

Factors Affecting Anti-Corruption Efforts in Vietnam

Nguyen Quoc Suu¹

Abstract

Corruption is a common phenomenon in all countries, prompting the establishment of various political, legal, and technical measures to combat it. Vietnam, a rising country in science, technology, economy, and politics, is experiencing an increasing prevalence of corruption at all levels, from local to central. Despite many stringent anti-corruption measures taken by the State and the Party of Vietnam, the results have not been satisfactory. This article provides an overview of the current situation of corruption in Vietnam and analyzes factors preventing the effective and efficient implementation of anti-corruption measures. These factors include political-legal and sociocultural influences, criminal and disciplinary measures, law enforcement challenges, investigation rights, the independence, objectivity, and impartiality in anti-corruption work, as well as the coordination of these efforts.

Keywords: *Affecting Factors. Anti-Corruption, Vietnam*

INTRODUCTION

Prior to the enactment of the 2005 Anti-Corruption Law, anti-corruption endeavors in Vietnam were governed by the 1998 Anti-Corruption Ordinance and other legal directives. This period marked significant economic growth and notable improvements in both material and spiritual aspects of life for the populace. Simultaneously, there was an expansion of social democracy, socio-political stability, and advancements in foreign affairs and international integration. However, corruption and wasteful practices became more prevalent, exhibiting increasingly sophisticated patterns that detrimentally impacted the innovation process and eroded public trust. Recognizing the perils of corruption, the Communist Party of Vietnam (CPV) has advocated and implemented numerous stringent anti-corruption policies. A prominent example includes the issuance of the Resolution of the Party Congress (Term X) on "Enhancing the Party's leadership in preventing and combating corruption and wastefulness," alongside the enactment of the 2005 Anti-Corruption Law, thereby establishing a robust legal framework for addressing this issue. Subsequently, Vietnam has actively engaged in international and regional initiatives, thereby contributing to collaborative efforts against corruption on the global stage.

Since the enactment of the 2005 Anti-Corruption Law², Vietnam has made remarkable strides in its anti-corruption endeavors over the past two decades. Anti-corruption measures have been consistently enforced and have begun to yield tangible results. Numerous significant cases of corruption have been identified and met with stringent punishment. In 2009, Vietnam ratified the United Nations Convention against Corruption and swiftly adjusted its policies to ensure smooth implementation nationwide. Throughout this period, the active participation of various organizations, unions, businesses, mass media, and the general populace has played a pivotal role in effectively enforcing anti-corruption regulations. Despite these inspiring achievements, they do not serve as a guarantee for sustained success in the long term. Recent developments have revealed that only the surface of the issue has been scratched, with a series of recent cases underscoring the persistence of corruption challenges that lie beneath.

This study is centered on analyzing the legal framework governing anti-corruption efforts, particularly examining the provisions outlined in the 2005 Anti-Corruption Law. Additionally, it draws upon the fundamental principles articulated by the Party's General Secretary, Nguyen Phu Trong, as a primary point of reference.

The International Transparency organization employs a 100-point rating scale to assess countries' corruption levels. According to this scale, the higher a country's score, the lower its level of corruption, and vice versa. In

¹ National Academy of Public Administration, Vietnam. E-mail: quocsuu.nguyen@gmail.com

Factors Affecting Anti-Corruption Efforts in Vietnam

the Corruption Perceptions Index (CPI) ranking of 180 countries and territories, Vietnam has advanced by 10 places, from 87th to 77th. However, the country still falls within the two-thirds majority where scores are below the threshold of 50 points. This indicates a significant level of corruption within Vietnam's public sector². Therefore, it is crucial to intensify efforts and determination in anti-corruption activities.



