruption combat. To address these limitations, most experts hold that the Law on Access to Information should be passed as soon as possible with comprehensive and specific provisions, especially those on exceptions which allow non-disclosure of information as well as the obligation of state agencies and civil servants to enforce the Law. The draft Law on Access to Information, which was submitted by the Government to the National Assembly (draft 4, submitted on May 25, 2009),<sup>42</sup> should be further amended to be more conformable to international standards and practices.<sup>43</sup>

The existence of a solid law on access to information can bring about various benefits to the State. As the most important instrument in the fight against corruption, such law would contribute to creating breakthroughs in anti-corruption in Vietnam by making mandatory the publicity of operations and assets of state agencies and public employees and subjecting them to the regular and close supervision by the mass media and the public. In addition, the extension and assurance of the right of access to information would help promote the building of an open government, accelerate the administrative and judicial reforms, and improve the efficiency of operations of the state apparatus, which are also the aims of the Vietnamese Communist Party and State in the renewal cause. Moreover, since the right of access to information is a fundamental and important human right, such a law would demonstrate the political determination and practical action of the State of Vietnam in the implementation of international conventions on human rights to which Vietnam is a party.

For these reasons, the consultants and many experts hold that the Government should speed up the adoption of the law on access to information so that this law will be available as soon as possible.

### 7.1. RECENT REMARKABLE DEVELOPMENTS

According to experts, key developments in the prevention and combat of corruption in Vietnam in the last five years include:

#### *Policies and laws:*

- The Government approved and implemented Project 30 on simplification of administrative procedures (under Prime Minister Decisions No. 30/QD-TTg of 10 January 2007, and No. 07/QD-TTg of 4 January 2008).<sup>44</sup> This Project introduced a system of comprehensive, open and transparent solutions in order to list, review and simplify administrative procedures toward building a democratic, professional, effective and efficient administration, consequently helping prevent and combat corruption and waste. On the basis of this Project, for the first time, a national database on administrative procedures applicable to four levels of administration has been formed with over 5,400 procedures and 9,000 documents. In addition, 10,000 commune-level and 700 district-level procedures have been both reduced and standardized to 63 procedures. By February 2011, the Project's second phase was completed with nearly 5,000 administrative procedures simplified (accounting for 88% of the reviewed procedures), thus helping citizens and businesses cut over 37% of expenses for administrative procedures (estimated at nearly VND 30 trillion each year). These achievements were not only economically significant but also made active contributions to the fight against corruption, making the state apparatus healthy and clean.<sup>45</sup>
- On 9 March 2007, the Government passed Decree No. 37/2007/ND-CP on property and income transparency. This Decree details and guides provisions on property and income transparency of Section 4, Chapter II of the Anti-Corruption Law, covering declaration of properties and incomes; verification of properties and incomes; handling of violations of regulations on property and income transparency; and responsibilities of agencies, organizations, units and individuals in implementation. On 8 August 2011, the Government promulgated Decree No. 68/2011/ND-CP amending a number of articles of Decree No. 37/2007/ND-CP of 9 March 2007, additionally providing the publicization of property and income declarations. Despite some limitations, especially both of these decrees' failure to require public disclosure of information on declared properties- they just require publicization within agencies or units in certain cases- these decrees can be regarded as an important stride as property and income transparency is significantly important in the fight against corruption. According to many experts, even when information is not publicly disclosed, serious declaration alone can help detect illicit properties originated from corruption.<sup>46</sup>
- The National Assembly passed the Law Amending and Supplementing a Number of Articles of the 2005 Anti-Corruption Law (Resolution No. 01/2007/QH12 of 4 August 2007). This Law provides a basis for improving the system of specialized anti-corruption bodies by forming provincial-level steering committees for corruption prevention and combat (Article 73). The experts say this move is necessary and somewhat effective to restrain corruption. Nevertheless, they agree that its effect is minor for many reasons, one of which is lack of independence of these committees from local administrations (under regulations, these committees are headed by chairpersons of People's Committees of provinces and centrally run cities).
- The Government passed Decree No. 158/2007/ND-CP on 27 October 2007, providing a list of posts and terms for regular change of post holders among cadres, civil servants and public employees. According to the experts, regular change of posts for cadres, civil servants and public employees in some sectors and industries is necessary and, once seriously implemented, will have positive effects on the prevention and combat of corruption.
- The Government passed on 12 May 2009, Resolution No. 21/NQ-CP promulgating the national strategy for the prevention and combat of corruption through 2020, with the objectives of: preventing and eliminating conditions and opportunities for corruption; increasing inspection and supervision of the exercise of state powers, preventing abuse of posts and powers for self-seeking purposes; improving institutions and creating a fair, equal and transparent business environment; improving policies to penalize corruption; especially criminal and criminal procedure policies, etc. The promulgation of this strategy is highly appreciated



- by the experts since it sets overall and comprehensive guidelines, orientations and measures for effective prevention and combat of corruption from now to 2020.
- The President of Vietnam ratified the UNCAC (on 30 June 2009) which was effective to Vietnam on 18 September 2009. As mentioned above, as a State Party to the UNCAC, Vietnam has received more effective supports from the international community in fighting corruption. But more importantly, this has helped boost Vietnam's harder efforts in its fight against corruption since as a state party to the UNCAC, corruption prevention and combat is not only an internal need but also an international obligation of Vietnam.
  - The Prime Minister signed on 2 December 2009, Decision No. 137/2009/QĐ-TTg approving the scheme on incorporating corruption prevention and combat into education, training and retraining programs. Under this scheme, corruption prevention and combat is a compulsory training content of all educational levels. According to the experts, this has important and long-term significance for corruption prevention and combat in Vietnam since education helps raise awareness of people of all strata, especially young people, about corruption and corruption prevention and combat, which may lead to positive behavioral changes in this field.
  - On 7 April 2010, the Prime Minister signed Decision No. 445/QĐ-TTg promulgating the UNCAC implementation plan. According to the experts, this plan is significant for corruption prevention and combat since it sets specific tasks together with an implementation roadmap involving 3 phases: Phase I (to 2011), which concentrates on improvement of institutions and policies in accordance with the Convention, capacity building for specialized corruption prevention and combat agencies, raising awareness about the Convention for cadres, civil servants, public employees and people of all social strata and actual implementation of anti-corruption measures; Phase II (2011-2016), which will concentrate on assessment of measures of implementing the Convention and amendments to the law against corruption in order to raise the effectiveness of the Convention implementation; and Phase III (2016-2020), which will concentrate on comprehensive assessment of the Convention implementation and supplementation of mechanisms, strengthening of organization and increase of the quality and effectiveness of anti-corruption activities in general

and the Convention implementation in particular. In addition, to implement the plan, an inter-sectoral task force for the Convention implementation was formed (under the Government General Inspector's Decision No. 434/QĐ-TTCP of 11 March 2010) and an expert team for assessment of the Convention implementation was formed (under Prime Minister Decision No. 776/QĐ-TTg of 2 June 2010).

