

# Analysing Corruption in Public Investment in Vietnam: A Multiple-Government Official's Survey

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**Abstract:** Three decades after the Renovation Period in 1986 (*Doi Moi* in Vietnamese), although Vietnam is a fully integrated member of the globalized capitalist economy, they are still facing several difficulties to anti-corruption as one of the most challenging concerns to communist party and government. Amongst of several types of corruption, our paper using corruption frequency in public investment in the Period 2009–2014 is to examine and evaluate effectiveness and accountabilities of anti-corruption in public investment in Vietnam. They include three main bodies, namely the Government Inspectorate of Vietnam, the People's Procuracy of Vietnam and the People's Public Security Forces of Vietnam. Using a survey questionnaire with 150 participants from three those agencies, this paper examines corruption and criminal behaviour in public investment in Vietnam as well as evaluates the effectiveness and accountabilities of anti-corruption in public investment in Vietnam. Current findings show the limited qualifications of anti-corruption officers affected the investigation of cases meanwhile offenders are often high-level and powerful officers that have greatly hindered the investigation of corruption cases in the field of public investment. Yet, lacking transparency in management little information on public investment projects available and its related monitors led to ideal conditions for corruption. Besides that, the provisions on the handling of responsibilities of heads of agencies, organisations or units when corrupt acts occur in their agencies, organisations or units are not yet specific and clear.

**Keywords:** Corruption, anti-corruption, public investment, communist party, Vietnam.

## INTRODUCTION

Public investment is one of the most important socio-economic development policies of any state, but especially for countries in transition to and development of a market economy, such as Vietnam. Public investment is an investment of the state sector and consists of not only government investment but investment by local authorities, investment in government bonds, investment credit granted by development banks and investment by state-owned enterprises (World Bank 2018). Infrastructure construction and development is considered the backbone of economic growth and the driving force for social development, creating an important foundation for the State to provide basic public services to the citizen. As a developing country, the demand for investment in infrastructure in Vietnam is huge. The increasing demand for infrastructure investment through large-scale projects has skyrocketed in recent years, leading to the risk of corruption in infrastructure investment projects (Jenkins, Miklyaev *et al.* 2017, Malesky 2018). However, the public-private partnership method of investment in infrastructure projects is revealing gaps, thereby increasing the risk of loss and waste (Transparency International 2017). The publicity and transparency of the project portfolio is an important factor in enhancing the competitiveness in order to

improve the efficiency of investor selection and project effectiveness (Maruichi and Abe 2019, Transparency International 2020).

However, the reality is now through inspection and examination that was likely to lead the practical corruption's concerns in this field in Vietnam. In Vietnam, corruption has become more rampant and sophisticated, seriously affecting economic development, security and social stability, the value of democracy, and above all, the rule of law in Vietnam. Indeed, weakness in economic management, loopholes and lack of synchronization of the system of legal documents on management, inspection and supervision in construction investment (Nguyen 2017, Le 2020). Besides, there is the role of the governing body (e.g., Government Inspectorate of Vietnam, the People's Procuracy of Vietnam and the People's Public Security Forces of Vietnam) in compliance with the law and the responsibility and professional ethics of the construction workers. Corruption prevention and anti-corruption legislation became effective on 1 June 2006. The Party and State have issued many important instructions to prevent loss and corruption in the construction investment field. In January 2007, the function of supervising corruption investigations in the Department of Public Prosecution was detached from general criminal investigations. The Department of Public Prosecution plays a supervisory role for corruption investigations and works in close collaboration with the Ministry of Public Security and the corruption investigation department in prosecuting

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criminals and collaborating with international anti-corruption officials.

