

VIETNAM'S EXPERIENCES IN IMPLEMENTING ARTICLES 5, 6 AND 7 OF UNCAC

I. Article 6

1. *Corruption prevention bodies*

1.1. *Organizational structure, functions and duties*

- Vietnam does not have a specialized corruption prevention body. Preventing corruption is the mandate of all agencies, organizations, units and socio-economic organizations.

- The political regime of Vietnam is led by the Vietnam's Communist Party (VCP), thus it's the VCP's responsibility to lead and steer anti-corruption work. The *Central Steering Committee on Anti-Corruption (CSCA)* is the advisory agency of the VCP in leading and steering anti-corruption work.

CSCA is responsible for directing, coordinating, monitoring and urging anti-corruption efforts all over the country, especially in severe and complicated cases. The CSCA is headed by the Secretary General of the VCP. The Central Committee for Internal affairs is the standing agency of CSCA.

At local level, the provincial Party Committees directly lead and steer the anti-corruption work of their respective localities and have the responsibility to coordinate with the CSCA when serious corruption cases occur in the localities.

- All state agencies (those belong to legislative, executive, judiciary branches, the State Audit) together with social and political organizations have the responsibility to take measures to prevent and combat corruption. In the system of state agencies in the legislative, executive and judicial branches, there are specialized anti-corruption bodies. Specifically as follows:

Legislative branch:

The National Assembly (NA) has the responsibility to enact laws on anti-corruption such as: Law on Anti-corruption; Criminal Code; Criminal Procedure Code; Law on Thrift practice and Anti-wastefulness; Law on Inspection; Law on Complaints; Law on Denunciations...

The NA, NA's Standing Committee, Nationality Council and other committees of the NA, together with the People's Councils at provincial, district and communal levels, are responsible for supervising anti-corruption work. The NA and the People's Councils are the agencies with state power, members of which are elected by the people to ensure the independence of oversight.

Executive branch:

The Government issues anti-corruption bylaws, develops plans and strategies on anti-corruption, organizes and directs the implementation of anti-corruption tasks and measures.

Ministers, heads of ministry-level agencies and heads of local governments are responsible for organizing and directing the implementation of anti-corruption tasks and measures under their functions, mandates, areas and localities of management.

The Government Inspectorate (GI) has the responsibility to exercise functions of state management on anti-corruption (i.e. advising for the development and improvement of anti-corruption policies and laws; synthesizing and assessing anti-corruption work; organizing, directing and guiding the inspection on the implementation of the anti-corruption laws in the entire inspectorate system; developing a common anti-corruption database; propagandizing and raising awareness on anti-corruption...); conducting inspections and anti-corruption activities within its competence; upon detection of corruption behaviors, requesting competent agency or organization to handle the case. *Anti-Corruption Bureau under GI* is the advisory unit which assists the Government Inspector General to carry out the above-mentioned duties and powers.

Ministry of Public Security (MPS) and Ministry of National Defense (MND) have the responsibility to direct and conduct investigations of corruption crimes. *Police Department for investigation of corruption crimes under the MPS* is responsible for advising the Director General of the Police General Department, the Head of Police Department for Investigation to direct and provide guidance to the corruption investigation police all over the country to take steps to prevent, detect, investigate and handle corruption crimes; directly investigating corruption cases in accordance with the laws.

Judicial branch:

The Supreme People's Procuracy (SPP) has the responsibility to organize and direct the work of prosecution of corruption crimes, and to supervise activities of investigation, adjudication and implementation of conviction relating to corrupt offences. *Department for Prosecution and Supervision over Investigation of Corruption Cases under SPP* assists the Chief Procurator to practise the rights of prosecution and supervise corruption cases investigated by the MPS's investigation agencies; advise the Chief Procurator in monitoring, managing, guiding, directing and examining the practice of prosecution, investigation and first instance trial of corruption cases conducted by local people's procuracies; detect and synthesize the violations of laws by investigation agencies, judicial bodies and other relevant agencies, organizations and units to advise the Chief Procurator to make recommendations; advise the Chief Procurator to organize the implementation of tasks assigned by the CSCA; assist the Chief Procurator in coordinating with anti-corruption authorities; synthesize, assess, forecast corruption crimes and make

recommendations on anti-corruption policies and measures; perform the tasks of international cooperation in mutual legal assistance in anti-corruption.

The Supreme People's Court has the responsibility to adjudicate and provide guidance on the adjudication of corrupt offences in the whole system. Local people's courts do not have specialized anti-corruption adjudication agencies. Corruption crimes shall be adjudicated by judges of provincial courts who are in charge of criminal cases.

The State Audit

The State Audit (SA) - a specialized body established by the NA - has the responsibility to audit the management and use of public finances and assets in order to prevent, detect and coordinate to deal with corrupt acts; upon detection of corrupt acts, the SA shall transfer the case files to investigation agencies, procuracies or other competent agencies for handling.

1.2. Independence of corruption prevention bodies

It can be seen from the overview of organizational structure, functions and duties of Vietnamese relevant agencies, that the main agencies which play an important role in corruption prevention include: the CSCA, the GI and other bodies in the inspectorate system, the SA and the audit system, the MPS, the SPP and local people's procuracies. Among them, the SPP and SA are independent bodies which perform their duties only in accordance with the laws; for other anti-corruption agencies under the Government or Party Central Executive Committee, although they are put under the management and direction of higher-level agencies, they are relatively independent in professional aspect.