- Formulation of documents on mechanisms for coordination among agencies with anti-corruption functions; documents on obligations for communication and reporting on anti-corruption work; criteria for corruption measuring and evaluation of corruption prevention and combat performance. According to the experts, these are necessary and positive steps to improve the legal framework on and coordination in the prevention and combat of corruption in Vietnam.

#### *Other aspects:*

- Activities to promote and enhance public involvement in the prevention and combat of corruption have been intensified and achieved initial results, specifically annual commendation of persons with achievements in this field by the Office of the Central Steering Committee for Corruption Prevention and Combat; organization of the Government Inspectorate's program on anti-corruption initiatives nationwide to find and realize feasible ideas against corruption. According to the experts, these are creative and useful activities to promote public involvement in the anti-corruption fight.
- Strict punishment of acts of corruption has achieved encouraging results: a host of major corruption cases (as mentioned above) have been brought to court, contributing to raising public confidence in the fight against corruption.
- International cooperation in the prevention and combat of corruption has been expanded, shown in the Vietnamese Government's participation in regional and world forums against corruption, specifically: South East Asia Parliamentarians Against Corruption (SEA-PAC); ASEAN Regional Forum (ARF) on counter terrorism and transnational crimes; global forum on fighting corruption and safeguarding integrity; plan of action against corruption in Asia-

Pacific of the Asia Development Bank (ADB) and the Organization of Economic Cooperation Development (OECD). Expansion of international cooperation has given Vietnam more opportunities in exchanging anti-corruption experiences and initiatives with the international community.

## 7.2. RECOMMENDATIONS ON PRIORITIZED ACTIONS

According to the consultants and many experts, in the current context of Vietnam, in addition to other measures, actions the State should and may prioritize in the coming time to step up the fight against corruption include (listed in order of priority)<sup>48</sup>:

- 1.** Developing and improving mechanisms to protect witnesses, reporting persons, experts and victims in the fight against corruption (this measure is related to Articles 32 and 33 of the UNCAC). Specifically, as mentioned earlier, the State should speed up the formulation and passage (with quality) of planned legal documents related to this issue, including a joint circular guiding the protection of witnesses, reporting persons and victims in criminal investigations; a regulation on protection of persons reporting acts of corruption; a law on protection of witnesses and providers of information on crimes; a law on denunciations and a law on complaints. This is because many constraints remain in current mechanisms to protect these persons in Vietnam while terrorization and repression, especially of witnesses and corruption-reporting persons, have recently occurred commonly and increasingly become more blatant and dangerous, leading to people's reluctance to fight corruption.
- 2.** Passing the Law on Information Access with amendments and supplements to the 4th draft (this measure is directly related to Article 10, and also to Articles 17 and 23 of the UNCAC). This is because Vietnam's current legal framework on the right to access information contains limitations and problems while this right is regarded as the most important tool of the public and media agencies in fighting corruption.<sup>49</sup>
- 3.** Further amending and supplementing relevant legal documents to require not only limited declaration and publicity within agencies or units but also wide publicity of properties and incomes of civil servants and public employees (this measure is directly related to Articles 17 and

23, and also related to Article 10 and many other articles of the UNCAC). As analyzed above, declaration without wide publicity of properties and incomes obstructs the people's right to and effectiveness of supervision of acts of civil servants and public employees and concurrently reduces public confidence in the Party's and the State's determination to fight corruption. Initially, trial publicity of properties of civil servants and public employees who are newly appointed and promoted to top positions in the political system can be applied.

- 4.** Studying revision of relevant legal documents to stipulate that legal persons must also bear administrative liability for all acts of corruption rather than only money laundering as currently prescribed. In addition, it is necessary to consider withdrawing the reservation not to abide by Article 26 of UNCAC and concurrently study amendments to the 1999 Penal Code to regard legal persons as subjects of crime (these measures are related to Article 26 of the UNCAC). As analyzed in Part III, these amendments will be significant in preventing and handling cases of corruption abusing the names of legal persons which have occurred and are occurring in Vietnam.
- 5.** Also studying the possibility to withdraw the reservation not to abide Article 20 of the UNCAC and concurrently amending the 1999 Penal Code to regard illicit enrichment as a criminal offense (this measure is related to Article 20 of the UNCAC). This will help prevent and handle cases of corruption which have become increasingly complex and sophisticated in Vietnam.
- 6.** Adding to the 1999 Penal Code the offenses of bribing foreign public officials and officials of public international organizations; receiving bribes of foreign public officials and public officials of public international organizations to be consistent with the provisions of Article 16 of the UNCAC (this measure is related to Article 16 of the UNCAC). As analyzed in Part III, Vietnamese law still lacks provisions on this issue while these acts of corruption have been committed and will be committed in an increasing number in the process of the country's international integration.
- 7.** Amending the provisions of Article 289 of the Penal Code to broaden the concept of bribe from 'material benefit' to 'any illicit benefit' in compatibility with the provisions of Article 15 of the UNCAC (this measure is related to Article 15 of the UNCAC). As analyzed in Part III, this amendment will be very significant in preventing and



handling acts of bribery which are increasingly popular and complicated in Vietnam.

**8.** Studying amendments to related provisions of the Criminal Procedure Code toward imposing on suspects of corruption the burden of proof of the legality of their properties (this measure is directly related to Article 17 of the UNCAC). As analyzed in Part III, this is a breakthrough measure to effectively handle acts of corruption, contributing to tackling the problem that many known cases of corruption cannot be handled in Vietnam.

**9.** Studying revision of Article 251 of the Penal Code toward (i) replacing the provision that the suspect must clearly know that property is gained acquired from the commission of a crime with the provision that the suspect knows that the property is of an illegal origin, which is sufficient for constituting an offense; (ii) clearly providing that legalized money and properties may be proceeds of a crime committed by the suspect himself/herself, and (iii) regarding involvement of a foreign element in money laundering as an aggravating circumstance. Besides, the State should also early promulgate documents guiding in detail the value of legalized money and properties sufficient for constituting a money laundering offense under Article 251 of the Penal Code and study and formulate a law against money laundering, a law on cast transactions in the economy, a law on checks and a law on promissory notes. All of these measures are related to Article 23 of the UNCAC, aiming to address limitations and constraints in the current legal framework against money laundering in Vietnam as analyzed in Part III.