## **CORRUPTION IN VIETNAM: AT A GLANCE**

### **Economic Reform Policies during the Doi Moi**

In 1986, Vietnam started renovation towards a free-market economy with expecting for open doors to the world. The Renovation Period (*Doi Moi* in Vietnamese) has introduced at the Sixth National Party Congress of the Communist Party of Vietnam (CPV) in December 1986 (Sidel 2008, Thayer 2008). The leaders of the CPV considered it a novel policy, necessary both for the economic development of the country and for innovation in politics and society, to meet the future developmental (Thayer 2010, Nguyen 2016). Under the *Doi Moi*, the Vietnamese economy was converted to market-oriented socialism under the guidance of the state, involving a multi-ownership structured economy with the relaxation of economic policies and reduction of government intervention in the market aimed at enhancing living standards (Nguyen 2016, Gillespie and Toan 2018). The *Doi Moi* provided policies for encouraging and attracting foreign investment. In the face of economic recession in general and agricultural decline in particular, the *Doi Moi* focused on formulating new policies for the economy, especially agriculture (World Bank 2020). Before the *Doi Moi*, the management of goods was monopolised by the state and the government did not recognise the potential of the free market. However, by applying new economic policies, households became more self-sufficient and independent from cooperatives and taxes were reduced or abolished for farmers living in mountain regions (Gillespie and Toan 2018, Hualing, Gillespie *et al.* 2018). Land was distributed to each household by the cooperatives and households had the responsibility for growing, applying fertiliser and harvesting crops (Bui 2016, Gillespie and Toan 2018).

However, there were several problems with the *Doi Moi* economic reform policies, including that market-economic institutions, were not appropriately established, large capital flows such as ODA or FDI were not used efficiently (Hanoi National University and Konrad-Adenauer-Stiftung 2016). Besides that, the geographically uneven decrease in the national poverty rate, the gap in education levels and working skills created between the rich and the poor, and the higher unemployment rate and inequality in society (Hanoi National University and Konrad-Adenauer-Stiftung 2016, Herr, Schweisshelm *et al.* 2016). Throughout the

1990s, strong factions in the communist party defended socialism against the new tide of capitalism (Herr, Schweisshelm *et al.* 2016). For a while, the socialist factions still had enough political muscle to direct the new capitalist vehicle (Bui 2014, Bui 2015). During the late 1990s, the World Bank on three occasions offered extra loans worth hundreds of millions of dollars on the condition that Vietnam sold its state-owned companies and removed trade tariffs (Cunningham, Alidadi *et al.* 2018). However, from 2000, the rate of change accelerated, and the political balance shifted. Under pressure from international donors and foreign investors, Vietnam approved the sale of its state-owned companies (Davies 2015).

### **Corruption the Post-Doi Moi**

During the post-*Doi Moi*, the Vietnamese economy grew rapidly. This resulted in several significant transformations, including an increase in corruption (Bui 2014, Bui 2015). One of the reasons for this was that marketisation, internationalisation and decentralisation created opportunities for bribery (Davies 2015). Civil servants and state officials took advantage of this to create administrative hurdles and make profits from obscure policies and laws. Many studies show that corruption flourished in the post-*Doi Moi*, and corruption became endemic in the Vietnamese government and society (Nguyen 2016, Gillespie and Toan 2018). Accordingly, recently there has been some remarkable research on corruption in Vietnam that provided stories of corruption in different areas and from different perspectives (Nguyen 2019, Le 2020). The scholars used survey-based, quantitative and/or qualitative methods, including surveys on corruption perceptions conducted by Vietnam's government agencies, the United Nations organizations, non-government organizations as well as academic community. Vietnam's public administration reforms have officially adopted a "public duty" definition of bureaucratic corruption (Nguyen and Quach 2019, Nguyen 2019). It criminalises official behaviour intentionally diverging from official functions and accepted norms and conducted for private gain (Maruichi and Abe 2019, Cao 2020). Legal definitions of corruption codify this formulation and include misconduct in the use of official authority.

