

Whistle-Blowers in Viet Nam – Possibilities and obstacles from an institutional perspective



Abstract

This study aims to investigate, *from an institutional perspective*, the implications of the new anti-corruption law in Viet Nam with a particular focus on its impact on civil society and individual rights to report on corruption. The overarching research question is: *How do formal and informal institutions affect whistle-blowers possibilities to engage in combat of corruption in Viet Nam?* To blow the whistle in Viet Nam can be problematic, with consequences such as loosing his/hers job and social exclusion. Whistle-blowers in Viet Nam today seem to have an insufficient confidence to official authorities. Moreover, a problem of significance is that whistle-blowers have to state their name and contact details when reporting on corrupt acts to competent agencies. Another problem is that civil society is strongly connected to the CPV (Communist Party of Viet Nam).

Keywords: Corruption, institutions, whistle-blowers, civil society

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Thank you!

ADB	Asian Development Bank
CPI	Corruption Perception Index
CPV	Communist Party of Viet Nam
CSO	Civil Society Organisations
GI	Government Inspectorate
IMF	International Monetary Fund
NIS	National Integrity System Country Report
OECD	Organisation for Economic Co-operation and Development
OSCAC	Office Steering Committee of Anti-Corruption
PAR	Public Administration Reform
UNDP	United Nations Development Program
VFF	Viet Nam Fatherland Front
VLA	Viet Nam Lawyers Association
WB	World Bank
SIDA	Swedish International Corporation Development Agency
TI	Transparency International

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1 Introduction

1998, teacher Nguyen Thanh Hang blew the whistle at an upper secondary school in Ho Chi Minh City (Saigon). She reported corrupt acts committed at the Le Quy Don School to the Director of Education and Training Department in Ho Chi Minh City. Mrs Nguyen Thanh Hang were ostracised, received a penalty decision which resulted in that she had to leave the city and were transferred to another school. All this occurred even though she acted in accordance with the rules. The case indicates, at least at the time of the occurrence, a lack of commitment from the local competent authorities¹. Moreover, despite or maybe because of the sensitivity and interest such a case might evoke, the media was not involved and the case was unknown among the public until several years later.

Research literature points to functioning legal and judicial institutions as a corner stone in the anti-corruption struggle, where a central factor in the fight against corruption is the role of civil society, individual citizens and the protection in law. An important factor to consider in this respect is implementation of the law which will be a very important determinant for its effect. Likewise, civil society is often pointed to as a key factor for contributing to holding power holders accountable not least if they can act as whistleblowers. Successful law enforcement and anti-corruption strategies are mainly dependent upon the motivation of individuals to provide information and/or to give evidence. The social institutions that protect civil society is therefore of greatest value when tackling corruption. Furthermore, recent research addresses the importance of the willingness of government's to cooperate with nongovernmental organisations².

Viet Nam was, like several other Asian countries planning economies. And while still being a communist state, the country has since the 1980s undertaken a change towards, a so called, socialist market economy and has initiated a central program for public administration reform. One of the official purposes of this reform programme is to fight corruption³. Moreover, it is complemented by other reforms such as the new anti-corruption law (2006). Through this anti-corruption law, the citizens have the legal right and possibility to report corrupt acts.

¹ Dr. Cu, Dialogue on Anti- Corruption 2007-12-03

² Anti- corruption policies in Asia and the Pacific. The Legal and Institutional Frameworks 2004:49

³ Andersson 2002:59

Citizens have the right to detect and denounce corrupt acts; and have the obligation to cooperate with and assist the competent agencies, organizations, units and individuals in detecting and dealing with the persons who have committed corrupt acts⁴.

Along with this, the anti-corruption law expresses the importance of civil society in the anti-corruption struggle. The Viet Nam Fatherland Front (connected to the Communist Party) is an umbrella organization for organizations and associations in Viet Nam⁵.

The Viet Nam Fatherland Front and its member organizations shall be responsible for encouraging the people to actively participate in preventing and suppressing corruption; detecting, proposing competent agencies, organizations and individuals to deal with persons who have committed corrupt acts; and supervising the implementation of the laws on prevention and suppression of corruption⁶.

Yet, the case from Ho Chi Minh points out that the previous institutional framework did not protect whistle blowers in Viet Nam. So, that civil society and citizens has the legal equipment to take on the important role in the fight of corruption does not guarantee real protection. As the Ho Chi Minh – case points out; the negative consequences of reporting on corrupt act can be devastating to the individual citizen. So this study is related to these questions about *how civil citizens can be empowered to engage in the combat of corruption in Viet Nam*.

1.2 Purpose and research questions

The study aims to investigate, *from an institutional perspective*, the implications of the new anti-corruption law in Viet Nam with a particular focus on its impact on civil society and individual rights to report on corruption.

The overarching research question is:

How do formal and informal institutions affect whistle-blowers possibilities to engage in the combat of corruption in Viet Nam?

⁴ Law on prevention and suppression of corruption: Law No. 55/2005/QH11:2-4

⁵ Dialogue on Anti-Corruption, 2007-12-03, Hanoi, Vietnam

⁶ Decree 47 2007:8

To answer the overarching research question, the following questions will be investigated:

- *Based on the anti-corruption law, what role are social organizations in civil society given in the anti-corruption work?*
- *What is the effect of informal institutions, such as culture, norms and values, for whistle-blowers possibilities to engage in anti-corruption work in Viet Nam and how?*
- *What formal protection does the new anti-corruption law give whistle-blowers in Viet Nam and what protection is given in real life experience taken in account?*

To answer above questionings the study intends to look into how formal and informal institutions regarding whistle-blowers and civil society are functioning in Viet Nam.

1.3 Disposition

Chapter 2, *Definitions and theoretical framework*, aims to, with help of existing research in the area, to point out relevant institutions which are important to the possibilities civil citizen of to engage in the combat of corruption. The purpose of following chapter 3, *Methodology*, is to give the reader an oversight into how this study is conducted. Chapter 4, *Viet Nam*, presents the result of the study. First, the anti-corruption institutions as the theory chapter pointed out as relevant will be investigated in the context of Viet Nam. Second, the questionings from the introduction will be answered. *Ending discussion*, chapter 5, aims to discuss how this study can contribute with knowledge to recent research in the area.

2 Definitions and theoretical framework

Following chapter aims to, with help of existing research in the area, to point out relevant institutions which are important to the possibilities civil citizen of to engage in the combat of corruption.

2.1 Corruption

While this study does not aim to focus on which types of corruption existing in Viet Nam, and instead focuses upon which possibilities whistle-blowers have to use existing *institutions* to engage in the combat of corruption, there will not be a detailed discussion about the concept of corruption. Instead, this discussion will concentrate to the concept of whistle-blowers and important institutions, such as the law. In the law, different types of corruption are defined. Therefore, a more briefly discussion concerning how the phenomenon corruption could be regarded as, is accounted for below.

A definition of corruption used by the World Bank and the IMF, among others, “the abuse of public office for private gains”⁷. Corruption can also be seen as an outcome that reflects a country’s institutions, such as legal, economic, cultural and political. At the same time corruption can occur when the country’s institutions and policies are ineffective, in the sense that people try to get around them by bribing⁸. Bureaucratic, also called administrative or "petty" corruption, takes place at the implementation end of politics, where the public meets public officials. Bureaucratic corruption is generally differentiated from "grand" and "political" corruption (to the extent it is possible to differentiate administration from politics)⁹. Political corruption is in some cases used synonymously with grand or high-level corruption; this refers to the mistreatment of the entrusted authority by political leaders¹⁰.

2.2 The concept of accountability

Robert Klitgaard points out three basic ingredients of corruption in his book *Controlling corruption*.

⁷ www.worldbank.org search word: World Bank definition of corruption 2007-11-16

⁸ Ibid search word: definition of corruption 2007-11-16

⁹ www.u4.no search word: corruption glossary 2007-11-16

¹⁰ Ibid search word: political corruption 2007-11-16

$$CORRUPTION = MONOPOLY + DISCRETION - ACCOUNTABILITY$$

The equation implies that when agents have monopoly power over clients, and when agents have great discretion, it is easy to commit non-allowed acts. Therefore, accountability is an important factor when combating corruption. He also argues that accountability can be easier with help of rules which could lead to reduced corruption¹¹. The WB defines accountability as:

Political accountability refers to the constraints placed on the behaviour of public officials by organizations and constituencies with power to apply on them. As political accountability increases, the costs to public officials of taking decisions that benefit their private interests at the expense of the broader public interest also increase, thus working as a deterrent/disincentive to corrupt practices¹².