**10.** Studying and completing relevant legal documents to enhance the independence and effectiveness of operations of specialized anti-corruption agencies, including the system of steering committees for corruption prevention and combat (this measure is directly related to Article 36 of the UNCAC). In order to enhance the independence of this system, it is suggested to study the formation of an anti-corruption body attached to the National Assembly. At the same time, the State should also study improving the mechanism of coordination between the existing anti-corruption agencies in order to bring into full play and tap every resources and advantages of each agency, thereby raising the effectiveness and efficacy of operations of the system of these agencies.

**11.** Quickly, promptly and strictly handling corruption cases, especially those with major damage or impacts to deter offenders and consolidate the public's confidence in the fight against corruption. Increasing and assuring

the independence of judicial bodies in investigations, prosecutions and trials of corruption cases (this measure is directly related to Article 11 of the UNCAC).

**12.** Completing the mechanism to recover properties acquired from corruption, studying and proposing to add enforcement of civil parts in criminal sentences of foreign courts; carrying out international cooperation in the recovery of properties acquired from corruption (this measure is also related to Article 49, as well as provisions of Chapter V of the UNCAC).

**13.** Consolidating and improving mechanisms to ensure participation of the public in general and civil society organizations particular in making anti-corruption policies and laws; and in fighting corruption (this measure is related to Article 13 of the UNCAC).

**14.** Increasing forms, measures and raising effectiveness of education of ethics and laws on the prevention and combat of corruption in combination with improving living and working conditions for state officials and civil servants (this measure is related to Articles 7 and 8 of the UNCAC). Regarding this, the Government should direct the serious implementation of the scheme on incorporation of anti-corruption education into the educational system at all levels, especially encouraging and assisting a number of domestic universities and law research institutes to work out and implement corruption prevention and combat training and research programs to train and raise professional capacity for employees of anti-corruption agencies.

**15.** Further increasing publicity and transparency measures through further stepping up administrative and judicial reforms, especially implementing Project 30 on simplification of administrative procedures (this measure is also related to Articles 7, 8, 10, 17 and 23 of the UNCAC).

**16.** Increasing physical foundations and improving professional operations and techniques in investigation of corruption crimes for specialized anti-corruption personnel (this measure is also related to Article 6 of the UNCAC).

**17.** Further promoting international cooperation in the prevention and combat of corruption toward more practicality, specifically in training and retraining of specialized personnel, building of mechanisms for sharing information, documents and data on the prevention and combat of corruption with other countries (this measure is also related to Article 6, as well as to provisions of Chapter IV of the UNCAC).

# ENDNOTES

**1.** Including filling in the questionnaire, in-depth interview and participating in the workshop.

**2.** The concept 'civil society organizations' here is understood according to the definition of CIVICUS in the UNDP/SNV report: "Filling the gap: the emerging civil society in Vietnam" by Irene Norlune 2007.

**3.** See the Prime Minister's Decision No. 776/QĐ-TTg of June 2, 2010, at <http://www.chinhphu.vn/portal>.

**4.** See information on the workshop at <http://www.thanhtra.com.vn/tabid/77/newsid/43618/itemidclicked/1059/se0/Xay-dung-Bao-cao-Quoc-gia-thuc-thi-Cong-uoc-cua-Lien-hop-quoc-ve-chong-tham-nhung/Default.aspx>.

**5.** See Decision No. 950/2009/QĐ-CTN of June 30, 2009, of the President of the Socialist Republic of Vietnam ratifying the United Nations Convention Against Corruption at <http://www.vietlaw.gov.vn/LAWNET/index.html> or <http://www.thuvienphapluat.vn/archive/Quyet-dinh-950-2009-QD-CTN-phe-chuan-Cong-uoc-Lien-hop-quoc-ve-chong-tham-nhung-vb125436t17.aspx>.

**6.** See Pham Hong Hai, Can legal persons be subjects of crime? Jurisprudence Journal, No. 6/1999, pp 14-19; Trinh Quoc Toan, Penal liability of legal persons in the British criminal law, Science Journal of the Hanoi National University (Economics-Law), No. 3/2002; Penal liability of legal persons in the criminal law of Belgium, Science Journal of the Hanoi National University (Economics-Law), No. 3/2003; Penal liability of legal persons in the criminal law of the Netherlands, European Studies Journal, No. 2/2003; and Penal liability of legal persons in the criminal law of France, State and Law Journal, No. 10/2004.

**7.** See the text of this Decision at <http://www.vietlaw.gov.vn/LAWNET/index.html>.

**8.** See this Decision at <http://www.vietlaw.gov.vn/LAWNET/index.html>.

**9.** See the draft Law on Denunciations at <http://duthaoonline.>

[quochoi.vn/du-thao-luat/du-thao-luat-to-cao](http://duthaoonline.quochoi.vn/du-thao-luat/du-thao-luat-to-cao); and the draft Law on Complaints at <http://duthaoonline.quochoi.vn/du-thao-luat/du-thao-luat-khieu-nai>.

**10.** Transparency International, Global Corruption report 2003: Special Focus: Access to Information, London: Profile Books, p 6.

**11.** Privacy International, Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws, p 7 (see at <http://www.privacyinternational.org/foi/survey>).

**12.** Privacy International (2009), Global Freedom of Information Map, (see at <http://www.privacyinternational.org/index.shtml>).

**13.** See more information on this case at <http://tuoitre.vn/Chu-de/545/PMU-18.html>; <http://vietbao.vn/tp/Con-bac-trieu-do-vu-PMU18/700790/>..., and some other online newspapers.

**14.** See more information on this case at <http://www.tienphong.vn/Topic/Index.html?TopicID=312>; <http://search.vnexpress.net/news?s=Hu%E1%BB%B3nh+Ng%E1%BB%8Dc+S%C4%A9&g=66FD8EC7-FA76-4A7C-8FE3-DB605B4C9CE0&butS=yes>; <http://laodong.com.vn/Theo-dong-su-kien/Huynh-Ngoc-Sy-ra-toa-vi-toi-nhan-hoi-lo/58...> and some other online newspapers.