Corruption in Vietnam can be classified in the same ways as elsewhere. Accordingly, corruption can be classified into three groups: bureaucratic (government officials take bribes), political (politicians take bribes), and grand corruption which reveals abuse of state

power by political elites for substantial and private monetary benefit (Martini 2012, Gracycar 2015, MacWilliam and Rafferty 2017). The nature and scope of corruption in Vietnam have been classified in many ways, ranging from administrative, judicial, and political, both petty and grand corruption, and also public and private sectors corruption. Like many other developing countries, corruption in Vietnam occurs across all social levels and functional sectors (Martini 2012, Tromme 2016). It manifests itself in many forms from street-level harassment by traffic police officers; among many other public officials in most government offices; among ordinary people in their daily lives through 'under-the-table' payments for health, medical care, schools and other services (Tromme 2016, Dao 2017). Accordingly, corruption's forms line with 1) bribes from business units in legislating, licensing and permission procedures, 2) colludes "purchase of office" in every field of public employment, 3) over-abuse authority by decisions in the bureaucracy when claiming or enforcing economic and other rights (Tromme 2016, Dao 2017).

The fast growth of the economy accompanied by a high level of corruption in state officials led to top state officials selling economic interests to find profit-making opportunities, particularly since 2010s (Le 2020). During the term of the 11<sup>th</sup> and 12<sup>th</sup> National Assembly Congress, from 2011 to 2018, there were at least 56,572 party members disciplined, including 16,259 members at all levels, in which the Central Inspection Committee examined 13 party organizations and 33 party members (Nguyen 2017). Through examination, there are three party organizations, and 13 party members have been charged with their relevant defects and specific violations. Besides, local inspection committees, units checked 15,898 party organizations and 55,217 party members, of which the number of party organizations that violated is 10,478, must discipline 791 party organizations (Nguyen 2017). Many cases of corruption, particularly serious economic-related offences, were investigated, prosecuted without interventions and exemptions. Accordingly, the People's Court at all levels also proceeded at least 436 cases with 1,118 defendants on corruption crimes, in which the Audit State's Authority recovered at least VND 65,000 billion from assets (Phuong Linh 2018).

### **Corruption in Public Investment**

There are doubts about the efficiency of public investment in infrastructure construction because of

corruption. In developing countries with poor governance, corruption is common and much worse in projects involving the public sector (Maruichi and Abe 2019, Cao 2020). Ahsan, Blackburn *et al.* (2017) argued that public sector corruption can usually be viewed as two elements: exaggeration in public investment project costs and the use of inferior materials, or both. There are at least three basic impacts of corruption on public investment. Firstly, corruption affects the process of approving investment spending, also known as "bending" capital from effective projects to ineffective projects or projects with a low level of necessity (Ahsan, Blackburn *et al.* 2017). Investment and capital construction are very common areas of corruption. This is an area that often has a very large amount of investment capital from the State budget, while the management mechanism is relatively loose, so corruption occurs a lot, and the amount of money lost is often very large (MacWilliam and Rafferty 2017). In this sector, corruption occurs at all stages, from planning, project formulation, approval, design, construction, inspection, inspection, to acceptance, payment, settlement (Nguyen, Nguyen *et al.* 2016). Secondly, when approving the budget of the project, the costs of public projects are "raised" above the necessary level under the influence of corruption (Ngo 2017). Finally, corruption affects project implementation's stages. Lacking transparency and lax monitoring mechanisms created by corrupt practices lead to deteriorating investment quality (Nguyen 2019). In particular, in capital construction investment, many rapid deteriorations of infrastructure can be seen (Dao 2017, Maruichi and Abe 2019). After all, the increase in investment costs that were not associated with quality resulted in low public investment efficiency.

Against a backdrop of economic mismanagement and frequent worldwide political upheavals, the Vietnamese government has carried out fundamental reforms in its political and economic systems through its *Doi Moi* policy of renovation and restructuring (Thayer 2010, Bui 2016). This was a process of industrial and service liberalisation with the simple objective of providing market mechanisms for the economic sector; however, the context was still controlled by CPV (Bui 2016, Nguyen 2016). Under the *Doi Moi*, there has been a renovation in international relations and the internal economy, especially in the field of agriculture (Hanoi National University and Konrad-Adenauer-Stiftung 2016). This has resulted in a number of achievements and successes, and the *Doi Moi* has been one of the most successful economic

transformations globally; however, Vietnam has faced many challenges and risks (Herr, Schweisshelm *et al.* 2016, Herr, Schweisshelm *et al.* 2016). There are many weaknesses in rapid development, and corruption is one. Corruption has negatively affected the development rate of many countries, including Vietnam, and anti-corruption efforts have become a global trend (Dao 2017, Nguyen 2019).

