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to the United Nations
Convention against Corruption**

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**Review of implementation of the United Nations
Convention against Corruption**

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Note by the Secretariat

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II. Executive summary

Viet Nam

1. Legal system

The United Nations Convention against Corruption was signed by Viet Nam on 10 December 2003 and ratified by the President on 30 June 2009. Viet Nam deposited its instrument of ratification on 19 August 2009.

The position of the Convention in Viet Nam's legal system is one level below the Constitution and one level above other sources of law. The Convention like other international treaties can be applied directly, in whole or in part, or through incorporation into domestic laws and regulations. Viet Nam made a declaration upon ratification that the provisions of the Convention are non-self-executing. Viet Nam has a civil law system with elements of socialist legal theory.

Overview of the anti-corruption legal and institutional framework

The institutions most relevant to the fight against corruption in Viet Nam are the Government Inspectorate, the Ministry of Justice, the Ministry of Public Security, the Supreme People's Procuracy, the Supreme Court, the State Bank of Vietnam, the Central Steering Committee on Anti-Corruption and the Vietnam Fatherland Front. Other relevant stakeholders include the National Assembly representatives, the National Lawyer Association and civil society.

The Penal Code of 1999 was amended most recently on 19 June 2009. The Law on Prevention and Combating of Corruption was enacted in 2005. Comprehensive amendments to the Penal Code have been scheduled in the law-making programme of the National Assembly in its tenure 2011-2016, including regarding bribery, trading in influence, the liability of legal persons, and protection of witnesses, experts and victims. Legislation on anti-money-laundering was expected to come into force in the near future and a regulation on the protection of reporting persons will come into force on 1 July 2012.

2. Implementation of Chapters III and IV

2.1. Criminalization and Law Enforcement (Chapter III)

2.1.1. Main findings and observations

A general observation related to the implementation of Chapter III in Viet Nam is that the relevant criminal legislation appears to be applicable generally to two different categories of persons: for some offences, the prohibited acts apply to all persons while for others only certain persons "holding positions and powers" are covered. Vietnamese officials clarified that the concept of "persons holding positions and powers" under Vietnamese law corresponds to the group of public officials enumerated in article 2 of the Convention and applies equally to persons elected and appointed to positions of power.

Bribery offences; trading in influence (articles 15, 16, 18, 21)

Active bribery is partially criminalized in Article 289 of the Penal Code read together with Article 277 for bribes of two million Dong or more, or less than two million Dong but causing serious consequences or repeated violations. Cases of promise and offer of bribery are not addressed but can be charged under the offence of preparing to commit a crime (for serious and especially serious crimes) or as incomplete offences, provided that there is evidence that the promise or offer would cause the public servant to act or refrain from acting in his or her official duties. Bribes are limited to money, property or other material benefits, and the subject of the offence are persons holding “positions and powers”. Under paragraph 6 of Article 289, persons who are coerced to offer bribes but self-report them before detection may be exempt from penal liability and have all or part of the offered property returned.

Passive bribery is addressed in Article 279 of the Penal Code, which is limited to the receipt of material benefits and addresses persons holding positions and powers in order that they act or refrain from acting at the request, or for the benefit of, the bribe giver. The solicitation of bribes is considered an aggravating factor when determining the criminal liability of the bribe taker.

Viet Nam has not adequately addressed the bribery of foreign public officials and officials of public international organizations. Although the term “agency or organization” as used in Article 277 has not been interpreted by the courts, it was explained to include agencies and foreign organizations in Viet Nam or international organizations, unless Viet Nam’s international treaties stipulate otherwise. Article 279, read together with Article 6 of the Penal Code, is applicable to the acceptance of bribes by foreign public officials or officials of public international organizations for crimes committed outside Viet Nam in the circumstances set out in Viet Nam’s international agreements; the solicitation of bribes is not addressed.

Trading in influence is partially addressed in Articles 289 (on bribe offering) and 283 of the Penal Code (abusing positions and/or powers to influence other persons). The limitations are that Article 289 does not describe the act of “bribe giving”, so that Article 277 must also be applied. Moreover, only material benefits are covered.

Bribery in the private sector is not criminalized in Viet Nam.

Laundrying of proceeds of crime; concealment (articles 23, 24)

Money-laundering is partially implemented in Articles 250 and 251 of the Penal Code. Articles 20, 18 and 17 are also relevant. To fully implement the Convention, the anti-money-laundering legislation would have to, inter alia, more clearly define the prohibited acts in relation to the transfer and conversion of property. There was no evidence that self-laundering is covered. Several acts stipulated in the Convention, such as bribery in the private sector, have not been criminalized and are not regarded as predicate offences. These gaps would be addressed in anti-money-laundering legislation expected to come into force in the near future.