Also B Guy Peters identifies accountability as an important component when combating corruption. A traditional way to think about accountability is to consider it as legalistic controls. The term can be discussed in many aspects but accountability is important to both democratic and undemocratic governing systems. In this sense accountability is about learning governing and improving the capacity of the political system to govern. Furthermore, accountability can also mean identify and assigning responsibility for failures¹³. Rob Jenkins points out an important factor of accountability which central to all definitions of the concept, one person or institution is obliged to inform of his/hers/its activities to another¹⁴. Andrew Heywood argues that accountability means answerability. Moreover, the concept requires that duties, powers and functions must be defined in such way that it can be effectively monitored and evaluated by higher authorities¹⁵. ADB suggests that civil society organizations can function as a complement to institutional oversight bodies, but to be able to do this they need access to relevant information to be effective in this important role¹⁶.

¹¹ Klitgaard 1998: 75, 88

¹² Jenkins 2007:148

¹³ Peters 2007:16, 26, 148

¹⁴ Jenkins 2007:136

¹⁵ Heywood 2002:393

¹⁶ Curbing corruption in public procurement in Asia and the Pacific – progress and challenges in 25 countries 2006:25

With this said, accountability seems to be about rules and answerability to another. Thus, accountability is an area where civil society has possibilities to influence the outcome of politics, and therefore central to this study. That put us into the question of what an institution is and the relation between institutions and the society.

To hold stakeholders accountable and responsible for their acts is problematic and efforts to increase accountability can be carried through in various ways. Though, whistle-blowers information is one of the most useful sources to find corruption and is therefore also an important tool and a way of for citizens to control and hold those in powers accountable for their acts¹⁷.

2.3 New and old institutionalism

Old institutionalism looks upon institutions as formal rules and organisations¹⁸. According to Charlotta Stern, an institution is a set of rules, routines and norms in the society. Furthermore, institutions can be seen as the rules for the society, where the rules affect the society's actors¹⁹. But what is a rule? New institutionalists also invoke both informal and formal conventions to the concept of rules. By doing so they are able to view a more fine-grained and more realistic picture of what affects political behaviour²⁰. Many scholars within the field of political science often focus upon the effects by deliberately shaped formal institutions, such as laws, agreements, and statute. The old institutionalism argues that within the organisations, informal institutions frequently develop²¹.

Lowndes argues that our political institutions today not are the same as political organisations. The view on political institutions nowadays is seen as a set of rules, and these rules are meant to guide and maintain a desirable behaviour amongst the individual actors. Since the institutional rules offers information about other similar future behaviour and sanctions against non-compliance, the institutions play a very important role. One way of looking at the roles of political institutions is that the political institutions set the rules of the game, and it is the organisations (and also the individuals) that are the players. Because political organisations play a role as a collective actor and is an arena where institutional

¹⁷ Shah 2007:248, 317

¹⁸ Lowndes 2002:92

¹⁹ Stern 1999:77

²⁰ Lowndes 2002:103

²¹ Stern 1999:78-79

rules are shaped and developed and is articulated, focus lies here²². Jenkins review different ways that political institutions can contribute to greater accountability of public officials to the people they serve. He argues that the concept of “non-political” institutions today also is politicized and this is one of the reasons to why accountability of governments to people is in such short supply²³.

Lowndes demonstrates that the thinking of political institutions as affecting the actor’s behaviour comes from the normative institutionalism. By influencing the actor’s norms, values, interests, faith, and identity the political institutions contribute to the formation of the behaviour of the actor. Normative institutionalism, which is a form of new institutionalism, claims that the appearance of institutions is informal and is a result of individuals acting²⁴. By making sure and guaranteeing that some things are taken for granted by those in power by other things, the institutions are simplifying the political life. Moreover, new institutionalism has another way of looking upon institutions as it lays it focus upon the interaction between the individual and institutions²⁵. Thereby, new institutionalism also gives a possibility to explain individual level behaviour²⁶. Depending on how the relationship between the individual and the institutions is understood is according to Lowndes the way that change is conceptual or not.

Figure 1. Theoretical model

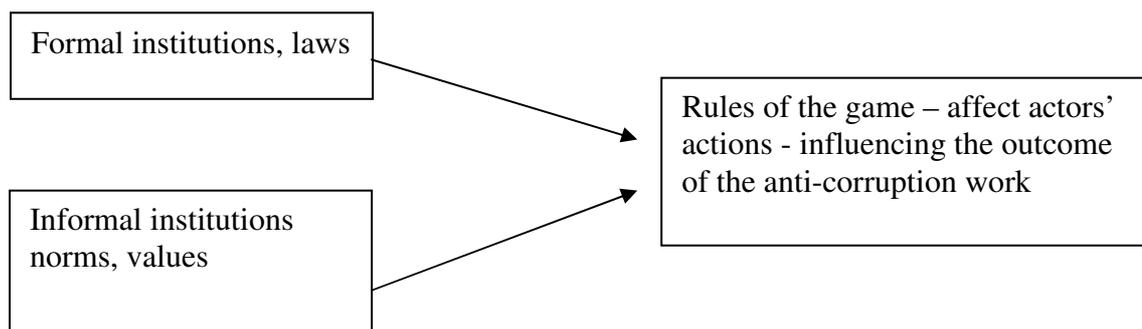


Figure 1. Then, what is the outcome of the game involving actors and rules? The meaning of the arrows is that they point out influence. In this study, it means that formal and informal institutions affect citizens’ possibilities to engage in the combat of corruption. The model aims to simply above reasoning.

²² Lowndes 2002:91

²³ Jenkins 2007:135

²⁴ Stern 1999:83

²⁵ Lowndes 2002:90-91

²⁶ Peters 2004:1

The model aims to provide an oversight of the above discussion concerning institutionalism, and the way formal and informal affect actor's possibilities to engage in the combat of corruption. For example, if there is no protection for whistle-blowers, this will also affect the citizens' possibility to act as a whistle-blower. But the model also implicates that informal institutions, such as norms and values also affect the possibilities of whistle-blowers and other actors in the society to engage in the anti-corruption work. Moreover, the model pictures how institutions and individuals interact with each other, based on the theoretical discussion above.

2.4 A culture of corruption?

Heywood argues that individuals and groups acquire their political attitudes and values through a process of political socialization. These beliefs and values are transmitted from generation to generation. This phenomenon can be seen either as a process of indoctrination that takes place during a person's entire life, or it can be seen as a transmission of values that passes from one generation to another generation, mainly accomplished during childhood. In socialization the major agents are the family, religion, education, the mass media and government. Political culture is the people's psychological orientation in relation to political objects. The objects can be parties, institutions, government and the constitution. In individuals political attitudes, beliefs, symbols and values they define and create the opinion towards political objects and react and act from their attitudes. Political culture is shaped out of long-term values. From Heywood's reasoning above we can conclude that people socializes into the political culture. Heywood's reasoning can be similarly being recognized from institutionalisms way of looking into interaction between institutions and the individual.²⁷

Then, what is the role of civil society for accountability and in the combat of corruption? The role of civil society can take various forms, from raising awareness among the public about negative effects of corruption and to participate in the analysis of legislation or institutional procedures²⁸.

²⁷ Heywood 2002:200-203

²⁸ Anti-corruption policies in Asia and the pacific – progress in legal and institutional reform in 25 countries 2006:58

The discussion concerning institutions leads us to investigate how institutions function in the field of anti-corruption, how these institutions affect citizens possibilities to engage in fight against corruption.