**15.** See more information on this case at <http://www.cand.com.vn/News/Search.aspx?SearchTerm=L%C6%B0%C6%A1ng%20Ph%C6%B0%E1%BB%A3ng%20C%C3%A1c>; <http://www.tin247.com/l%C6%B0%C6%A1ng+ph%C6%B0%E1%BB%A3ng+c%C3%A1c.html>; [http://tintuc.xalo.vn/l%C6%B0%C6%A1ng\\_Ph%C6%B0%E1%BB%A3ng\\_C%C3%A1c...](http://tintuc.xalo.vn/l%C6%B0%C6%A1ng_Ph%C6%B0%E1%BB%A3ng_C%C3%A1c...) and some other online newspapers.

**16.** See more information on this case at <http://laodong.com.vn/Tim-kiem?q=Tr%E1%BA%A7n+Ng%E1%BB%8Dc+S%C6%B0%C6%A1ng>; <http://tuoitre.vn/Chu-de/1170/Nong-truong-song-Hau.html>.. and some other online newspapers.

**17.** See more information on this case at <http://www.sggp.org.vn/phapluat/2007/12/134757/>; [http://tim.vietbao.vn/Tr%E1%BA%A7n\\_V%C4%83n\\_Kh%C3%A1nh/](http://tim.vietbao.vn/Tr%E1%BA%A7n_V%C4%83n_Kh%C3%A1nh/); <http://laodong.com.vn/Tim-kiem?q=%22tr%E1%BA%A7n+v%C4%83n+kh%C3%A1nh%22...> and some other online newspapers.

**18.** See more information on this case at <http://laodong.com.vn/Home/Bat-tam-giam-nguyen-Giam-doc-So-Tai-nguyen--Moi-truong-Binh-Duong/200910/161407.laodong>; [http://tim.vietbao.vn/Cao\\_Minh\\_Hu%E1%BB%87/](http://tim.vietbao.vn/Cao_Minh_Hu%E1%BB%87/) ; <http://www.tin247.com/cao+minh+hu%E1%BB%87.html>

**19.** See more information on this case at <http://dantri.com.vn/c25/s20-464571/de-nghi-truy-to-nguyen-pho-chanh-van-phong-tinh-uy-dak-lak.htm>; <http://vietbao.vn/An-ninh-Phap-luat/Khoi-to-cuu-lanh-dao-Cong-ty-co-phan-rung-Tay-Nguyen/20872558/218/> ; <http://f.tin247.com/21390463/B%C3%A1o+c%C3%A1o+Ch%C3%ADnh+ph%E1%BB%A7+v%E1%BB%81+sai+ph%E1%BA%A1m+t%E1%BA%A1i+Cty+C%C3%B4ng+nghi%E1%BB%87p+R%E1%BB%ABng+T%C3%A2y+Nguy%C3%AA.html> and some other online newspapers.

**20.** See more information on this case at <http://tuoitre.vn/Chinh-tri-Xa-hoi/357266/Bat-tam-giam-ong-Luong-Hoai-Nam---nguyen-Tong-giam-doc-Jetstar-PacificnbspAirlines.html>; <http://vtc.vn/7-267750/phap-luat/dinh-chi-dieu-tra-voi-ong-luong-hoai-nam-nguyen-tgd-jpa.htm>...and some other online newspapers.

**21.** See more information on this case at [http://tintuc.xalo.vn/%C3%94ng\\_%C4%90o%C3%A0n\\_Ti%E1%BA%BFn\\_D%C5%A9ng](http://tintuc.xalo.vn/%C3%94ng_%C4%90o%C3%A0n_Ti%E1%BA%BFn_D%C5%A9ng); <http://nld.com.vn/20100929122632387p0c1019/doan-tien-dung-hau-toa.htm>... and some other online newspapers.

**22.** See more information on this case at <http://www.baomoi.com/Group/1004130.epi>; <http://m.baodatviet.vn/Home/phapluat/Mien-to-cho-ba-bi-can-buon-ngoai-te-thua-lo-500-ty-dong/20096/47374.datviet..> and some other online newspapers.

**23.** See more information on this case at [http://tim.vietbao.vn/Nguy%E1%BB%85n\\_%C4%90%C3%ACnh\\_Th%E1%BA%A3n/](http://tim.vietbao.vn/Nguy%E1%BB%85n_%C4%90%C3%ACnh_Th%E1%BA%A3n/); <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/198639/Nguyen-giam-doc-Nguyen-Dinh-Thân-nhan-hoi-lo-gan-13-ti-dong.html>...and some other online newspapers.

**24.** See more information on this case at <http://tim.vietbao>.

[vn/Tr%E1%BA%A7n\\_Xu%C3%A2n\\_%C4%90%C3%ADnh/](http://vn/Tr%E1%BA%A7n_Xu%C3%A2n_%C4%90%C3%ADnh/); <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/326961/Ong-Tran-Xuan-Dinh-duoc-tai-ngoai.html>..and some other online newspapers.

**25.** See more information on this case at <http://m.baodatviet.vn/Home/phapluat/Hai-chi-em-cung-linh-an-chung-than/20117/157045.datviet>; <http://www.vietnamplus.vn/Home/2-an-chung-than-trong-vu-an-rut-ruot-BIDV-Dong-Do/20117/98220.vnplus...> and some other online newspapers.

**26.** See more information on this case at <http://www.tin247.com/%C4%91%E1%BA%B7ng+nam+trung.html>; <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/204772/%E2%80%9CKy-an%E2%80%9D-Dang-Nam-Trung-hoan-xu-lan-3.html>...and some other online newspapers.

**27.** See more information on this case at <http://www.tin247.com/v%C5%A9+%C4%91%C3%ACnh+thu%E1%BA%A7n.html>; <http://vnexpress.net/gl/phap-luat/2010/01/3ba17dd1/...> and some other online newspapers.

**28.** See more information on this case at <http://vnexpress.net/gl/kinh-doanh/2011/06/vinashin-lo-no-nhieuhon-bao-cao/>; <http://vneconomy.vn/20110603044755359p0c5/thuc-lo-cua-vinashin-gap-3-lan-bao-cao.htm>; <http://tuoitre.vn/Chinh-tri-Xa-hoi/387933/Vinashin-no-hon-80000-ti-dong.html>; <http://www.cand.com.vn/vi-VN/phapluat/2011/6/150994.cand>; <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/443053/Truy-na-quoc-te-nguyen-tong-giam-doc-tai-chinh-Vinashin.html>.. and some other online newspapers.