Concealment is addressed in Articles 250 and 313 of the Penal Code.

Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)

Embezzlement of property by a public official is stipulated in Articles 278 and 280 of the Penal Code. As with the bribery provisions, serious consequences must accrue for the offence of embezzlement to be completed in respect of property that is valued at less than two million Dong. The object of infringement can be property directly or indirectly under the management of the person committing the criminal act.

Abuse of functions is partially implemented by Article 282 of the Penal Code (Abusing powers while performing official duties). It was explained that the provision “for undue benefits or personal motivation” in Article 282 the Penal Code also encompasses third party benefits.

Viet Nam has not criminalized illicit enrichment, but has taken concrete steps in considering the adoption of such measures, notwithstanding its reservation to being bound by the article.

Embezzlement in the private sector is partially implemented in Article 140 of the Penal Code, which is limited to preventing, through fraudulent means or for illegal purposes, the return of assets received by loan, borrowing, hiring or contract.

Obstruction of justice (article 25)

Relevant offences are found in Articles 309 and 289 of Penal Code. However, acts of bribing or forcing witnesses or victims not to testify or to provide evidence are not criminalized. Further, Article 257 stipulates the offence of “acting against persons conducting official duties”, whereas Article 297 stipulates the offence of “forcing judicial officials to act against laws”. The latter covers only obstruction of justice causing serious consequences during the criminal process. There have been no cases to date under the referenced provisions.

Liability of legal persons (article 26)

Viet Nam made a reservation not to abide by article 26 of the Convention and has not established the required liability of legal persons. Although legal entities may be subject to administrative and civil (but not criminal) liability pursuant to Article 93 of the Civil Code and Articles 1 and 6 of the 2002 Ordinance on handling administrative violations, this liability does not cover the corruption offences. Administrative liability for money-laundering is possible. It was observed that the stipulated sanctions for legal persons are not sufficient. Vietnamese officials repeatedly indicated an intention to prioritize the enactment of criminal liability measures for legal persons.

Participation and attempt (article 27)

Punishment for participation is established principally in Article 20 (Complicity) of the Penal Code, which applies to organizers, executors, instigators and helpers of criminal acts as accomplices. Article 18 of the Penal Code addresses the attempted commission of crimes.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Penalties for corruption in Viet Nam range from one year up to twenty years of imprisonment and death penalty. Fines range 3 million Dong to 50 million Dong or from 1 to 5 times the value of the bribe. Sanctions also include partial or full confiscation of assets and removal of officials from their position. The imposition of sanctions depends on the circumstances of each case, including mitigating and aggravating circumstances. No functional immunities exist in Viet Nam for public officials at any level.

Viet Nam follows a system of discretionary prosecution. The power to make a decision whether to prosecute or not rests with prosecutors at all levels of procuracy.

Pretrial detention may be replaced by non-custodial measures in a manner consistent with the Convention. Similarly, parole for convicted persons takes into account, among other considerations, the nature and gravity of the offence.

Vietnamese legislation provides for the possibility of suspension of public officials against whom judicial proceedings have been initiated. Public officials convicted of corruption are removed from office and may be subject to additional penalties, such as a ban from holding certain positions. Policies and measures aiming at the reintegration of convicted persons are insufficiently concrete and specific.

The legal framework for cooperation between accused persons and law enforcement is relatively complete. In particular, persons who “self-report” may not be punished and would also qualify for reduced penalty terms or mitigated punishment.

Protection of witnesses and reporting persons (articles 32, 33)

Measures for the protection of witnesses include physical security, maintaining the confidentiality of a person’s identity, providing an assumed identity or the use of safe houses for witnesses and their families. Testimony cannot be given through the use of video technology due to technical difficulties. Viet Nam has not entered into international agreements providing for the relocation of witnesses. It was noted that consideration could be given to the establishment of witness protection programmes.

The legislation of Viet Nam guarantees the right of citizens to make complaints or report alleged offences, but does not seem to afford corresponding protection to reporting persons. A regulation on the protection of reporting persons will come into force on 1 July 2012.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

The legislation of Viet Nam regulates freezing, seizure and confiscation of assets that are proceeds or instrumentalities of crime. Assets subject to seizure and confiscation include yields and benefits derived from proceeds of crime, as well as assets converted, transformed or intermingled with legitimate property. The absence of provisions on confiscation of property destined for use in the commission of an offence was noted.