2.5 Anti-corruption institutions

Anwar Shah argues that there is a need of special set-up regarding institutions to be successful and established when fighting corruption. He argues that there is a need of establishing the rule of law; strengthening institutions of participation and accountability and there need to be a commitment of national leaders to combat corruption. Around the world there have been some success in establishing anti-corruption agencies, though, the establishing of anti-corruption institutions is dependent on the quality of governance in the country²⁹. ADB and OECD (Organization for Economic Co-operation and Development) identify important institutions in the anti-corruption fight. As well as Shah they points out the importance of successful law enforcement agencies. They address the need of public involvement in fight of corruption³⁰. Likewise, Shah also finds empirical evidence which concludes that citizen participation in anti-corruption leads to reduced corruption³¹. Heywood stress media as an important channel where political actors appear³². As well as Heywood, Shah, ADB and Transparency International (TI) identify important anti-corruption institutions. TI carry through so called *National Integrity System Country Study* (NIS), which aims to provide a starting point for signalling areas requiring priority action in development countries. NIS points out an extensive range of key institutions, sectors or specific activities that contributes to integrity, transparency and accountability in a society³³. However, recent research, in the area mainly points out about the same institutions as important to fight corruption as referred to above. While NIS analysis encompasses a wide range of institutions, every one of these institutions will not be relevant for this study. Institutions regarding accountability are a matter of importance in this study since it is within this area that citizens have possibility to hold those in power responsible. The following institutions, identified from recent research presented above, will therefore be investigated; law, judiciary, law enforcement agencies, ombudsman,

²⁹ Shah 2007:241,249

³⁰ Anti-corruption policies in Asia and the pacific – progress in legal and institutional reform in 25 countries 2006.43

³¹ Shah 2007:246

³² Heywood 2002:202

³³ TI, NIS 2006:6

regional and local government. Media and civil society will also be investigated in this study but they will not be regarded as institutions, but as important actors which affect citizen's possibilities to act as whistle-blowers. How could citizens participate in the combat of corruption with these institutions and actors and actors as channels?

2.6 Whistle-blowers

The regulations concerning whistle-blowers are intended to provide protection to citizens at large and public officials who have the knowledge of a potential case of corruption and are willing to provide information. Denunciators are intended to be protected from any possible threats and consequences that are negative of their action³⁴. Law enforcement that is successful and anti-corruption strategies is mainly dependent upon the motivation of individuals to provide information and/or to give evidence. We define whistle-blowers as people who inform the public or the authorities about corrupt transactions they have witnessed or uncovered. These individuals often require protection from those they expose. Whistle-blower protection, therefore, refers to the measures (administrative or legislative) taken to shield the informer from physical, social and economic retaliation³⁵.

2.7 Law

First of all the law is a corner stone in fight of corruption, Shah argues³⁶. Scholars argue that the need for protection of whistle-blowers is determinant because the denunciators often is to expose those they ask protection from³⁷. Scholars discuss the importance of confidentiality, anonymity and immunity provisions regarding whistle-blower protection. Furthermore, this obstacle can be eliminated by effective legislation and physical protection of whistle-blowers. Though, confidentiality cannot always be assured in practice and whistle-blowers always run a risk of being identified despite the regulations. One important complement to confidentiality to protect the informant's rights and personal security is material protection. The material protection can encompass immunity against criminal proceedings for false accusation and defamation. Furthermore, witness protection laws are seen as a useful complement to above discussed whistle-blower protection. The witness protection law can be useful in a later stage of criminal procedures, like granting

³⁴ www.u4.no search word: whistle blower 2007-11-16

³⁵ Ibid search word: whistle blower 2007-11-16

³⁶ Shah 2007: 233

³⁷ www.u4.no search word: whistle blower 2007-11-16

witnesses protection in court or judicial proceedings³⁸. ADB and OECD release annual reports on how the anti-corruption work proceeds in Asia and the Pacific called *Anti-Corruption Initiative for Asia and the Pacific*³⁹. According to ADB the rule of law need to be strengthened, this by ensuring the independence of investigative and judiciary bodies. This promotion should be done through the enactment and effective enforcement of laws, regulations and the development of an anti-corruption corporate culture⁴⁰.

2.8 Judiciary

The judiciary is the “watchdog” and control that laws are followed and corrupt judiciary is obviously a serious weakness when fighting corruption. Whistle-blowers need to feel that they are protected and know that judiciary can provide them with this lawful rights protection. Citizens need to have access to justice. Therefore, the judiciary is supposed to be free and independent so that citizens can rely on them and report and be protected by law. The law enforcement agencies task is to implement law in practice and the judiciary’s role is to make sure that justice is secured in the society. If the judiciary system not is free, it is hard for citizens to use this institution as a channel to engage in the combat of corruption⁴¹.

2.9 Law enforcement agencies

The task of law enforcement agencies is to make sure that the laws are put in to practice and not just exist on paper. If citizens are provided with legal rights in law, these rights also must be implemented in practical life. Anti-corruption agencies, with the task to inspect and detect corrupt acts among different institutions and organizations in the society are important law enforcement agencies. The initiative to start an inspection can come from higher authorities, citizens and organizations in the society. Regarding the area of whistle-blowing is of greatest importance while citizens plays an essential role of the law enforcement agencies task of detect corrupt acts. Within this situation the whistle-blower is running a risk of negative consequences and it is therefore significant to provide the whistle-blower with protection. ADB suggests that this can be done by establish a whistle-

³⁸ Anti-corruption policies in Asia and the Pacific – The Legal and Institutional Frameworks 2004:44-45

³⁹ Ibid 2004:39

⁴⁰ Anti-corruption policies in Asia and the Pacific – The Legal and Institutional Frameworks 2004:18

⁴¹ Shah 2007:245, 309

blower special agency to implement the important protection that citizens need to have in law to be able to act as whistle-blowers⁴².

2.10 Ombudsman

One way of simplify for citizens possibility to engage in the anti-corruption work is to establish the function of ombudsman. An ombudsman does not have the enforcement powers but they have shown too be successful in many countries. Though, the role of ombudsmen has in some countries, with systemic corruption, not been very effective because they can become complicit in corruption⁴³. Omar Azfar argues that a solution to that problem can be to pass freedom of information acts that allow any citizens to demand information⁴⁴.

2.11 Media

The media is a particularly important nongovernmental actor in monitoring governments and public administrations work. By doing so they can perform as a “watchdog”. But the media also have an important role in enabling the civil citizens and the public to participate in the anti-corruption work. By reporting about corruption they educate the public and thereby raise the question about what is corruption and what is not corruption which often is unknown among the public. But reporting about corruption requires freedom and independence of the press and access to information⁴⁵. Media can in that way enable civil citizens, by raising awareness, to take part in the fight of corruption and the citizens can use media as a channel to affect the anti-corruption work⁴⁶.

2.12 Civil society

The fight against corruption cannot be won without citizens’ support and participation⁴⁷. Civil society are the realm of autonomous groups and associations, a private sphere independent from public authority⁴⁸. There are two factors that is determinant to which extent non-governmental actors can engage in the combat of corruption. The first is a good

⁴² Anti-Corruption Policies in Asia and the Pacific; progress in legal and institutional reform in 25 countries 2006:43-45,51

⁴³ Russel - Einhorn 2007:200

⁴⁴ Azfar 2007:262

⁴⁵ Anti-corruption policies in Asia and the pacific – The legal and institutional framework 2004:57

⁴⁶ Anti-corruption policies in Asia and the pacific – Progress in legal and institutional reform in 25 countries 2006:57

⁴⁷ Ibid 2006:57

⁴⁸ Heywood 2002:420

existing legal framework that creates positive advantages allowing civil society to gather and operate. Inconstant, a negative legal framework can create the opposite, by limiting or reduce civil society in its capacity to act in the combat of corruption. The second determinant factor is government and administrative general attitude toward cooperation with non-governmental organisations⁴⁹. Another factor of importance is that the civil society need develop independence from the state⁵⁰. Civil society's role in the combat of corruption can take various forms. One possibility for civil society actors, recognized from many Asian development countries, is to take part in the analysis of legislation or institutional procedures. Civil society actors also take on an important role in raising awareness and educate the public about corruption issues and problems and engaging in educational programs⁵¹. To be able to play a key role concerning monitoring and scrutinizing and hold actors accountable, a crucial factor of importance for citizens' possibilities to engage in the combat of corruption is access to information and free discussion. Reform in this area has often been triggered by civil society actors. Granting citizens access to information can be accomplished by establishing legal instruments⁵².

2.13 Regional and local government

National- level laws on local government and institutions may have an impact concerning citizens' possibilities to participate in the combat of corruption on local level. Splitting the power into multiple layers and different levels in the society can result in that these different layers can discipline one another. A local government can fight corruption by leading by example. This can, for example, be done by letting the local executive answer questions in the local council and broadcast it. Furthermore, it can be accomplished by that the council itself will be overseen by an accountability committee of randomly elected citizens. Another alternative regarding citizen's possibilities to engage in anti-corruption work is to act as whistle-blowers through local agencies. But the same matter concerning protection of denunciators need to be established on a local level as a well as on the national level⁵³.