Source: Statistics of Transparency International organization (TI) in 2012-2022

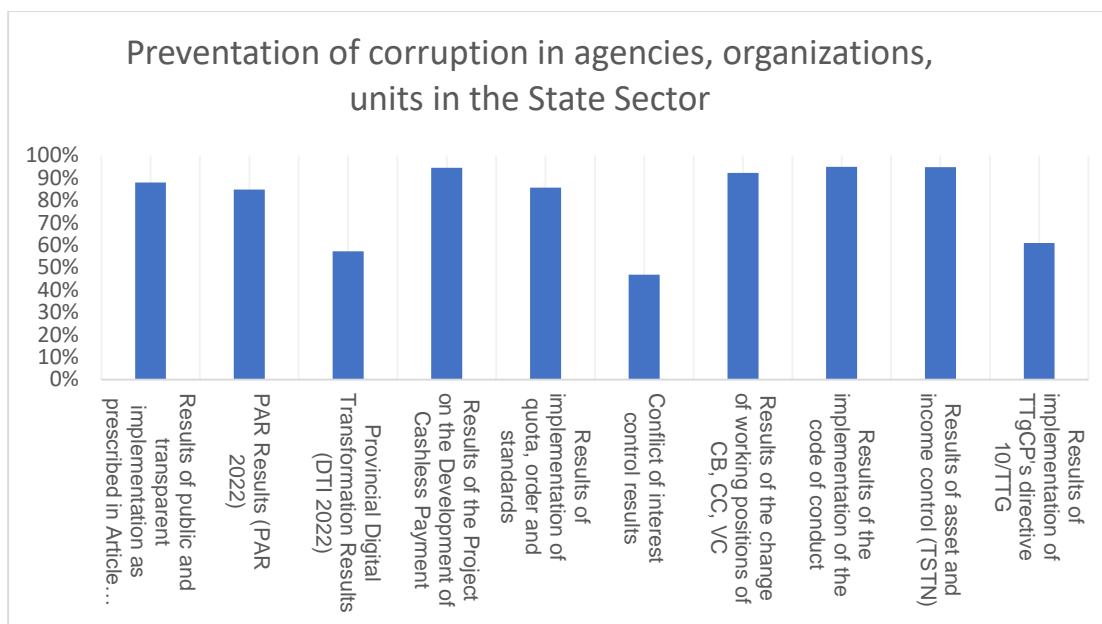
OVERVIEW OF ANTI-CORRUPTION ACTIVITIES IN VIETNAM AND THEIR CHALLENGES

Over the past 20 years, the enforcement of anti-corruption laws has yielded significant improvements across all areas of state management. There has been a strengthening of the state apparatus, institutional systems, and policies, characterized by increased openness, transparency, accountability, and more effective supervision and law enforcement. Furthermore, anti-corruption laws and policies have been incorporated into school curricula and mass media programs, thereby enhancing public awareness and gradually fostering an anti-corruption culture among the populace.

Monitoring and adjustment of measures are conducted more regularly to ensure improved outcomes. Inspection and complaint resolution activities have led to the discovery of a greater number of cases. Additionally, there has been an increase in the identification and handling of serious and complex corruption cases, resulting in strict sentences that serve as deterrents for both the public and potential wrongdoers. Furthermore, the effectiveness of asset recovery in corruption cases has shown noticeable improvement.

The significance of socio-political unions, business associations, and the mass media in preventing and combating corruption has been underscored. Procedures to protect and reward whistleblowers exposing corrupt practices have been established and put into action. Furthermore, anti-corruption initiatives have been actively encouraged and supported to facilitate the engagement of all sectors of society. Additionally, international cooperation in this field has been strengthened and broadened.

The Government Inspectorate's report on the assessment of provincial-level anti-corruption work in 2022 (PACA INDEX 2022) indicates that corruption prevention measures are continuously being enhanced, with new methods that are highly effective and aligned with international standards being introduced. Some of these new measures include implementing non-cash payment tools, managing conflicts of interest, and monitoring the assets and income of civil servants, among others.



Source: The Government Inspectorate's report on the assessment of provincial-level anti-corruption work in 2022 (PACA INDEX 2022)

The outcomes have enhanced the efficiency and effectiveness of anti-corruption efforts, progressively thwarting corruption. Nevertheless, to further enhance the execution of the anti-corruption campaign, there are still limitations and weaknesses to address:

Institutions and policies regarding socio-economic management in various fields remain inadequate, with limited publicity and transparency.

In certain agencies, departments, and organizations, leaders lack decisiveness in directing and organizing the implementation of anti-corruption plans. Many officials and civil servants, particularly those in leadership and management roles, exhibit diminished fighting spirit and struggle to fulfill their duties.

The dissemination and education of anti-corruption laws and regulations are inadequate, failing to fully engage society and individuals in their role and responsibility in preventing and combating corruption.

Corruption prevention measures have proven to be less effective than desired. Law enforcement remains weak, and there is a noticeable absence of IT applications in controlling assets and income.

These issues demand institutional reform, reinforced discipline, and heightened involvement of communities and social organizations in supervising and implementing anti-corruption policies.