The most problematic issue is the strong and positive correlation between corruption and poverty. Accordingly, the absence of public scrutiny causes corruption to continue with serious consequences affecting the welfare of the whole nation and punishing those with low incomes (Luong 2016). The recent report of Governance and Public Administration Performance Index 2015 shows that not less than 20% of citizens reported paying bribes to achieve certificate of their land use right; another 12% reported paying bribes to access better hospital services, and even worse, 30% of respondents, including students in primary school, confirmed that they had been illicitly solicited by educators (Luong 2016).

## METHOD

According to Bradley (2010), online surveys involve setting up an online platform with an electronic questionnaire and inviting all target respondents to a specific online site by email. This method appears to be the most cost-effective methodology since it can avoid costs of preparing locations and hiring interviewers; however, given the sensitive nature of the research (corruption), it required a specific online security system. In this study, an online survey with the support of Qualtrics (a well-known online research platform) was proposed. The survey questions were designed to investigate Vietnamese perceptions of corruption and the corruption phenomenon in the public sector, evaluate the efficiency of anti-corruption law implementation, measure the effectiveness of the current anti-corruption 'preventing', 'managing' and 'judging' system in Vietnam, barriers to anti-corruption inspection and shortcomings of the current anti-corruption system, and suggest practical solutions. The questions in the survey were arranged in a logical structure to assist the interviewer in obtaining accurate responses to serve the given research objectives. Specifically, the survey encompassed nine questions.

### Sampling Survey Design

We use a stratified sampling method that separates the target population into a number of strata based on

their demographic information (e.g., occupation, age and gender). The survey was sent around 300 participants, and a total of 150 responses were acceptable for the analysis, who were or are currently working in the Government Inspectorate, the police force and People's Procuracy. Being government officials, these respondents spend much of their time investigating and addressing corruption matters. All participants in this research, who worked for the police, the inspectorate and the procuracy and departments, had an age range of 28–45 years. Most officers in the Vietnamese government, especially in the inspectorate and police department, are male. Thus, this study had a gender imbalance (see Table 1).

**Table 1: Participants in the Survey**

N=300	Males	Females
Total	181	119
Police (N=110)	71	34
Procuracy (N=100)	55	40
Inspectorate (N=100)	55	45

### The Recruitment Process for the Survey

This is included two steps. In the first step, if respondents agreed, they needed to complete the questionnaire independently on the Qualtrics website. In the second step, an email introducing the researcher and research topic was sent to the Government Inspectorate, the police and the procuracy. The email provided a link to the questionnaire on Qualtrics. After receiving the email, the three agencies forwarded it to all of their staff.

The first three questions in the survey collecting participants' perspectives regarding the reality of corruption in public investment during the period 2009–2014, their points of view about investigations and anti-corruption law effectiveness. The next four questions discuss participants' opinions regarding whether current criminal law in Vietnam is sufficient to prevent corruption. The last two questions discuss participants' opinions concerning their challenges in corruption investigations and prosecutions.

The data collected in this research, related to corruption in Vietnam, was considered private and sensitive. It was compulsory for the researcher to control the confidentiality of the data. The audience of

the collected data must be limited; only the moderator and his assistant had access to the data. There were several courses of action that had to be followed to guarantee the confidentiality of the research project. The online survey was based entirely on the willingness of the participants; thus, the participants did not feel any pressure to participate or respond to questions.

### Data Analysis

All collected data were analysed using Qualtrics. Qualtrics has a data-mining tool that draws intuitive, easy-to-understand graphs, from which the analyst found it straightforward to answer each of the research questions. The survey questionnaire was designed, prepared and uploaded online. An online survey with the support of Qualtrics was employed. The invitation letters and the link to access the questionnaires were sent to the representative office of the three agencies (the Government Inspectorate, the police force and People's Procuracy) by email so that they could be sent to all participants.