**29.** See more information on this case at <http://dantri.com.vn/c36/s20-233386/sieu-lua-nguyen-lam-thai-linh-26-nam-tu-giam.htm>; <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/280982/Nguyen-Lam-Thai-keu-khong-lua-cac-buu-dien.html>

**30.** See more information on this case at <http://vnn.vietnamnet.vn/xahoi/phapluat/2005/06/462373/>; <http://vnexpress.net/gl/phap-luat/2008/01/3b9feb3e/>; <http://www.tienphong.vn/Topic/Index.html?TopicID=51>

**31.** See more information on this case at <http://www.tin247.com/%C3%B4ng+nguy%E1%BB%85n+qu%E1%BB%91c+s%C6%A1n.html>; <http://hanoimoi.com.vn/newsdetail/Phap-luat/307317/khoi-to-them-4-can-bo-xa-hai-boi-huyen-%C4%91ong-anh.htm>

**32.** See more information on this case at [http://tintuc.xalo.vn/00-260160377/Truy\\_na\\_Tong\\_Van\\_Du\\_va\\_Duong\\_Van\\_Mai.html](http://tintuc.xalo.vn/00-260160377/Truy_na_Tong_Van_Du_va_Duong_Van_Mai.html); [http://www.tin247.com/dieu\\_tra\\_vu\\_trung\\_ta\\_cong\\_an\\_nhan\\_hoi\\_lo\\_15\\_ti\\_dong-6-21733096.html](http://www.tin247.com/dieu_tra_vu_trung_ta_cong_an_nhan_hoi_lo_15_ti_dong-6-21733096.html)

**33.** See more information on this case at <http://www.tin247.com/c%C3%B4ng+ph%C6%B0%C6%A1ng+to%C3%A0n.html>; <http://www.anninhthudo.vn/An-ninh-doi-song/Chi-tiet-vu-bat-nguyen-Chu-tich-phuong-Phu-Thuong/322238.antd>

**34.** See more information on this case at <http://giadinh.net.vn/22432p0c1005/10-quan-chuc-cong-ty-xang-dau-hang-khong-viet-nam-hau-toa.htm>; <http://vietbao.vn/An-ninh-Phap-luat/Tam-giam-ke-toan-Cong-ty-Xang-dau-hang-khong/40071302/218/>

**35.** See more information on this case at <http://f.tin247.com/21484763/Nguy%C3%AA+Gi%C3%A1m+%C4%91%E1%BB%91c+C%C3%B4ng+ty+cao+su+Ph%C3%BA+Ri%E1%BB%81ng+I%C3%A3nh+%C3%A1n.html>; <http://vietbao.vn/Xa-hoi/Nguyen-Giam-doc-Cong-ty-Cao-su-Phu-Rieng-lai-ra-toa/20869003/157/>;

**36.** See more information on this case at <http://www.tin247.com/d%C6%B0%C6%A1ng+xu%C3%A2n+t%C3%BAy.html>; <http://antg.cand.com.vn/vi-vn/vuan/2006/3/66994.cand>; [http://tim.vietbao.vn/D%C6%B0%C6%A1ng\\_Xu%C3%A2n\\_T%C3%BAy/](http://tim.vietbao.vn/D%C6%B0%C6%A1ng_Xu%C3%A2n_T%C3%BAy/)

**37.** See more information on this case at <http://f.tin247.com/45325/B%E1%BA%Aft+nguy%C3%AA+Ph%C3%B3+TBT+B%C3%A1o+Ng%C6%B0%E1%BB%9Di+cao+tu%E1%B%95i+chi%E1%BA%BFm+ti%E1%BB%81n+c%E1%BB%A7a+b%C3%A1o.html>; <http://baodatviet.vn/Home/phapluat/Khoi-to-hai-nguyen-lanh-dao-bao-Nguoi-cao-tuoi/20096/43805.datviet>

**38.** See more information on this case at <http://www.baomoi.com/De-nghi-truy-to-36-doi-tuong-trong-vu-xuat-khong-khoang-2-trieu-tan-than/58/2963013.epi>; <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/272022/Tam-giam-hai-giam-doc-cung-ung-tau-bien-Cua-Ong-Hon-Gai.html>

**39.** See more information on this case at <http://tuoitre.vn/The-gioi/349043/Securency-dinh-chi-cong-tac-hai-quan-chuc.html>; <http://www.baomoi.com/Vu-Securency-WB-cung-cap-thong-tin-tai-khoan-nuoc-ngoai-cua-mot-so-nguoi-Viet/122/5267531.epi>; [http://tintuc.xalo.vn/00-214067405/Thanh\\_tra\\_Chinh\\_phu\\_noi\\_gi\\_ve\\_vu\\_Securency\\_lobby\\_in\\_tien\\_polymer.html?mode=print](http://tintuc.xalo.vn/00-214067405/Thanh_tra_Chinh_phu_noi_gi_ve_vu_Securency_lobby_in_tien_polymer.html?mode=print)

**40.** See more details on this issue, see Law Faculty, Hanoi National University, Access to information: Law and Practice in the world and Vietnam, Hanoi National University Publisher, 7/2011.

**41.** See the draft Law on Access to Information (Draft 4) at <http://duthaoonline.quochoi.vn/du-thao-luat/du-thao-luat-tiep-can-thong-tin>.

**42.** *ibid.*

**43.** See Nguyen Đăng Dung-Vũ Công Giao: “Draft Law on Access to Information of Vietnam: Comparative analyses with the model law of ARTICLE 19”, in Access to Information: Law and Practice in the world and Vietnam, Hanoi National University Publisher, 7/2011.

**44.** See full texts of these documents at <http://www.vietlaw.gov.vn/LAWNET/index.html>

**45.** For detailed information, visit <http://phapluattp.vn/20110220010746814p0c1013/de-an-30-cuoc-dau-tranh-cat-bo-quyen-hanh-dan.htm>

**46.** See interview with Dr Nguyen Dinh Loc, former Minister of Justice and deputy to the 12th National Assembly, on this issue at <http://vietbao.vn/Xa-hoi/Minh-bach-tai-san-thu-nhap-Ke-khai-nhung-khong-cong-khai/40190387/157/>.

**47.** See information on the program at [http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Ban-hay-noi-voi-toi/CHUONG\\_TRINH\\_SANG\\_KIEN\\_PHONG\\_CHONG\\_THAM\\_NHUNG\\_VIET\\_NAM\\_VACI\\_2011/](http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Ban-hay-noi-voi-toi/CHUONG_TRINH_SANG_KIEN_PHONG_CHONG_THAM_NHUNG_VIET_NAM_VACI_2011/)

**48.** Recommendations in this section are related to not only the above-analyzed issues but also many other contents of UNCAC and Vietnamese law.