SPP is the highest agency in the system of people's procuracy. It is stated in the Constitution of Vietnam that the people's procuracy is an independent state agency system in the state apparatus, exercising the rights of prosecuting and supervising judicial activities in accordance with the Constitution and laws. The whole system of military and people's procuracies at different levels is put under the management and direction of the Chief Prosecutor. The Chief Prosecutor is elected among the NA's deputies by the NA, at proposal of the State President. This person is put under the supervision of the NA, being accountable and to report to the NA. Tenure of the Chief Prosecutor is 5 years. The NA also has the right to dismiss or remove the Chief Procurator from his office.

The SA is the highest body in state audit system. Under State Audit Act of 2005, the State Audit is a specialized agency in the field of state financial control established by the NA, operating independently and only complying with laws.

The MPS and GI are two government agencies; the Minister of Public security and Government Inspector General are members of the Government who are accountable to the Prime Minister for their implementation of tasks and

powers. These two positions are appointed under approval of the NA, at proposal of the Prime Minister and have a same 5-year term as that of the NA. The dismissal, removal from office of them shall be conducted by the NA, at proposal of the Prime Minister. Regarding anti-corruption work, as these 2 agencies respectively have the functions of conducting state management over anti-corruption work and conducting inspections on the implementation of anti-corruption policies and laws (the GI), and conducting investigation to prevent and combat crimes, including corruption offences (the MPS), while both of them are put under the Government's management, it can be affirmed that these two agencies do not have independent positions in the system of state agencies. However, in terms of implementation of tasks, certain independence is legally guaranteed for the inspectorates and investigation agencies.

Paragraph 1, Article 7 of the Law on Inspection 2010 provides for the principles of inspection activities: "to comply with the laws; ensure the accuracy, objectiveness, honesty, publicity, democracy and timeliness"; Paragraph 7, Article 13 of the same Law states that it is prohibited "to make unlawful intervention in inspection activities". Many other provisions of Law on Inspection 2010 also provide for mandates and powers of the inspectorates, heads of inspectorates, inspection decision makers, heads of inspection delegations and inspection delegation members. Paragraph 1, Article 5 of the Law on People's Public security stipulates principles in the operation of the people's public security that "shall comply with the Constitution and laws". Paragraph 1, Article 41 of the mentioned Law provides that "Agencies, organizations and individuals that commit acts of opposing or obstructing activities of People's Public Security officers, non-commissioned officers and soldiers who are on official duty shall, depending on the nature and seriousness of their violations, be charged with disciplinary measures, administrative or criminal liability".

2. Some difficulties and challenges in the prevention of corruption

- Currently, a common anti-corruption database has not been developed, thus Vietnam has to cope with a number of difficulties in monitoring, assessing and synthesizing progresses of the implementation of anti-corruption laws as well as anti-corruption work.

- The methods of conducting the dissemination and propaganda of anti-corruption laws are still simple, unidirectional, lack of creativeness, together with the absence of an effective communication strategy, which lead to the fact that the awareness of the citizens, business and public servants and officials on those laws is not adequate and clear.

3. Proposal for technical assistance

In order to further improve anti-corruption laws, in the coming time, Vietnam is revising the Law on Anti-corruption to make it more comprehensive and up-to-date and at the same time making legal recommendations on improving

the functions and mandates of anti-corruption agencies. To this end, Vietnam is in need of both financial and technical assistance from the Secretariat of UNCAC. Specifically as follows:

- + Financial assistance in conducting surveys and studies on the results of implementing anti-corruption measures in recent years;
- + Technical assistance for the revision of the Law on Anti-corruption, including the sharing of international experiences in anti-corruption;
- + Assistance for the GI to develop a national anti-corruption database as well as anti-corruption communication strategy.

II. Articles 5 and 7

Proper legislative and administrative measures to enhance transparency in funding of candidates for elected public offices and, where applicable, the funding of political parties is an optional requirement of UNCAC.

Relevant issues are stated in the Law on Organization of the National Assembly (Article 43); Law on Election of Deputies to the National Assembly (Article 1, Article 2 on general principles, Article 3 on standards of National Assembly Deputies, Article 48 on those who can not be candidates for National Assembly Deputies), the Law on Election of Deputies to the People's Councils (Articles 2, 3, 4, 25 and 31); Law on Organization of the People's Councils and People's Committees and their guiding legal documents on election and candidacy. Accordingly, the election and candidature to public office in Vietnam shall comply with strict provisions on standards of the candidates to ensure that elected persons have qualifications and capacity to serve people. Vietnam's laws also have specific provisions on asset and income declaration. Scope of regulation includes: candidates that have the responsibility to declare assets; types of asset subject to declaration; procedures for asset declaration; competence, process and procedures for verification of assets; conclusion on transparency in asset declaration and disclosure of conclusions on transparency in asset declaration; liability of the dishonest declarers.

Regarding election funding, in accordance with the Law on Election of Deputies to the National Assembly and Law on Election of Deputies to People's Councils, the fund for election shall be ensured by the state budget. Requirements in Paragraph 3, Article 7 of the UNCAC are optional in nature, accordingly States parties shall implement it in their specific contexts, as appropriate. Vietnam does not have a multi-party system, therefore the provision for funding for political parties in the election is not set up. The state budget guarantees the fund for election in accordance with processes and procedures prescribed by laws to ensure transparency and lawfulness.