⁴⁹ Anti-corruption policies in Asia and the pacific – Progress in legal and institutional reform in 25 countries 2006:57

⁵⁰ Jenkins R 2007:175

⁵¹ Anti-corruption policies in Asia and the pacific – Progress in legal and institutional reform in 25 countries 2006:57-61

⁵² Anti-corruption policies in Asia and the pacific – The legal and institutional framework 2004:57

⁵³ TI, NIS 2006: 22

Figure 2. Analytical model

Institution/Actor	Quality/ Characteristics
Law	Lawful rights and protections of whistle-blowers
Judiciary	Free and independent so whistle-blowers feel protected
Law enforcement agencies	Implementation of law, protection in practical life?
Ombudsman	Established?
Media	Access to information, free and independent
Civil society	Access to information, free and not connected to the power
Regional and local government	Whistle-blower protection, different layers of power?

Figure 2. The model is based on the theoretical discussion. Quality/ Characteristics aims to point out important components in the study of institutions and whistle-blowers possibilities in corruption combat. Above figure aims to provide an analytical framework, which will be an analytical tool when analysing the context of Viet Nam to be able to answer the questionings of the study. The results will be accounted for in the chapter Viet Nam.

The analytical model aims to put the important characteristics into a model which will help when identifying the situation in Viet Nam. The institutions in the model are based on the theoretical discussion concerning anti-corruption institutions. If whistle-blowers does not have lawful rights to blow the whistle and the protection when blowing the whistle, the situation to act as a whistle-blower is not very favourable. This indicates that it is not easy to engage as a whistle-blower in the combat of corruption. It is of great importance that the judiciary is free and independent so that whistle-blowers will have protection in the process. Otherwise, this will affect whistle-blowers negatively. The task of law enforcement agencies is to implement the law. If the law concerning the role of whistle-blowers is not implemented, it will have no effect in the society, and again, whistle-blowers will be affected negatively. Establishment of an ombudsman can affect whistle-blowers

positively. Media and civil society is not regarded as institutions in this study but in recent research they are actors of significance to the conditions of whistle-blowers. Regional and local government can be divided into different layers to avoid that corrupt acts are committed and this, in next turn will simplify the possibilities to act as a whistle-blower.

3 Methodology

The purpose of the Methodology chapter is to give the reader an oversight into how this study is conducted, aiming to let the reader follow the process of the study.

3.1 Case selection and research design

Our research is conducted with a single case study, where Viet Nam is represented as the critical case. TI annual carry through a so called Corruption Perception Index (CPI) where countries are ranked after degree of corruption in the country. Countries get a grade from 0-10 where a low figure is negative. After that, countries are ranked in a list where Viet Nam 2007 is ranked 123 of 179 countries⁵⁴. TI has been widely criticized concerning the CPI because of the methodology. The list is based on perception of corruption in the countries. But still, it gives a hint of the situation in the country. As the introduction indicates, the climate for whistle-blowers does not seem to be very favourable. In this perspective, Viet Nam can be seen as most likely case. But, as discussed in the introduction, Viet Nam is also going through changes, from a socialist oriented economy to market oriented economy, and a number of reforms through PAR. This should also affect the outcome of the study and the changes in Viet Nam also challenge the conditions for the theory. With this background, Viet Nam can be seen as a critical, least likely case⁵⁵.

3.2 Qualitative method

The study also came to be a descriptive case and field study of whistle-blowing in Viet Nam. We choose not to do an explaining study because we were not interested in explaining *what* and *why* caused the problem. We were rather interested in *how*-questionings around the subject of whistle-blowing and to make analysis in which areas the conditions for whistle-blowing was insufficient, from the existing research and theories in the area. There has already been done a statistical study on the types of corruption in Viet Nam and we found no reasons to do a quantitative study of whistle-blowing. Structures of possibilities to act as a whistle-blower through existing institutions would be difficult to study through a quantitative method. We came to the conclusion that by studying laws and decrees we could get an insight to formal institutions. Though, we had problems regarding on how and which material we should gather to get information on informal institutions. To

⁵⁴ www.transparency.org search word: CPI 2008-02-12

⁵⁵ Esaiasson, Gilljam, Oscarsson, Wängnerud 2007:185

solve the problem we decided to do interviews with persons who had expertise knowledge in the area.

3.3 Interviews and selection of respondents

Interviews would let us gain an insight into informal institutions if we interviewed key persons who possess this information. Therefore, we interviewed experts who worked on embassies in Viet Nam from different countries. However, to avoid being dependent only on the perspective from the donor communities other countries working in Viet Nam, also Viet Nam- citizens who worked with questions within the field of anti-corruption were interviewed. The interview persons in this study all work within the field of anti-corruption and through this wide knowledge on the subject we have expertise points of views. The interviews are informant interviews. We wanted information concerning the situation of citizens' informal and formal possibilities to act as whistle-blowers. Therefore, we choose to do informant interviews. Some interview persons wanted to be anonymous, why we also decided not to name any of the interview persons.

Interview persons:

Interview person 1 – Governance Advisor, foreign embassy in Viet Nam

Interview person 2 – Senior Official, World Bank

Interview person 3 – Senior Official, Government Inspectorate, Viet Nam

Interview person 4 – Vietnamese Consultant, Governance Ph.D

Interview person 5 – Lawyer, Vietnamese firm

Interview person 6 – Governance Advisor, foreign embassy in Viet Nam

Interview person 7 – Governance Consultant

Interview person 8 – Senior official, UNDP

Interview person 9 – Chairman of Lawyers Association, Viet Nam

Interview person 10 – Senior Official, Sipu International

3.4 Formation of interview guides

Questions in interviews are formulated from theory and recent research, earlier accounted for in the essay. Since interviewees have different position and different knowledge and approach to the subject, interview guide (some questions) has been modified to adept to this. But the overall framework of the interview guide has been used in all interviews. See appendix 1 for interview guide.

3.5 Interview situations

The interviews have taken place in different environments depending on the interview person's possibilities and access to an office. Our primary goal was to interview the person in their own office or an environment where the person would be comfortable. Though, in some interviews we had no access to an office or similarly. In these cases we let the interview person decide a place. This happened in two interviews that took place in cafés. Both of us have been present in the interviews, in some situations being two can negatively affect the interview person. To avoid that the interview person would experience a two-against-one situation, one of us asked questions and the other one took notes. When the interview person allowed a dictating machine we used this to get the exact words of the interview persons. When the interview person did not want to have a dictating machine present, we only took notes. In one of the interviews we used an interpreter. We are aware of the risk that the interpreter may not retell the exact words from the interview person. Asking questions regarding corruption can be a sensitive subject for Vietnamese citizens. Of course, this can have affected the answers of the interview persons, but our judgement is that we did not experience any reluctance to answer our questions.

3.6 Theoretical framework

How should we decide which theories could help us point out key factors and concept and be sure of that these are vital to the conditions of whistle-blowing? We went through the literature and research in the area of whistle-blowing and found that institutions were a key concept in recent research. Therefore, we decided to investigate the conditions of whistle-blowing from an institutional perspective. Literature and research on institutional perspective is massive and we had to investigate institutions in context of corruption to begin with. But there is also a debate on how institutional theories should be used in studies. Lowndes argues that using institutionalism as a theory can be misleading and should instead be understood as an approach to politics. Moreover, institutionalism should be used as a way to identify specific rules of behaviour that are agreed upon and followed by agents⁵⁶. Now, we had to make another decision of importance. How should we operationalize our concepts of institutions in the context of whistle-blowing and corruption? We decided to have a theoretical discussion from recent research and then make an analytical model from the theoretical discussion. This would let us use

⁵⁶ Lowndes 2002:103,107

institutionalism as an approach to investigate whistle-blowing in the context of institutions and to identify specific rules as recent research points out as important.

3.7 Material

During the study in Viet Nam we also took part as observers in a Dialogue on Anti-Corruption which is annually arranged. Participants from both non-Vietnamese and Vietnamese organisations are represented. From the Vietnamese organisations there were representatives from CPV and representatives from organisations within VFF participating. Non-Vietnamese participants were embassies, the WB and UNDP (United Nations Development Program).

Important empirical data was the anti-corruption law and implementation decrees, the decree we have used was mainly decree 47 and 120 which describes the roles and responsibilities of civil society and media in the anti-corruption struggle. TI has, as conducted a NIS on the situations of important actors and institutions in the combat of corruption in Viet Nam. This study has been very useful in the sense that it was helpful complementing recent research in the area to identify important institutions in the combat of corruption. Thereafter, we could investigate the role of whistle-blowers within these institutions from our empirical findings.