**49.** On this issue, see UNESCO, Freedom of Information - A Comparative Legal Survey, Toby Mendel, 2nd edition, 2008.

**ANNEX 1:**  
**QUESTIONNAIRE TO COLLECT**  
**STAKEHOLDERS' INPUTS IN SUPPORT OF**  
**THE 2011 UNCAC REVIEW PROCESS IN**  
**VIETNAM**

Dear Friends,

Vietnam ratified the United Nations Convention against Corruptions (UNCAC) in 2009. As a state party to UNCAC and according to the UNCAC Review Mechanism already adopted at the Conference of the State Parties in 2009, Vietnam was selected to conduct self-assessment in 2011- the second year of the first cycle of the UNCAC Review Mechanism. So far, the Vietnamese Government (with the Government Inspectorate- GI, assuming the prime responsibility and acting as the coordinator) has begun conducting this self-assessment process in order to formulate a national report. The self-assessment process, as prescribed, focuses on the UNCAC implementation regarding Criminalization & Law Enforcement (Chapter III) and International Cooperation (Chapter IV).

The UNCAC Review Mechanism encourages the state parties to consult broadly with non-state actors (including social organizations, business, and academia) when preparing their national reports. In close consultation with GI and with support and cooperation of the UNDP, Towards Transparency (TT) – the Transparency International (TI) National Contact in Vietnam – is mobilizing inputs from selected local CSOs and experts to contribute to the country's UNCAC Self-Assessment through questionnaire and in-depth interviews. This initiative will help raise awareness about and stimulate broader society's involvement in the Vietnam's government efforts to implement UNCAC.

For all above-mentioned reasons, we have prepared the following questionnaire and would highly appreciate if you could spend some time to answer and return it to us afterwards via email: giaovc@yahoo.com. Filling your names and other personal information in this paper is optional. If you provide your personal information, they will be kept confidentially. Thank you very much for your help!

Personal Information (optional)

Full Name:.....  
Institution:.....  
Gender:.....  
Age:.....



# I. EVALUATION OF THE GOVERNMENT’S REVIEW PROCESS

(The questions in this part are only for members of local CSOs)

Table 1: Transparency of the Government’s Undertaking of the Review Process		
Did the Government make public the contact information for the country focal point?	Yes/ No	Comments
Was civil society organizations consulted in the preparation of the self-assessment?	Yes/ No If yes, who? (please tick) <ul style="list-style-type: none"><li>• Mass organizations</li><li>• Professional and umbrella associations</li><li>• Local NGOs</li><li>• Local Academic Institutions</li><li>• Local Media</li><li>• Local CBOs</li><li>• Other (please list)</li></ul>	Comments
Was the self-assessment published online or provided to the expert assessing? If so, by whom?	Yes/ No	Comments. Please enter the website if applicable.
Was civil society invited to provide input to the official reviewers? Please enter the form of input invited.	Yes/ No	Comments
Is the Government committed to publishing the full country report (Please indicate if published by UNODC and/or country)	Yes/ No/ Unknown	Comments Please enter the website if applicable.

(\*)The term of CSOs used in this questionnaire is following the definition of CIVICUS in the UNDP/SNV report: “Filling the Gap: The Emerging Civil Society in Vietnam”, Irene Norlune, 2007.

# II. IMPLEMENTATION INTO VIETNAMESE LAW OF KEY UNCAC ARTICLES REGARDING CRIMINALIZATION AND INTERNATIONAL COOPERATION

(The questions in this part are reserved for local experts on criminal law, however, the other experts are encouraged to answer, depending on their capacity)

## 1. ARTICLE 15: Bribery of national public officials

a. Has the article been implemented into the Criminal Code of Vietnam?  
Yes\_\_\_\_ Yes, in part \_\_\_\_ No\_\_\_\_  
Explanation:

Note: Please ensure reference to both active and passive bribery components.

b. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC’s Article?  
Explanation:

### Note:

- This provision is compulsory in the UNCAC.
- The term “public official” according to Article 2(a) of UNCAC shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

## 2. ARTICLE 16: Bribery of foreign public officials

a. Has the article (16.1) been implemented into the Criminal Code of Vietnam?  
Yes\_\_\_\_ Yes, in part \_\_\_\_ No\_\_\_\_  
Explanation:

b. Has the article (16.2) been implemented into the Criminal Code of Vietnam?  
Yes\_\_\_\_ Yes, in part \_\_\_\_ No\_\_\_\_  
Explanation:

c. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC’s Article?  
Explanation:

### Note:

- The provision of (a) is compulsory in the UNCAC, while (b) is optional.
- The term of “foreign public official” according to Article 2(b) of UNCAC shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;
- The term of “official of a public international organization” according to Article 2(c) of UNCAC shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization.

3. ARTICLE 17: Embezzlement, misappropriation or other diversion of property by a public official

- a. Is embezzlement, misappropriation or other diversion of property by a public official covered in the Criminal Code of Vietnam?  
Yes Yes, in part No  
Explanation:
- b. If so, does the burden of proof shift to the defendant to prove that the funds in question were legally obtained?  
Yes Yes, in part No  
Explanation:
- c. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC's Article?  
Explanation:

Note:

- The provision of (a) is compulsory in the UNCAC, while (b) is optional.

4. ARTICLE 23: Laundering of proceeds of crime

- a. Is money laundering defined as a crime under the Criminal Code of Vietnam?  
Yes Yes, in part No  
Explanation:
- b. Does the list of predicate offences for money laundering include corruption offences?  
Yes No  
Explanation:
- c. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC's Article?  
Explanation:

Note:

- Both provisions of (a) and (b) are compulsory in the UNCAC

5. ARTICLE 26: Liability of legal persons

- a. Can legal persons be held liable for corruption-related offences under the law of Vietnam?  
Yes Yes, in part No  
Explanation:
- b. Under which of criminal, civil or administrative laws legal persons are held liable for corruption-related activities under the law of Vietnam?  
Criminal law: Civil law: Administrative law:  
Explanation:
- c. How many companies have received sanctions under criminal, civil and administrative law for corruption-related offences in the past three years in Vietnam?  
Criminal law: Civil law: Administrative law:
- d. Are the sanctions for legal persons committing corruption-related offences effective, proportionate and dissuasive in Vietnam?  
Yes Yes, in part No  
Explanation:
- e. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC's Article?  
Explanation:

Note:

- Liability of legal persons is compulsory in the UNCAC, while criminal liability is optional.