Further, all inspection, investigation, prosecuting and adjudicating agencies in Viet Nam may impose confiscation and freezing measures if warranted, without the need of a court order or decision. A reversal of the burden of proof concerning the origin of alleged proceeds of crime is not established. Bank secrecy does not create any obstacles to the investigation of corruption offences. The legislation regulates access of State agencies to the information and records of financial institutions.

Statute of limitations; criminal record (articles 29, 41)

The relevant sections of the 1999 Penal Code of Viet Nam are Articles 23 and 24. The statute of limitations in corruption crimes is between ten and twenty years. Where an alleged offender deliberately flees and is being sought by warrant, the time of fleeing is not counted and the statute of limitations is re-calculated from the time the person gives him/herself up or is arrested. No criminal cases have been barred by the statute of limitations in the last three years.

While there are no specific provisions in place, foreign convictions can be considered during a trial, including as mitigating or aggravating circumstances.

Jurisdiction (article 42)

In general, the jurisdiction of Vietnamese courts is established in accordance with the provisions of the Convention. Viet Nam may establish jurisdiction over offences against its nationals committed abroad only as permitted by existing treaties.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

The provisions of the Civil Code on the invalidity of transactions due to violations of law or contravention to social ethics are applied to annul or rescind contracts related to acts of corruption. Also, the Criminal Proceedings Code provides for the compensation of damage resulting from acts of corruption in a manner consistent with the Convention.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

The principal specialized authorities are the Supreme People's Procuracy and the Government Inspectorate. The former is a judicial body that reports only to the National Assembly and not to the Executive. The reporting structure of the Government Inspectorate appears to adequately ensure its operational independence.

Public authorities generally provide information to law enforcement agencies upon request, and not on their own initiative. Multiple agencies are competent for receiving citizens' complaints, and Viet Nam has put in place an award system where citizens can be recognized for anti-corruption efforts and receive financial rewards.

2.1.2. Challenges and recommendations

- The inadequacy of existing normative measures was cited as a challenge in implementing article 15. It is necessary to broaden the definition of bribery, which is limited to material benefits and persons holding positions and powers in the State apparatus. This should be considered a priority area during the revision of the Penal Code.

- The inadequacy of existing normative measures was cited as a challenge in implementing article 16. The Penal Code should clarify that the term “agency or organization” includes foreign agencies and organizations. There is a need for an explicit provision in the Penal Code to address corruption by foreign officials and officials of public international organizations. This should be considered a priority area during the revision of the Penal Code.
- The process to fully implement the bribery provisions through amendments to the Penal Code is a long-term process in Viet Nam, with some measures being implemented through 2015 and others through 2020.
- Specificities in Viet Nam’s legal system were cited as a challenge in implementing article 20.
- The inadequacy of existing normative measures and specificities in the legal system were cited as a challenge in implementing article 21. There is a need to enact legislation criminalizing bribery in the private sector as a priority area for Viet Nam, notwithstanding the non-mandatory nature of this provision. Officials repeatedly noted the absence of relevant measures as a priority challenge in the fight against corruption.
- Additional legislative provisions are required to fully implement the offence of embezzlement in the private sector. This should also be considered a priority area.
- A lack of statistics in the area of money-laundering was noted, and it was recommended that Viet Nam keep record of money-laundering cases. Further, a comprehensive review of the anti-money-laundering legislation should be conducted.
- Provisions regarding the criminal liability of legal persons in corruption offences should be elaborated, although alternative forms of civil and administrative liability would also satisfy the requirements of the Convention. This should be considered a priority for Viet Nam to avoid issues of impunity for legal persons engaged in corruption. The lack of relevant measures was also noted to affect the ability of Viet Nam to fully provide mutual legal assistance in cases involving legal persons (UNCAC article 46, paragraph 2). The inadequacy of existing normative measures was cited as a challenge.
- The inadequacy and lack of compatibility of existing normative measures, and the lack of implementing resources for the protection of witnesses, were cited as challenges in implementing article 32.
- Specificities in the legal system of Viet Nam were cited as a challenge in fully implementing article 33. Viet Nam is encouraged to adopt effective measures for the protection of reporting persons, such as the possibility of anonymous reporting, and to establish witness protection programmes.
- Limited resources were reported to be a challenge in implementing articles 34, 35, 36, 37, 38, 40.
- Challenges related to the gathering of data stemming from parallel mandates on anti-corruption and weak statistical capacity were reported in relation to article 38.