Informal institutions are not included in model because theory in the area does not account for specific characteristics in the area. Instead, theory point out socialisation and culture as a process. Therefore we decided to include this under the heading “A culture of corruption”. We came to the conclusion that this way of handle problem would give us most possibilities to analyze informal institutions in Viet Nam.

3.8 Validity and reliability

Internal validity of good quality, to require concordance between theoretical definitions and operational indicators, is of great importance concerning our possibility to draw trustworthy conclusions about the reality⁵⁷. This is a problem of significance that we also had to consider. Our key concepts on institutions, we used as indicators to increase our validity. But do study what we aim to study in Viet Nam? By studying formal institutions, we only get on side of the story. But by investigating informal institutions, we get another

⁵⁷ Esaiasson, Gilljam, Oscarsson, Wängnerud 2007:61

view of the situation. Though, the informal institutions are the tricky part regarding validity in this study. To increase validity we interviewed key persons using questions developed from the theory on institutions in anti-corruption. Of course, this is not a guarantee of high validity but being aware of this problem in mind when formulating interview questions, reduces the risks of low grade of internal validity.

Then, what about external validity? This study uses Viet Nam as a critical case and therefore aims at making generalizations from the findings of the research. External validity handles the issue of whether or not the result from an actual case study can be applicable also to other cases⁵⁸. Regarding possibilities to generalise the results to other cases, it is of great importance to take the choice of case into consideration. The question to put into place is *why* Viet Nam is a presentable case to make conclusions about other cases? We are not aiming to find a universal truth about whistle-blowing and corruption, but we believe that we can contribute knowledge about the way citizens can be enabled to act as whistle-blowers through existing institutions to other Asian countries. Though, all studies that aim at generalizing its findings need further research and replication before any valid conclusion can be made.

Another important perspective to take into consideration when using qualitative methods is the reliability of the study. If another researcher would decide to conduct this study with the same methods, he or she should reach the same results we have. By clearly showing and describing our choices and way of finding empirical data and how we did interpret these how we came to the conclusions we did, we believe that this would not be a problem.

3.9 Demarcations

This study does not focus on types of corruption in Viet Nam, it only focuses on the institutions that are of importance to citizens when acting as whistle-blowers when fighting corruption. Therefore, there is no thorough discussion on types of corruption in Viet Nam in this study.

⁵⁸ Esaiasson, Gilljam, Oscarsson, Wängnerud 2007:100

3.10 Alternative ways of conducting this study?

The study could have been conducted with a quantitative method by forming questionnaire and give this to citizens in Viet Nam, but the knowledge in English is very limited. We could have translated it into Vietnamese but then we reasoned that this is a political sensitive subject which ordinary citizens have difficulties to give information about. Therefore, we came to the conclusion that we would get most information if we did interviews. We could also have compared the situation in Viet Nam to another country with similar corruption problems. This could be a task for future research in the area.

4 Viet Nam

This chapter aims to present the findings of the study. First, the anti-corruption institutions as the theory chapter pointed out as relevant will be investigated in the context of Viet Nam. Second, the questionings from the introduction will be answered.

4.1 Law

The National Assembly of the Socialist Republic of Vietnam of XI Legislature at its 8th session on 29 November 2005 approved the anti corruption law, which consist of 92 articles describe in details the law. This makes it a comprehensive and complex law, also according to IP 6:

I think it is a very complex and comprehensive law, it covers, it is very broad and covers more things than most anti-corruption laws in Asia[...]But I think in terms of setting up legal framework it is very good⁵⁹.

Article 5 in the anti-corruption law states that persons who denounce shall be protected:

Protecting legal rights and interests of the person who has discovered and reported or denounced a corrupt act [...] ⁶⁰.

Furthermore the law states that citizens have the right to detect and denounce acts that are corrupt. It also says that citizens have a responsibility to assist competent agencies, organizations, units and individuals regarding detecting and dealing with persons who have committed corrupt acts. The law states the conditions and rules for all parts involved in the combat of corruption, it defines scope of regulation; definitions; corrupt acts; principles of dealing with corruption; responsibilities of agencies, organizations, units and persons holding position and having power among other things⁶¹. As recent research argues, whistle-blowers must maintain protection, but an important factor is anonymity. The fact that Vietnamese law does not provide anonymity can affect the motives for citizens to denounce on corrupt acts. In this way, law as an institution affect the actor's behaviour, as Lowndes argues. Furthermore, witness protection, which not is component of Vietnamese law, can be a useful complement to whistle-blower protection.

⁵⁹ IP 6 2007-11-30

⁶⁰ Law on prevention and suppression of corruption: Law No. 55/2005/QH5:C

⁶¹ Ibid: Law No. 55/2005/QH11:2-4

IP 3 mentions that miss abuse of power among the public officers and others is widespread. According the IP 3 the Viet Nam law in decree 120 includes good protection for citizens, but he also mentions that the decree does not function in practise. Moreover, the functioning of whistle-blowers is not working satisfying to the citizens. ADB states that this obstacle can be eliminated, with effective legislation and physical protection. Though, confidentiality cannot always be assured in practice and whistle-blowers always run a risk of being identified despite the regulations. Viet Nam has lawful protection, but the law enforcement has not been very successful.

Also, in Viet Nam there exist different projects in the combat against corruption. One is a training program with the aim to inform citizens about their legal rights and the anti-corruption law. In the future the plan is that the education should include anti-corruption, and be nation wide. Theory point out access to information as crucial in the combat of corruption and in this point of view, the projects should have positive effects for citizens.

4.2 Judiciary

The main purpose of the Law on the Organisations of People's Courts from 2002 is to protect judges from the pressure of government bodies. But for judges the ability to obtain this state is severely limited according to TI in their NIS report from 2006. Particularly this is the case regarding high-profile cases of corruption. CPV will not prosecute unless it has already been decided that the accused is guilty⁶².

Viet Nams core aim when developing institutions for legislature and enforcement of law is an indication to the limitations existing in the system. Poor enforcement is reflected in the weak capacity within the police and People's Procuracy. Concerning the judge's decisions they are not required to account for any reasons. The current situation in Viet Nam shows that the judiciary is weak as an institution. The system is not independent from CPV, which results in those verdicts in corruption cases never goes against what CPV wishes⁶³. As Shah argues, it its important that whistle-blowers feel they are protected and that the judiciary system will provide them with this right of protection stated in the law. The judiciary system in Viet Nam can not grant justice for the citizens and thereby the citizens

⁶² TI, NIS 2006:21

⁶³ Ibid 2006:22

cannot rely on the judiciary⁶⁴. A following consequence can be that citizens cannot use the judiciary as a channel and a helpful institution when denouncing on corruption.

4.3 Law enforcement agencies

The two primary agencies which are responsible for legal enforcement in Viet Nam are the People's Procuracy and People's Police Force, and also concerning corruption cases. Responsible for investigations is the Government Inspectorate, (GI) leaving the inspection duties concerning public funds to the State Audit and Ministry of Finance. Concerning CPV, Central Inspection Commission, is in charge of investigating members of CPV. Initiating public prosecutions followed by investigations and ensuring the implementation of laws by all government levels is the responsibility People's Procuracy. By all levels of government Viet Nam means the ministries, economic bodies, social organizations, the army and citizens⁶⁵. The People's Police Force has the responsibility to prevent and detect any violations made of the law, and this also includes the traffic police, which are rated as one of the most corrupt elements of government in Viet Nam.

The law enforcement agencies interact with CPV, executive, judiciary, GI (as Ombudsman and Anti-Corruption Agency) and State Audit. Although, they have a large impact on the civil society the interaction between them and society is poorly, but is increasing⁶⁶.

Moreover, IP 3 argues that the law has difficulties functioning in practice. ADB claims that the main task for law enforcement agencies is to make sure that laws put in practice not only exist on paper. IP 3's opinion verifies that the law enforcement agencies are not making sure that the laws function in practice.

The biggest challenges are first of all implementing those laws so now that the government has shown willingness and a commitment to actually work to improve the framework for combating corruption⁶⁷.

According to IP 3, there only exists one institution in Viet Nam, that is the CPV. He argues that you otherwise refer to political or social organizations⁶⁸. GI has four different tasks.