6. ARTICLE 32: Protection of witnesses, experts and victims

- a. Is the protection provided for witnesses, experts and victims adequate in the law of Vietnam? If so, by which laws?  
Yes Yes, in part No  
Explanation:
- b. If yes, is the protection provided for their relatives?  
Yes Yes, in part No  
Explanation:
- c. If yes, is the protection equally provided for both men and women?  
Yes Yes, in part No  
Explanation:
- d. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC's Articles?  
Explanation:

Note:

- Provisions of (a), (b) and (c) are all compulsory in the UNCAC

7. ARTICLE 33: Protection of reporting persons

- a. Is the protection provided for reporting persons adequate in the law of Vietnam? If so, by which laws?  
Yes Yes, in part No  
Explanation:
- b. If yes, is the protection equally provided for both men and women?  
Yes Yes, in part No  
Explanation:
- c. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC's Articles?  
Explanation:

Note:

- Provisions of (a) and (b) are both compulsory in the UNCAC

8. ARTICLE 46(9)(b)&(c): Mutual legal assistance (MLA) in the absence of dual criminality

- a. Is there a legal provision in the legislation of Vietnam allowing the provision of MLA in the absence of dual criminality?  
Yes No  
Explanation:
- b. Has Vietnam confronted any obstacles in providing or obtaining mutual legal assistance?  
Yes Yes, in part No No information available  
Explanation:
- c. What priority steps need to be taken in Vietnam to ensure compliance with this UNCAC's Article?  
Explanation:

Note:

- In UNCAC, it is compulsory for State Party to responding to a request for assistance in the absence of dual criminality, and in this case, the State Party shall take into account the purposes of this Convention, as set forth in article 1.

III. STATUS OF ENFORCEMENT OF PROVISIONS ON  
CORRUPTION-RELATED OFFENCES

(The questions in this part are also reserved for local experts on criminal law, however, the other experts are encouraged to answer, depending on their capacity)

1. Are there significant inadequacies in the enforcement system for corruption-related offences in your country?  
Yes\_\_\_\_\_ No\_\_\_\_\_ No information available \_\_\_\_\_
2. Please indicate whether the enforcement system is adequate in the following areas. Where the response is 'yes' please provide a short description of the main deficiencies and if relevant.

Please indicate which specific articles the enforcement problem relates to:

- Mechanism of investigation of corruption offenses  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- Organisation of enforcement (Article 36)  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- Coordination between investigation and prosecution  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- Specialized units among the Prosecutors Offices (Article 36)  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- Independence of public prosecutors and other enforcement agencies (Articles 11 and 36)  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- Adequate resources (Article 36)  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- Capacity of enforcement authorities (Article 36)  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:
- (Corruption) Reporting mechanisms (Article 13)  
Yes\_\_\_\_\_ Yes, in part \_\_\_\_\_ No\_\_\_\_\_  
Explanation:

3. In your view, have any investigations or corruption cases been hindered or dropped for improper reasons in Vietnam?  
Yes\_\_\_\_\_ No\_\_\_\_\_ No information available \_\_\_\_\_  
Explanation:

Note:

- In UNCAC, it is compulsory for each State Party to ensure the existence of a body or bodies or persons specialized in combating corruption, and granting these bodies necessary independence to be able to carry out their functions effectively and without any undue influence.
- Article 11 UNCAC (Measures relating to the judiciary and prosecution services): (1) Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary; (2) Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

- Article 36 UNCAC (Specialized authorities): Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

IV. STATUS OF TYPICAL CASES

(The questions in this part are also reserved for local experts working for judicial bodies, research institutes and anti-corruption institutions, however, the other experts are encouraged to answer, depending on their capacity)

1. Please list in numbers the amount of the corruption cases brought in the last three years in Vietnam that you know under each category.

Table 2: Statistics on typical cases in the last three years

	Prosecutions (under way and concluded) Please provide a breakdown into civil and administrative actions if possible.)	Settlements	Convictions	Acquittals	Dismissals	Pending
Bribery of national public officials (active) (Article 15(a))						
Bribery of national public officials (passive) (Article 15(b))						
Bribery of foreign public officials (Article 16)						
Embezzlement, misappropriation or other diversion by a public official (Article 17)						
Illicit enrichment (Article 20)						
Money laundering, corruption – related (Article 23)						

2. Please provide the following information for each category of cases:
- Please provide information about any major prosecutions and civil and administrative actions. In determining whether a case is major, consider for example whether the case involves a large multi-national corporation or a senior government official, the amount of capital involved, and the seriousness of the case.
  - If there is a large number of cases please select ten of the most important.
  - Please state the source of information for each case.
1. Name of the case, including parties.  
2. Date when prosecution was brought.  
3. Summary of principal charges.  
4. Penalties or other sanctions sought.  
5. Status of case, including expected trial date or appeal date.  
6. To your knowledge, are there any obstacles holding up the case?  
7. To your knowledge, are there any similarities in the above-mentioned cases? If yes, what are they?



V. ACCESS TO INFORMATION ABOUT PROSECUTIONS

(The questions in this part are developed for all)

1. Is the information requested for Table 2 publicly accessible?  
Yes Yes, in part No  
If not or in part, please indicate the official or other reasons why it is not:
2. Is information on case details accessible?  
Yes Yes, in part No  
If not or in part, please indicate the official or other reasons why it is not:

VI. NOTEWORTHY RECENT DEVELOPMENTS IN VIETNAM IN ANTI-CORRUPTION

(The questions in this part are developed for all)

Please describe recent developments in Vietnam in the areas covered in this questionnaire or any other areas that you feel are relevant to the implementation of Chapters III and IV of the UNCAC, e.g. new legislation, institutional changes in the last three years.

VII. SUMMARY OF PRIORITY ACTIONS NEEDED IN VIETNAM

(The questions in this part are developed for all)

Your suggestions and recommendations  
Please list, in order of importance, the most important actions that the Government of Vietnam should take to promote enforcement and compliance with the UNCAC.

Please ensure that you take the recommendations provided in Section II of this questionnaire into account when filling out this section, but feel free to add other recommendations.

1.   
2.   
3.   
4.   
5.