FACTORS AFFECTING ANTI-CORRUPTION EFFORT IN VIETNAM

Corruption is a multifaceted and intricate phenomenon intertwined with politics, legislation, economy, and society. Despite countries' consistent attention and extensive efforts to combat it, corruption tends to exacerbate over time. The fundamental challenge in addressing corruption stems from the mechanisms that give rise to it.

In politics and legislation, power has a tendency to corrupt. According to public choice theory, individuals often prioritize personal benefits, making corruption unavoidable in organizational operations and management. The main cause of corruption stems from the government's control over the free market, which grants individuals in power the ability to influence decision-making processes to pursue personal gains. As the state deeply intervenes in economic activities, the decision-making authority of officials, civil servants, and public employees increases, creating more opportunities for corruption.

Socially, the transformation of the social model due to modernization has sparked widespread and profound reform. Rapid societal changes, with traditional values giving way to new ones not yet fully assimilated, have led to a tolerance of corrupt behavior that was previously deemed unacceptable. Samuel P. Huntington, in "Political Order in Changing Societies," highlighted that modernization frequently correlates with corruption, closely intertwined with the rapid transformation of society, economy, and politics.

To effectively combat corruption in a swiftly evolving society, it is imperative to establish a stable political order, foster a robust economy, and cultivate effective social norms.

From a cultural standpoint, cultural traditions wield significant influence on corruption. According to cultural conflict theory, disparities in culture and norms can lead to transgressions. Exploiting power for personal gain, as well as for one's family and friends, is a widespread phenomenon, particularly in societies heavily influenced by Confucianism. Patriarchal concepts and personal preferences have blurred the boundaries between formal laws and informal political culture. The ambiguity between public morality and individual morality amplifies opportunities for nepotism and profit-driven transactions, rendering corruption a pervasive practice in society. Actions such as soliciting favors, offering gifts, and leveraging relationships to accomplish tasks have become ingrained in everyday life, often regarded not as corruption but merely as customary practices.

Since the Doi Moi reforms, particularly since Vietnam's full membership in the World Trade Organization (WTO) in 2007, the country has undergone a gradual transition toward a market economy with state regulation. However, corruption has been regarded as inevitable during this period of transition due to the inherent weaknesses in the new management mechanisms and the ongoing adjustments regarding the extent of state intervention in the economy. The Communist Party of Vietnam, the Government, the National Assembly, and numerous international observers all concur that Vietnam's anti-corruption efforts continue to face numerous challenges and have yet to achieve the expected results. These obstacles extend beyond merely quantifying the level of difficulty or addressing delays in corruption investigations, prosecutions, and trials; they also require a more profound understanding.

VIETNAM'S EFFORTS IN TACKLING CORRUPTION

Institutional Reform

Vietnam's self-assessment report following the signing of the United Nations Convention against Corruption highlighted 88 laws and associated legal documents, vividly illustrating the country's endeavors to prevent and combat corruption. The majority of these documents encompass resolutions and circulars that offer guidance on the implementation of laws and decrees. Noteworthy documents in the initial phases of anti-corruption efforts include the 2005 Anti-Corruption Law, the 1999 Penal Code (amended and supplemented in 2009), the 2010 Inspection Law, the 2005 State Audit Law, and the 2008 Law on Cadres and Civil Servants.

The primary focus of Vietnam's Anti-Corruption Law lies in enhancing awareness of corruption and delineating the responsibilities of anti-corruption agencies and civil servants. However, the law falls short in establishing robust and viable legal mechanisms for enforcing anti-corruption measures. There exists a lack of detailed requirements and obligations, such as asset declaration, disclosure, and transparency of state budget and finances. Additionally, the law fails to address decisions and related documents for various specialized operations and agencies within the state apparatus. Similarly, regulations pertaining to disciplinary action and criminal prosecution for corrupt acts are primarily delineated in administrative legal documents, the Penal Code, and the Criminal Procedure Code, rather than in the Anti-Corruption Law itself.