⁶⁴ Shah 2007:233

⁶⁵ TI, NIS 2006:24

⁶⁶ Ibid 2006:24-25

⁶⁷ IP 6 2007-11-30

⁶⁸ IP 3 2007-11-22

First one is to create laws, policies and submit to the Government. Second is to conducting inspections and prevent corruption in the ministries. Third is to work with external actors in the combat against corruption. Last and fourth is to handle complaints received from citizens. IP 3 argues that the GI gets many complaints from citizens. According to recent research, presented in the theory chapter, special anti-corruption agencies play a crucial role concerning law enforcement. Citizens also play a role of importance regarding law enforcement agencies task to detect corruption. In Viet Nam citizens has the possibility to report on corrupt acts, which, in this sense is positive. But again the law enforcement regarding protection must working effectively. ADB suggests an establishment of a special whistle-blower protection agency with purpose to give whistle-blowers the protection they need.

4.4 Ombudsman

A way of simplifying citizens possibilities to act as whistle-blowers is to establish an ombudsman. As theory pointed out, an ombudsman does not have the law enforcement powers. No single agency in Viet Nam exists to receive complaints from the citizens. It is normally GI who functions as a kind of ombudsman, though GI has law enforcement powers. In this sense, GI cannot be regarded as an ombudsman. GI is an executive agency direct under authority of the prime minister which is in charge of resolving denunciations and complaints in areas of administrative. Other institutions that are involved is the Inspection Commissions of CPV, VFF, the police, People's Procurarcy, People's Committees of provinces, districts and communes, National Assembly deputies and members of People's Councils at levels who are authorised to receive and resolve complaints from citizens⁶⁹.

It is free for every citizens to lodge an administrative complaint or denounce officials, this regarding violation of regulations and laws. A civil servant only has the possibility to file complaints regarding disciplinary decisions. In Viet Nam anonymity is not a characteristic in the system of complaint. It is required for the citizens who complain to state their name, address and signature. In the case of denunciations the same rules are required. Formally citizens can demand confidentiality following the initial report; the practice can not grant that the confidentiality will be respected. The consequence is that citizens dare retaliation

⁶⁹ TI, NIS 2006:26

when making a complaint. Although it is GI who is designated to lead anti-corruption agency in Viet Nam, at the same time the GI is a main target for corruption⁷⁰.

There should be some form of association or organisation to which they could turn for assistance and for guidance, you know, if they are suspicious or have reasons to believe that somebody is undertaking illegal act and they have a reason and, you know, they desire to inform the public and the government. I think they should have guidance and instructions and information from some kind of independent agency who can assist them and support them⁷¹.

As IP 6 argues, it is of great importance that the people have some kind of ombudsman, who they could turn to when talking about corruption. If the people have an ombudsman or organisation whose main purpose is to protect their rights, they would be more likely to report on corruption cases.

4.5 Media

Role of media there are still limitations of what media can do. This harm to what journalists can do. Access to information is not freely accessible to journalists⁷².

Theory points out free and independent media as an important factor in enabling citizens to engage in the combat of corruption. If the media not is independent, it cannot raise awareness among the public about corruption issues. In Viet Nam, all media outlets are state-owned and controlled. The task of the press is to publicising and popularising the Party line and state laws and guiding public opinion. Furthermore, medias task is to receive complaints and denunciations from citizens, but these must be forwarded to “competent agencies”. To publicise this kind of complaints the media has to obtain approval. Decree 47 points out the responsibilities of the media in Viet Nam. The media is a powerful instrument in the sense that it can perform as “watchdog” to monitor the governments actions. But to be able to do so requires, again, freedom of the press and access to information. In Viet Nam, the press can request information from agencies, organisations and enterprises, but there exist no law on freedom of information. The media can be denied when requesting access to information, for example, on the grounds of national security⁷³.

⁷⁰ Ibid 2006:26-27

⁷¹ IP 6 2007-11-30

⁷² Dialogue on Anti-Corruption in Viet Nam 2007-12-03

⁷³ TI, NIS 2006:28

Above statement clearly indicates that this is not the case. IP 6 also argues that the role of media still is limited. IP 6 thinks that the role of the media still is limited and does not feel very comfortable in exposing corruption cases⁷⁴. Journalists and the media have become more and more important. It is often said that corruption is more reported in media nowadays, but is to large extent depending on that the newspaper is controlled or have a link to the authority, thereby they can control which corruption cases they want to expose to the public. Journalists is in this way often influenced or instructed what to write by someone from a higher level. Citizens can go to the press with information but while the media still, to large extent, is controlled by government authorities the can not publish anything they want to. Though, it is important to be careful when saying corruption is more reported in the media. This because you have more newspapers today and there is maybe not more cases, but larger scale corrupt cases has taken place in media⁷⁵. Therefore, it is difficult for the media to play their role in raising awareness and educate the public on corruption. Thereby, it can be argued that media in Viet Nam has difficulties in reporting on corruption because often they are controlled by those they may want to expose. Access to information is clearly limited to media and journalists in Viet Nam. In this way, it is also problematic to use media as a channel for whistle-blowers in Viet Nam today.

4.6 Civil society

Theory points out civil society as autonomous groups and associations, a private sphere independent from public authority. The civil society in Viet Nam is to large extent consisting of the VFF which is an umbrella organisation for associations and organisations in Viet Nam. VFF is connected to the CPV. Civil society outside the ground of the state is still not independent. The CSO:s in Viet Nam is a sort of quasi CSO:s, they exist under the VFF, which is a sort quasi state organisation⁷⁶. Decree 47 points out the responsibilities of VFF, one of the tasks is to educate the members on the anti-corruption law⁷⁷. As the introduction made clear, the responsibilities of civil society in Viet Nam are:

The Viet Nam Fatherland Front and its member organizations shall be responsible for encouraging the people to actively participate in preventing and suppressing

⁷⁴ IP 6 2007-11-30

⁷⁵ IP 7 2007-11-30

⁷⁶ IP 6, 7 2007-11-30

⁷⁷ Decree 47 2005

corruption; detecting, proposing competent agencies, organizations and individuals to deal with persons who have committed corrupt acts; and supervising the implementation of the laws on prevention and suppression of corruption⁷⁸.

But as earlier stated, it is of great importance that civil society is free and independent to succeed with this task. Furthermore, a determinant factor enabling civil society is a good legal framework allowing civil citizens to create gather and operate. IP 9 states that Lawyers Association supervise and are participating in the combat of corruption.⁷⁹ The design of legal framework is of great importance, otherwise, it can create negative consequences and reduce civil society's ability to engage in anti-corruption activities. The legal framework in Viet Nam is build upon the law on associations which establish the rules for how to create an organisation. The law is intended to provide a more unified and regulatory framework for CSOs. All organisations are required to have licenses, and this allows selective approval of associational activity. Though, new forms of spontaneous organisations are emerging. Mass organisations are now responding to growing citizen's demands for greater participation. This is slowly changing their relation to the state and CPV⁸⁰. A governance advisor in Viet Nam argues that it is difficult for the individual to fight corruption and the ideal would be for the people to create associations but Viet Nam today, it is difficult because the law of creating associations is crashing with decree 47. Therefore it is very difficult for and individual to start an association. This issue must be raised in every government workshop and dialogue⁸¹. The governments and the administrations general attitude towards cooperation with non-governmental organisations are also crucial concerning enabling civil society to take part in the combat of corruption. The government's official attitude towards civil society in the combat of corruption in Viet Nam is formulated in decree 47 which says that civil society shall be involved, encourage individuals and actively preventing and suppressing corruption.

The new anti-corruption law is in my view comprehensive, ambitious and the most important is that it meets the Vietnamese society more open⁸².

⁷⁸ Ibid 2005:Article 6

⁷⁹ IP 9 2007-12-05

⁸⁰ TI, NIS 2006:29

⁸¹ IP 4 2007-11-26

⁸² IP 3 2007-11-22

Furthermore, IP 4 also argues that the government are willing to be more democratic. Some people within the Government are willing to change and some are not. To limit freedom of expression CPV maintains a centralized government. In Viet Nam the civil society is still very weak, even though the people know about their rights and want to grow stronger. A way to make the society stronger is to provide them with information. There have been many campaigns to let the people know their rights. Also IP 9 argues that the society and is changing with development of political and social associations. The government is working on a new law which will make it easier for organization, according to IP 9⁸³.