- It is recommended that Viet Nam consider adopting relevant measures, as appropriate, to enhance cooperation between public authorities and the private sector.

Specificities of the legal system of Viet Nam were cited as a challenge in fully implementing article 41.

2.2. International cooperation (Chapter IV)

2.2.1. Main findings and observations

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(articles 44, 45, 47)*

Viet Nam makes extradition conditional on the existence of a treaty, and has made a declaration upon the ratification of the Convention that it will not take the Convention as a legal basis for extradition. Extradition requests are handled in accordance with Vietnamese laws, bilateral treaties on extradition, and the principle of reciprocity. Viet Nam has concluded twelve bilateral treaties on mutual legal assistance which also deal with extradition, two treaties covering extradition specifically, and has been actively engaged with other States in view of concluding additional treaties on the matter.

The absence of dual criminality is an optional ground for refusing extradition under Vietnamese legislation. Almost all treaties make extradition conditional on the existence of dual criminality. The Vietnamese competent authorities may extradite persons whose acts do not constitute offences under Vietnamese law in application of the principle of reciprocity. The institution responsible for receiving and submitting requests for extradition and transfer of sentenced persons is the Ministry of Public Security.

The Law on Mutual Legal Assistance of 2007 sets out in detail the procedure to be followed and the deadlines to be met by competent authorities when deciding on extradition requests. It also permits the person sought to be taken into custody while the extradition request is considered. Moreover, the guarantees of fair treatment and respect of fundamental rights for all persons subject to criminal proceedings provided for by Vietnamese law also apply to extradition proceedings.

There is no definition of political offences in Vietnamese legislation; Viet Nam determines the political nature of offences for which extradition is sought on a case-by-case basis. Viet Nam reported that it would not consider corruption related offences to be of a political nature.

Extraditable offences are those punishable by imprisonment of at least one year, where the remaining imprisonment term is at least six months, or by death penalty. Viet Nam shall refuse extradition if it has reasonable grounds to believe that the person sought is being prosecuted or punished on account of his or her race, religion, sex, nationality, social status or political opinions.

Extradition will be refused if the person sought is a national of Viet Nam. In such cases a domestic prosecution will be considered by the Vietnamese authorities. Recent extradition treaties contain provisions on the mandatory prosecution of non-extradited nationals at the request of the other party to the treaty. Viet Nam

would not consider the enforcement of a sentence imposed in a requesting State against a national of Viet Nam whose extradition is refused.

There is no obligation on Viet Nam to consult with requesting States before refusing extradition. However, the practice of the Ministry of Public Security is to engage in such consultations before deciding a request.

The transfer of sentenced persons is regulated in the Law on Mutual Legal Assistance (Articles 49 to 60). Viet Nam has concluded four bilateral treaties on the matter. Viet Nam reported that to date, transfers did not concern persons convicted of corruption.

The transfer of criminal proceedings is regulated in the Criminal Proceedings Code and the Law on Mutual Legal Assistance, which permits such transfer where a prosecution in Viet Nam cannot be pursued because the alleged offender is abroad.

Mutual legal assistance (article 46)

International cooperation in criminal matters is regulated in the Criminal Proceedings Code of Viet Nam and the Law on Mutual Legal Assistance. Viet Nam does not use the Convention as the legal basis for mutual legal assistance, as it considers all its provisions to be non-self-executing.

Viet Nam has entered into several bilateral treaties on mutual legal assistance, and is also party to the ASEAN treaty on mutual legal assistance in criminal matters. Where no treaty is in force, mutual legal assistance may be granted under the principle of reciprocity.

The Law on Mutual Legal Assistance and applicable international treaties cover adequately the purposes for which mutual legal assistance may be granted and the elements that requests shall contain. International treaties in force often stipulate that requests should be executed in accordance with the procedures specified in the request, provided that they do not contradict domestic legislation.

The spontaneous transmittal of information is not prohibited under Vietnamese law and is regulated in several bilateral treaties.

The grounds for refusal of mutual legal assistance are consistent with the Convention. The legislation also stipulates that reasons for refusal of requests should be given to the requesting State.

A detailed timeline for the execution of mutual legal assistance requests is set out in the Law on Mutual Legal Assistance. The average time for execution ranges from one month to one year, depending on the complexity of the case. The Law also provides for the postponement of the execution of a request if such execution would hinder the investigation, prosecution or trial of an offence or the enforcement of a judgment in Viet Nam. Viet Nam would generally consult with requesting States prior to refusing a request, although consultations are not mandatory.