ANNEX 2: LIST OF AGENCIES AND ORGANIZATIONS OF SURVEYED EXPERTS

1. The Ho Chi Minh National Academy of Politics and Public Administration  
a. State and Law Faculty, the National Academy of Public Administration  
b. State and Law Faculty, Regional Academy I  
c. State and Law Faculty, Regional Academy II  
d. State and Law Faculty, Journalism and Propaganda Academy  
e. Politics Institute  
f. Human Rights Research Institute  
g. State and Law Institute
2. Hanoi Law University  
a. Criminal Law Faculty  
b. Economic Law Faculty
3. Ho Chi Minh City Law University  
a. Criminal Law Faculty  
b. Administrative Law Faculty
4. Law Faculty of the Hanoi National University  
a. Criminal Law Subject  
b. Administrative Law and Constitution Subject  
c. International Law Subject  
d. Leres Center  
e. Human Rights and Civic Rights Center  
f. Criminological Studies and Criminal Justice Center  
g. Comparative Law Center
5. Law Faculty, Hue University
6. State and Law Institute, National Social Sciences and Humanities Academy
7. Institute for Legislative Studies (National Assembly Office)
8. Office of the Central Steering Committee for Anti-Corruption
9. Government Inspectorate  
a. Government Inspectorate's Research Institute  
b. Anti-Corruption Bureau
10. Supreme People's Procuracy  
a. Procurators Training School  
b. The Criminal Investigations Prosecution and Supervision Department

# ANNEX 3: DESCRIPTION OF THE PROCESS AND METHODOLOGY

11. Supreme People's Court
  - a. Secretariat
  - b. Justice Protector Newspaper
12. Ministry of Justice
  - a. The Criminal- Administrative Law Department
  - b. Democracy and Law Journal
  - c. Secretariat
13. Ministry of Public Security
  - a. Administrative Management Police Advisory Department, General Department VII
  - b. Economic Management Order and Position-Related Crime Investigation Police Department
  - c. Corruption-Related Crime Investigation Police Department
14. Vietnam Lawyers Association Office
15. Vietnam Lawyers Federation Office
16. Vietnam Fatherland Front Office

Generally, the process of making this report involves the following steps and activities in timing order:

1. The consultants studied documents relating to the review mechanism and relevant documents prepared by TI (provided by TT) for making a report making plan. The report making plan was then considered and commented by TI for finalization before implementation by the consultants. This activity was carried out and completed in the third week of May 2011.
2. Also based on the study of documents mentioned in Section 1, the consultants proposed issues and contents to be surveyed within the scope of this report and a list of agencies and organizations with experts to be invited in the consultation process (see the list in Annex 2). The survey contents and this list were consulted with representatives of TT, UNDP Hanoi and a number of experts (about 10) from the Government Inspectorate, academic institutions and socio-political organizations related to this issue for revision and finalization. After examining and absorbing contributed inputs, the consultants decided to use the model questionnaire designed by TI (already used in more than 30 countries around the world), with certain adjustments to suit the specific conditions and circumstances of Vietnam (see the questionnaire in Annex 1). The modified questionnaire was then approved by TT for use in all three forms of survey. This activity was carried out and completed in the fourth week of May 2011.
3. Based on the TT-approved questionnaire, the consultants prepared a plan on in-depth interviews and workshop program. Basically, the contents of in-depth interviews and workshop program focused on issues and contents mentioned in the questionnaire for the purpose of tapping more specialized knowledge and information difficult or impossible to collect through the questionnaire survey. Besides, as said earlier, in-depth interviews and workshops also aim to clarify related aspects not yet touched upon in the questionnaire or already touched upon but with unspecific or inconsistent feedback information. Also at this step, the consultants collected other reference documents necessary for verifying and supplementing information obtained from survey activities. This activity was carried out and completed in the first week of June 2011.
4. Also in the first week of June 2011, the consultants listed and contacted experts expected to be invited for the survey. Compared to the initial plan, some experts of some agencies and organizations declined to participate for some reasons (too busy work, being away on working trip or no concern/specialized knowledge on the issue...). To ensure reliability of survey results, the consultants contacted more experts from other agencies and organizations.
5. The process of consultation through questionnaires took place from the second to fourth week of June 2011. More than 30 experts were sent questionnaires by the consultants (by email combined with phone calls for exchange and confirmation). By June 30, 2011, the consultants received 26 completed questionnaires (mostly sent by email, only some hand-written). Information collected from these questionnaires was processed by the consultants from the third week to the end of June 2011. Information obtained from the processing of questionnaires was immediately used to finalize the plan on in-depth interviews and workshop program, and prepare this report.
6. Along with the process of consultation through questionnaires, in the fourth week of June 2011, the consultants began to conduct in-depth interviews in the northern region (Hanoi). A total of 6 experts were interviewed (mostly face-to-face, only one expert interviewed by telephone and email as a meeting could not be arranged due to working conditions). These experts were selected by the consultants from those who already filled in the questionnaires.
7. The consultation workshop was organized in June 29, 2011, by the Comparative Law Center under the Law Faculty of Hanoi National University, with the technical support and guidance of the consultants. The workshop was attended by more than 30

# BIBLIOGRAPHY

experts who were criminal law researchers and lecturers and administrators currently working for law universities, legal research institutes and related Vietnamese state agencies and social organizations (see the list of agencies and organizations in Annex 2). About half of the participants were those who had filled in the questionnaires. At the workshop, participants energetically discussed most of issues mentioned in the questionnaires. Besides, a total of papers were sent to the workshop, providing deep and systematic analyses on the surveyed contents. Also at the workshop, participants were informed of the self-assessment process and methods recommended by the UNCAC and applied by Vietnam in particular, as well as of the role and activities of the Government Inspectorate and TT in this process.

8. Continuing with in-depth interviews, the consultants paid two working visits to Hue and Ho Chi Minh City in the first and second weeks of July 2011. In Hue, they conducted in-depth interviews with 4 legal experts working at the Law Faculty of Hue University and at the National Assembly Office (while they attended a workshop organized by the Legal Research Institute in Hue). In Ho Chi Minh City, the consultants interviewed 5 more experts working at the Ho Chi Minh City Law University. Of these experts, five had filled in the questionnaires previously sent by the consultants.

9. The writing of the report began in early July 2011. The first draft was completed at the end of the second week of July 2011 and sent for TT inputs. The second draft (revised based on TT inputs) was completed in July 29, 2011, and sent to the Government Inspectorate and UNDP Hanoi for opinion. Based on the inputs contributed by the Government Inspectorate and UNDP Hanoi, the consultants will finalize the report and sent it to TT on August 10, 2011.

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52. See a number of articles on the case of Cong Phuong Toan at <http://www.tin247.com/c%C3%B4ng+ph%C6%B0%C6%A1ng+to%C3%A0n.html>; <http://www.anninhthudo.vn/An-ninh-doi-song/Chi-tiet-vu-bat-nguyen-Chu-tich-phuong-Phu-Thuong/322238.antd>
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