A factor of importance is that the civil society need develop independence from the state. As earlier stated, the CSOs in Viet Nam are not independent from the state. The problem in Viet Nam is the lack of autonomy and independence of civil society organisations. They are clearly linked and attached to the system⁸⁴. In Viet Nam, government party, national assembly, and some extent the media and VFF is central in the discussion of politics but not much beyond that in terms of civil society, the underdevelopment of the civil society is also part of the reason why corruption is so widespread in Vietnam⁸⁵. Civil society's role in the combat of corruption can take various forms. One possibility for civil society actors, recognized from many Asian development countries, is to take part in the analysis of legislation or institutional procedures. In Viet Nam this is rather problematic because there are no external actors outside the system and all mass-organisations are directly linked to CPV. The few NGOs that exist are more like consulting firms that are connected to the system. VFF is no civil society, they can have a big role in some cases and in some others they have none. Members of the VFF are also members of CPV⁸⁶. If VFF would take part in the analysis of legislation, it would mean that they are scrutinizing them selves. But while the mass organisations link between them and CPV slowly is changing, the possibility for future more independent mass organisations to take part in the legislations process will have better conditions. Civil society actors also take on an important role on raise awareness and educate the public about corruption issues and problems and engage in educational programs. To be able to play a key role concerning monitoring and scrutinizing and hold actors accountable, a crucial factor of importance for citizens' possibilities to engage in the combat of corruption is access to information and free

⁸³ IP 9 2007-12-05

⁸⁴ IP 8 2007-12-04

⁸⁵ IP 1 2007-11-11

⁸⁶ IP 7 2007-11-30

discussion. IP 6 argues that civil society has to demand for transparency so that they have access to information that allows them to hold their representatives and public officials accountable. Furthermore, IP 6 discusses the importance of civil society's role in oversight and supervising. But if the society not is willing to play that role in performing that oversight function to hold the officials responsible and accountable it will not work, IP 6 argues⁸⁷. IP 9 argues that they can initiate and follow up suspicions of corrupt acts within their organization (Lawyers Association). Furthermore, IP 9 thinks that they not are controlled by the government and the Lawyers Associations task is to supervise the implementation of the anti-corruption law⁸⁸.

Reform in this area has often been triggered by civil society actors. Though, in Viet Nam the State and CPV are totally linked, same people possess many different positions. While VFF is so linked to CPV it is hard for a member of VFF to raise their voice against CPV⁸⁹. But pressure from citizens to expand the scope for participation is increasing and this can also be a beginning to a reform triggered by citizens⁹⁰. Grant citizens access to information can be accomplished by establishing legal instruments. But as IP 6 earlier stated, you can set up a legislative framework but if you don't have civil society that has the willing to play a role in performing that oversight function, that oversight supervision and serve the check and balance on how public funds are spent and holding their officials responsible and accountable it will not work⁹¹.

4.7 Regional and local government

National- level laws on local government and institutions may have an impact concerning citizens' possibilities to participate in the combat of corruption on local level. Splitting the power into multiple layers and different levels in the society can result in that these different layers can discipline another. The power in Viet Nam is to large extent controlled by the national assembly but the country has a unitary system characterised by dual subordination. The system is based on provincial, district and commune level. The people's council, where seats are appointed through election, is the highest state institution at the regional and local level and they are responsible to the national assembly at the national

⁸⁷ IP 6 2007-11-30

⁸⁸ IP 9 2007-12-05

⁸⁹ IP 7 2007-11-30

⁹⁰ TI, NIS 2006:29

⁹¹ IP 6 2007-11-30

level. The people's council elects a people's committee which purpose is to act as executive institution. A local government can fight corruption by leading by example. This can, for example, be done by letting the local executive answer questions in the local council and broadcast it. Public meetings are required to be held by peoples council in Viet Nam and do occur in practice, particularly in relation to elections. There exist no clear rules on involving the public and the press. Furthermore, it can be accomplished by that the council itself will be overseen by an accountability committee of randomly elected citizens. In Viet Nam, the peoples committee is formally overseen by the people's council. Tough, in practice this oversight function by people's council is very weak⁹². The people's council is tasked with inviting representatives of Standing Boards of VFF when overseeing the implementation of the anti-corruption law⁹³. Another alternative regarding citizen's possibilities to commit in anti-corruption work is to act as whistle-blowers through local agencies. But the same matter concerning protection of denunciators need to be established on a local level as a well as on the national level. Whistle-blowing is even more problematic at sub-national level than on national level in Viet Nam. This, because of less protection and anonymity. Furthermore, citizens have the right to initiate lawsuits and appeal settlements in administrative courts, but this rarely occurs⁹⁴.

4.8 Whistle-blowers in Viet Nam

As the introduction pointed out, citizens possibilities to act as whistle-blowers is limited in Viet Nam:

I think at this point people, they will be bold, you know the people who will be whistle-blowers would be bold. I can't imagine too many people doing it⁹⁵.

The regulations concerning the whistle-blower are intended to provide protection to citizens at large and public officials who have the knowledge of a potential case of corruption and are willing to provide information. Denunciators are intended to be protected from any possible threats and consequences that are negative of their action. Whistle-blowers in Viet Nam has legal protection in decree 47, they shall be protected when they are intimidated, revenged or retaliated. But the citizen has to state their name and

⁹² TI, NIS 2006:31

⁹³ Decree 47 2007

⁹⁴ TI, NIS 2006:31

⁹⁵ IP 6 2007-11-30

full address⁹⁶. The protection is to be given from competent agencies. But as IP 9 argues, the citizens do not thrust official authorities in this matter. Law enforcement that is successful and anti-corruption strategies is mainly dependent upon the motivation of individuals to provide information and/or to give evidence. Whistle-blower's incentives to report in Viet Nam are problematic. IP 1 argues that the citizens' incentives to report on corrupt acts are reversed, because the citizen or the family of the citizen can be threatened. Furthermore, IP 1 argues that this in next turn, leads to widespread corruption⁹⁷. This is, according to IP 2, a major challenge in Viet Nam, an enabling environment for whistle-blowers has to be created⁹⁸. These individuals often require protection from those they expose. Even if the citizens have right to protection through decree 47, IP 7 argues that laws mean very little here in Viet Nam. The relationship between the people and the judiciary system is complicated. Most of the Whistle-Blowers remain anonymous because they don't trust the authorities. There is no short-term solution the problem and a collective action would be the best way to a solution. IP 9 states that Lawyers Association receive many complaints from citizen because they do not know where to go with their complaints and that many are afraid of getting revealed. Citizens do not thrust official authorities. The only thing they can do is to give the citizen psychological support, look after them the best they can and to let them know about their rights⁹⁹. As it is today, the best way for a whistle-blower to feel and be protected is to get the case published in the newspapers, make people aware of the issue. Today there exist no independent anti-corruption agencies¹⁰⁰.

4.9 A culture of corruption

In Vietnam petty corruption is the biggest problem. Here in Viet Nam it is also a question of a deeply rooted culture¹⁰¹.

Above statement clearly indicates that the problems regarding corruption as a whole issue is a matter of culture. Therefore, culture also seems to be an issue regarding citizen participation as whistle-blowers in the anti-corruption struggle.

⁹⁶ Decree 47 2007

⁹⁷ IP 1 2007-11-11

⁹⁸ IP 2 2007-11-20

⁹⁹ IP 9 2007-12-05

¹⁰⁰ IP 7 2007-11-30

¹⁰¹ IP 2 2007-11-20

In Viet Nam, the society is going through a major transition. Heywood argues that individuals and groups acquire their political attitudes and values through a process of political socialization. These beliefs and values are transmitted from generation to generation. This phenomenon can be seen either as a process of indoctrination that takes place during a person's entire life, or it can be seen as a transmission of values that passes from one generation to another generation, mainly accomplished during childhood. In socialization the major agents are the family, religion, education, the mass media and government. IP 2 also point out the need of change in culture to solve the corruption matters in Viet Nam. To do this, IP 2 mean that school is an important institution to work with¹⁰². Political culture is the people's psychological orientation in relation to political objects. The objects can be parties, institutions, government and the constitution. In individuals political attitudes, beliefs, symbols and values they define and create the opinion towards political objects and react and act from their attitudes. Political culture is shaped out of long-term values. IP 4 argues that old values like Confucianism from the past are still present in the society today. Confucianism is, according to IP 1 only about obedience to the king. The king rules the people and the people obey the king's rules and there is no concept as accountability in Confucianism¹⁰³. But now there are new values emerging in Viet Nam. Society has changed, there have been economic changes and VFF is old fashion in these days, IP 4 argues. As a country in transition, institution has not been properly built and developed to ensure that people or their check and balance to prevent people to and senior official from corruption activity and corruption behaviours. The market economy is challenging old values like Confucianism on the control and the traditional staff because the rule of the market, the capital development so it challenged the old traditional norms and values, but also social capital. From Heywood's reasoning concerning political culture and political socialisation there are reason to believe that people maybe are socializing into a new culture with other values than obedience to the king¹⁰⁴. Heywood's reasoning can be similarly being recognized from institutionalisms way of looking into interaction between institutions and the individual. The empirical findings indicates that new values, emerging from a growing market economy is challenging old values and through this change people change their psychological orientation in relation to political objects. The society are about to create new political attitudes, beliefs, symbols

¹⁰² IP 2 2007-11-20

¹⁰³ IP 1 2007-11-11

¹⁰⁴ IP 4 2007-11-26

and values towards political objects and react and act from Heywood’s perspective on looking at political culture. The way the interaction between individuals and institutions in Viet Nam are about to change.