The absence of dual criminality is a mandatory ground for refusing requests for mutual legal assistance. Some international treaties to which Viet Nam is party provide either for granting assistance even in the absence of dual criminality or for the possibility of consultation prior to refusing a request on this ground.

Notwithstanding the dual criminality requirement, Vietnamese authorities may provide information for offences not criminalized under the laws of Viet Nam to networks such as INTERPOL or ASEANAPOL. Although it has not established criminal liability of legal persons, Viet Nam would consider requests for mutual legal assistance involving legal persons, based on the principle of reciprocity and its will to maintain good international relations.

Viet Nam has reported that from July 2008 to January 2012, it had received three requests for mutual legal assistance relating to corruption offences and had executed two of those. The third one was pending at the time of the country visit.

The principle of specialty of information provided in the context of mutual legal assistance is enshrined in domestic legislation and treaties concluded by Viet Nam. Also, confidentiality of requests is respected in a manner consistent with the Convention. There are no provisions in the legislation of Viet Nam permitting the hearing of witnesses by videoconference.

According to the declaration made by Viet Nam, the Ministry of Justice, the Ministry of Public Security and the Supreme People's Procuracy were designated as authorities for mutual legal assistance in criminal matters. Viet Nam could require that a request for mutual legal assistance be submitted through diplomatic channels, if this is provided for in the applicable bilateral treaty.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Vietnamese law enforcement authorities cooperate regularly with their counterparts abroad. Such cooperation is based on memorandums of understanding signed by the Ministry of Public Security and senior officials in foreign States, or on mechanisms of cooperation established at the local/provincial level. The cooperation channels of INTERPOL and ASEANAPOL were reported to be frameworks for quick and efficient exchange of information in preventing and combating crime.

Joint investigations have not been established in Viet Nam. The Strategy on Preventing and Combating Corruption towards 2020 provides that the adoption of measures permitting the establishment of joint investigative bodies should be considered. There are no provisions regulating the use of special investigative techniques or the admissibility in court of evidence derived from such techniques.

2.2.2. Successes and good practices

- The significant number of treaties on mutual legal assistance concluded by Viet Nam, in particular with countries in the same region, was noted. Such a network of treaties creates a good framework for the provision of mutual legal assistance, and has permitted Viet Nam to grant assistance in corruption related cases.

2.2.3. Challenges and recommendations

- Viet Nam reported inadequate human, technological and institutional capacity to be a challenge in the implementation of article 45.

- Viet Nam should give consideration to using the Convention as a legal basis for mutual legal assistance as appropriate in order to streamline procedures and cooperation with other States parties to the Convention.
- Inadequate resources for implementation were cited as a challenge in implementing article 49.
- Viet Nam is encouraged to introduce in its legislation and applicable bilateral treaties the possibility to afford mutual legal assistance for offences established under the Convention even in the absence of dual criminality.

3. Technical assistance needs

The following technical assistance needs were identified by Viet Nam:

- Article 15: Model legislation and a summary of good practices/lessons learned. The reviewers suggested that legal assistance might be useful to broaden the definition of bribery in Vietnamese law.
- Assistance to conduct research to perfect the Penal Code was requested on issues related to the implementation of articles 18 and 20.
- Model legislation was requested for the implementation of articles 16, 20 to 22, and 26.
- Article 23: A summary of good practices/lessons learned and training, educating staff of judicial agencies and banks. The reviewers also observed a need for capacity-building of the financial intelligence unit and other law enforcement authorities to detect and investigate money-laundering cases.
- Article 24: A summary of good practices/lessons learned and training for public officials of judicial agencies.
- Article 36: The need for additional resources and training of staff of investigative agencies to enhance operational capacities was underscored.
- A summary of good practices and lessons learned was requested with respect to articles 16, 20 to 22, 25 to 27, 30-36, 38 to 42, 46 to 50.
- Technical and financial assistance was requested related to the implementation of article 30, paragraph 10.
- Assistance in conducting surveys and developing thematic reports was requested on issues related to the implementation of articles 16, 21, 22, 26, 31, 33 to 35, and 37 to 39.
- Legal advice was requested on issues related to the implementation of articles 31 and 32.
- Training activities and courses to enhance professional skills of relevant public officials were sought with regard to articles 36, 41, 44, and 46 to 50.
- Financial support to implement pilot programmes on protecting witnesses, experts and victims was requested.
- The development of an action plan for the implementation of articles 37, 38 and 39 was requested.

- Model treaties were requested for the implementation of articles 44 and 45, and model agreements/arrangements for the implementation of article 50.
-