Anti-Corruption Measures in Effect

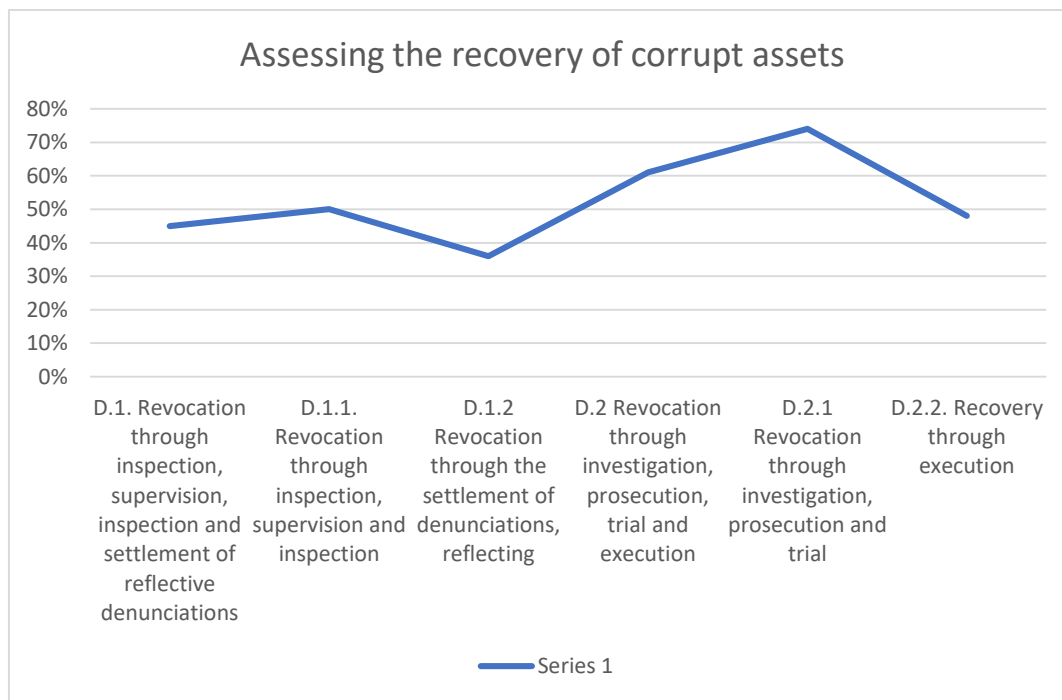
Criminal Sanctions for Corruption Crimes: The Penal Code strictly regulates penalties for corruption crimes, encompassing terms of imprisonment, life imprisonment, and even the death penalty, particularly for severe offenses like property embezzlement and bribery. It establishes four penalty frames based on the value of the misappropriated property or the bribe, as well as the consequences of the corrupt act. Quantifying these values is crucial in determining the severity of the crime. Additionally, the Penal Code prescribes supplementary penalties such as temporary bans from holding positions for one to five years, fines, and the confiscation of

property and funds directly associated with the offense. These regulations aim to enhance deterrence and the ability to combat corruption. However, law enforcement in this realm still grapples with numerous challenges due to the complexity of the circumstances and the specific requirements of each case.

Measures To Ensure the Recovery of Assets Acquired Through Corruption: Vietnam currently lacks specific regulations in the Law on Prevention and Combat of Corruption or the Penal Code addressing the act of "unjust enrichment" as a form of corruption. This absence indicates that Vietnam has not prioritized the recommendation of the United Nations Convention to classify this behavior as a corrupt crime. The rationale provided includes the insufficiency of legal and administrative tools to monitor the assets of individuals in positions of power, with a majority of financial transactions occurring outside the banking system. Additionally, the "traditional family model" complicates the clear assignment of assets to individuals. Furthermore, the principle of "presumption of innocence" is cited as a primary reason for not implementing this regulation.

The justifications in Vietnam's case are not convincing, as similar models have proven successful in places like Hong Kong and Singapore, which share comparable cultural and traditional elements. Moreover, anti-corruption laws should evolve in tandem with the progress of the market economic system, rather than depending solely on traditional factors as a precondition for institutional change. Consistent efforts are needed to legalize modern financial transactions, property rights, and land use, fostering a progressively transparent and accountable system.

Finally, exceptions in applying the principle of "presumption of innocence" to "unjust enrichment" cases are manifestations of determination in the field. According to the report of the Vietnam Government Inspectorate in 2022, the recovery of corrupt assets is still limited, with the highest recovery rate through investigations, prosecutions, and trials reaching only 74.99%. (Government Inspectorate, 2022).



Source: The Government Inspectorate's report on the assessment of provincial-level anti-corruption work in 2022 (PACA INDEX 2022)

Disciplinary Sanctions: In addition to criminal sanctions, Vietnam has also established disciplinary measures for corrupt acts through administrative legal documents. According to the 2023 Decrees on disciplining civil servants and public employees, disciplinary actions are applied in two cases: when there is a court verdict or when the violation does not rise to the level of criminal sanctions. This underscores the

differentiation between forms of legal actions, excluding petty corruption cases from the realm of criminal actions.