Figure 2. Analytical model in context of Viet Nam

Institution/Actor	Quality/ Characteristics in Viet Nam
Law	Only protection (decree 120, 47) if whistle-blower not remain anonymous
Judiciary	Not free and independent
Law enforcement agencies	Implementation of law, no protection in practical life
Ombudsman	Not established
Media	Limited access to information, not free and independent
Civil society	Access to information, connected to the power
Regional and local government	No whistle-blower protection

Figure 2. At this point, the analytical model aims to identify the characteristics of the current institutions/actors in Viet Nam. The findings on institutions in Viet Nam are based on the results accounted for in the current chapter.

From above model it can be concluded that there are several lack of important components in the institutions/actors that recent research point out as of crucial importance. The whistle-blower can only have access to protection if the person state their name and contact details. The judiciary is not free and independent which can have consequence of that the whistle-blower does not feel protected. Law enforcement agencies in Viet Nam have problems with providing protection to whistle-blowers in practical life. An ombudsman is not established. The media has limited access to information and is not free and independent. Civil society is strongly connected to the party. There are also problems with

providing protection to whistle-blowers on regional and local level. With this said, formal institutions seem not to be favourable to whistle-blowers in Viet Nam.

4.10 Research questions

Based on the anti-corruption law, what role are social organizations in civil society given in the anti-corruption work?

The formal regulations on how civil society shall participate in the combat of corruption are formulated in decree 47. Civil society in Viet Nam is a sort of quasi state organisation where the umbrella organisation is the VFF. According to decree 47 VFF shall actively participate in the combat of corruption and supervise the implementation of the anti-corruption law. IP 9 stated that they often receive complaints from citizens who have witnessed or have information on corrupt acts committed by civil servants. Furthermore, IP 9 argued that officially it is not their task to handle these complaints but the citizens do not know where to go with their complaints or that citizens do not thrust official authorities. The Lawyers Association do not have the possibility to protect the whistle-blower. All they can do is to be a psychological support and maybe look after the person and let them know what the citizen rights are. The task of handling complaints belongs to competent agencies, and the way the Lawyers Association work in the field of anti-corruption is only controlled by the anti-corruption law. According to decree 47, civil society also shall supervise the implementation of the anti-corruption law.

What is the effect of informal institutions, such as culture, norms and values, for whistle-blowers possibilities to engage in anti-corruption work in Viet Nam and how?

The society in Viet Nam today is shaped by the long history and former relations to China and Confucianism. Values, derived from Confucianism, are still strong in the society. A central value in the ideas of Confucianism is obedience to the king and those in powers. The king rules and the people obeys and therefore people are not used to oppose the power. Though, several interview persons states that society is about to change and much of this are a consequence of increased flourishing of market values. Confucianism seems to be an informal institution from the past, but still is present in the society. While Confucianism is a tradition about obedience, citizens do not either blew the whistle if an official would commit a corrupt act. This would be to oppose the power. In this way, Confucianism is still a matter of importance which has been and still is a culture which seems to affect citizen's possibilities to blow the whistle.

What formal protection does the new anti-corruption law give whistle-blowers in Viet Nam and what protection is given in real life experience taken in account?

According to the majority of our interview persons there exist no protection, but taken the implementation into account the possibilities may open up for people to engage more in the combat of corruption. It is of great importance that whistle-blowers feel they are protected, that the judiciary system can and will provide them with protection stated in the anti-corruption law. But today the system in Viet Nam can not guarantee this for citizens. Whistle-blowers have formal protection through decree 120, but the protection does not function in practice. Ideal would also be for whistle-blowers to maintain anonymity and gain immunity when reporting on corrupt acts. Anonymity for whistle-blowers is not mentioned in the anti-corruption law, despite the fact that many scholars prove the importance of protection for denunciators. This indicates that the judiciary in Viet Nam is weak as an institution, when failing to protect their citizens who denounce. Given these circumstances the whistle-blower can not trust the system, because they now they have to state their name and address, which will become known among the public. The result of this will be that no one dares to denounce because of the likely consequences of reporting of corruption. As the introduction pointed out, social exclusion and losing jobs is not an attractive consequence of reporting on corruption.

4.11 Conclusions

Viet Nam law give denouncers legal protection but does not provide them with anonymity. Though, a problem of significance is the defective law enforcement. Due to this and the absence of an independent judiciary, the denunciators is not guaranteed the lawful right to be protected. Moreover, civil society is not independent from state bodies. Similarly, the media is not either independent which also affect citizens possibilities to act as whistle-blowers. Furthermore, there exists no ombudsman or any agency with purpose to help whistle-blowers. At regional and local level there exists even more problems concerning whistle-blowing than at national level. Authorities seem to have trust issues to its citizens, individuals do not seem to have the motivation to report on corrupt acts committed by civil servants. With this said, it is also concluded that formal institutions can be developed to motivate citizens to report on corruption. The motivation problem can also be a reason to defective law enforcement according to recent research. Viet Nam is clearly affected by its history of Confucianism and interview persons speak of it as a reason to why corruption is so widespread, and to why no one dares to denounce. There exist informal institutions

affecting citizens' motivation to report on corrupt acts. The conclusion of this study is that there exist informal and formal institutions that affect citizens' possibilities to act as whistle-blowers in the way of above reasoning.

5 Ending discussion

Following chapter aims to discuss how this study can contribute with knowledge to recent research in the area.

Changes as a result of liberalisation of economy and politics raise interesting questions regarding how institutions in political system affect the combat of corruption. Johnston proves the importance of established, strong institutions when liberalising a country's economy. The movement to fight corruption to improve possibilities for economic development and democratisation in developing countries has often referred to liberalisation of politics and economy as a remedy to corruption problem, often in terms of the good governance approach. And indeed the period after the cold war has witnessed a rapid liberalisation in many developing countries. However the results so far for fighting corruption have not been very good. According to Johnston, corruption instead can depend on the strength or weakness of the state and regarding how social institutions sustain or restrain corruption¹⁰⁵. This study does not aim to investigate the strength of state but it provides a way of identify how the role of citizens can be strengthened through of existing institutions. Hopefully, the study will contribute with more information on interaction between whistle-blowers and existing institutions functions in practice and help to create strong established institutions for whistle-blowers. Moreover, this study has shown how civil citizens actively can be a part of the combat of corruption. But the study does not only point out important institutions but also important actors, such media and civil society, as crucial to citizens possibilities to act as whistle-blowers.

¹⁰⁵ Johnston 2005:1, 13

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Interview 2 2007-11-20

Interview 3 2007-11-22

Interview 4 2007-11-26

Interview 5 2007-11-28

Interview 6 2007-11-30

Interview 7 2007-11-30

Interview 8 2007-12-04

Interview 9 2007-12-05

Interview 10 2007-12-08

Appendix

Appendix 1

Interview guide

- Which would you say are the main problems of corruption in Vietnam?
- What do you think of the new anti-corruption law that was founded last year?
- How is the anti-corruption law implemented?
- How can you change the culture of corruption among public officers?
- How could corruption problems and solutions be solved according to a governance perspective?
- What is the role of civil society in the combat of corruption in Vietnam?
- Which possibilities exist for citizens to engage in politics?
- How could the role of civil society be strengthen or changed through a governance perspective?
- What is the role of Whistle-Blowers today in Vietnam? How are they functioning?
- How is legislation regarding the role of whistle-blowers protected in the combat of corruption?
- How are Whistle-Blowers protected? Both in definition of law and in practical life.
- How could the role of Whistle-Blowers be strengthened according to a governance perspective?
- Which concrete measures should be taken in to account to strengthen the whistle-Blower?