Disciplinary sanctions serve as a vital adjunct to the criminal justice system, forming an integrated framework to ensure effective enforcement and punishment for corrupt behavior. This acknowledgment underscores the understanding that not all instances of corruption align with criminal statutes in Vietnamese law, highlighting the essential role of disciplinary measures within public institutions, often providing an alternative means of accountability alongside criminal sanctions.

Vietnamese law also delineates the responsibilities of agency heads in curbing corruption, holding them accountable for any corrupt activities transpiring under their purview. Potential disciplinary actions encompass reprimand, warning, or dismissal, contingent upon the gravity of the misconduct.

Nevertheless, the enforcement of disciplinary measures as per the law encounters numerous hurdles. Ineffective asset declarations, coupled with the intricacies of overseeing and managing officials' conduct, have diminished the legal system's efficacy in combating corruption.

CONCLUSION

Studies show that the objective cause of corruption and negativity is due to the large, diverse, and complex scope of anti-corruption activities, involving many policies, laws, and almost all areas of operation of the state apparatus, as well as the officials, civil servants, and public employees. So far, corruption prevention solutions have mainly been applied in the public sector and for people with positions and powers, while complex socio-economic relationships give rise to unlimited corruption, rendering efforts in this area limited.

Subjective causes often take precedence. These can include a lack of decisiveness in directing and organizing the implementation of anti-corruption measures within certain agencies, units, and among leaders. In certain instances, an attitude of indifference, delays in providing direction, and a lack of consistent monitoring and inspection have resulted in the uncovering of significant corruption cases involving leaders acting as masterminds or accomplices. Furthermore, compliance with anti-corruption regulations is often lacking. The proactive and exemplary role of managers and party members in many instances has not been adequately promoted.

Lastly, the development and enhancement of anti-corruption policies and laws have yet to meet the necessary standards. The implementation of these regulations has revealed numerous limitations and inadequacies, while efforts to amend, supplement, and address these issues remain weak and sluggish. The translation of anti-corruption measures into concrete institutional frameworks and socio-economic policies has not been given due attention. Additionally, several anti-corruption measures outlined in the United Nations' Anti-Corruption Convention or the Party's resolutions have not been promptly legislated and institutionalized at the local level.

REFERENCES

- Charles K. Rowley , Friedrich G. Schneider: *Readings in Public Choice and Constitutional Political Economy*, 2008 Springer Science+Business Media, LLC (<https://link.springer.com/book/10.1007/978-0-387-75870-1>)
- Government, Report No. 330/BC-CP dated 22/9/2016 on Summary of Ten years of Anti-Corruption Law, <https://quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=66172> (released date: 30/6/2022, access date: 31/3/2024)
- Government Investigation report on Supporting the Government's Self-Assessment activities in implementing the United Nations Convention against Corruption (UNCAC) in Vietnam in 2011, Hanoi: Transparency International and Towards Transparency, 2011.
- Nguyen Minh Duc, "The People's Procuracy of Vietnam and the principle of fair trial", Hanoi: People's Procuracy; updated at: <http://ww.jus.uio.no/smr/english/about/programmes/vietnam/publication/> Nguyen Phu Trong, Full text of the Party's General Secretary – Nguyen Phu Trong's address at Review Conference on 10 years of Preventing and Combating Corruption and Negativity, source: <https://quochoi.vn> (date of publishment: 30/6/2022, date of access: 31/3/2024).
- University of Law - Vietnam National University, Hanoi, Proceedings of the Conference "Preventing and combating corruption in China and Vietnam", Annual Fall Jurisprudence Forum, 2021
- UNDP, Comparative analysis of international anti-corruption laws: Lessons on handling and enforcement mechanisms for Vietnam, Martin Painter, Dao Le Thu, Hoang Manh Chien, Nguyen Quang Ngoc, 2012

Government Inspectorate (2022), Assessment Report on provincial-level anti-corruption work in 2022 (PACA INDEX 2022)
<https://towardstransparency.org/wp-content/uploads/2018/11/2021-01-27-CPI-2020-TT-Message-VN-Final.pdf>
<https://ubkttw.vn/danh-muc/tin-tuc-thoi-su/hoi-nghi-toan-quooc-tong-ket-10-nam-cong-tac-phong-chong-tham-nhung-tieu-cuc-giai-doan-2012-2022.html>
<https://dangcongsan.vn/tieu-diem/10-nam-phong-chong-tham-nhung-quyet-liet-dot-pha-dat-nhieu-ket-qua-toan-dien-614124.html>
Vietnamnet news site