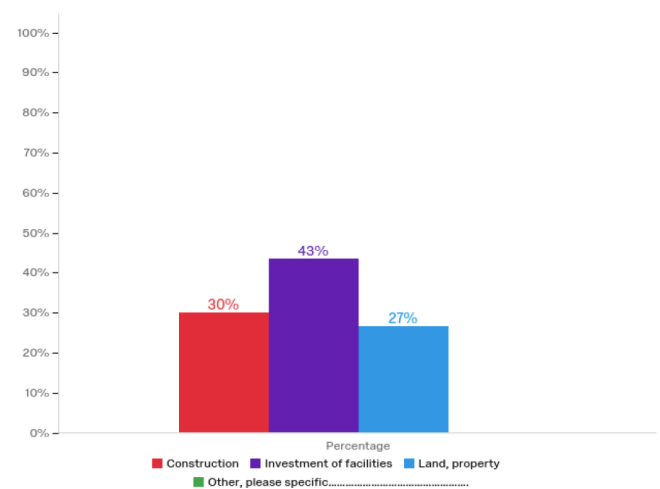
## FINDINGS

### Corruption Frequency in Public Investment

To better understand the field in which corruption in public investment most frequently occurred in 2009–2014, Survey Question 1 takes a detailed look at the corruption situation in the area of public investment. It helps to determine the field in which corruption in public investment occurred the most in the period 2009–2014, among construction, investment of facilities and land management. When querying in which field corruption in public investment occurred the most over 2009–2014, 43% of respondents (65 of 150) answered facilities investment, 30% construction and 27% land and property (see Figure 1).

Investment in facilities, construction and land and property are major areas of corruption. As in the investment process in these two areas, corrupt persons are more likely to exhibit corrupt behaviour. In management, they involve investment in facilities and spending on programs and projects. Typically examples include appointing a construction contractor in contravention of the prescribed regime to influence execution of construction works and pay high prices; collusion among bidding organisations to win bids at a high cost compared with the cost of construction; compiling dossiers of complete construction volume

price tickets for payment of investment capital before actual construction volumes are appropriated to occupy the state budget capital; expropriation of a volume of work that is not practiced nor done or work not included in the cost estimate or design to settle the capital account; purchasing materials, raw materials and equipment in incorrect quantities, types and unit prices according to the cost estimate and design, or purchasing less, declaring more and buying poor quality for construction but settling accounts for good-quality equipment and supplies at high prices; and collusion to make payment records to compensate for ground clearance higher than the reality in the form of increasing the land area, infrastructure compensation and decentralisation of the house higher than the actual price, thereby implying compensation higher than allowed.



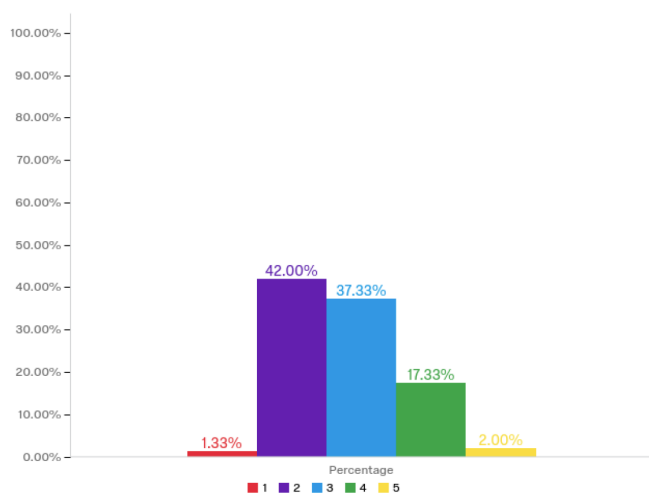
**Figure 1:** Frequent occurrence of corruption in public investment.

### Investigation Activity Effectiveness

To help assess the effectiveness of investigation activities into corruption in public investment cases, Survey Question 2 aided the researcher to obtain an objective assessment on the effectiveness of investigation activities. It allows collecting respondents' thoughts on investigation activities' effectiveness among government's authorities. Some 43.33% of respondents stated that investigation activities into corruption in public investment were ineffective, while 37.33% said that their effectiveness was just average. Only 19.33% thought that they were effective (see Figure 2).

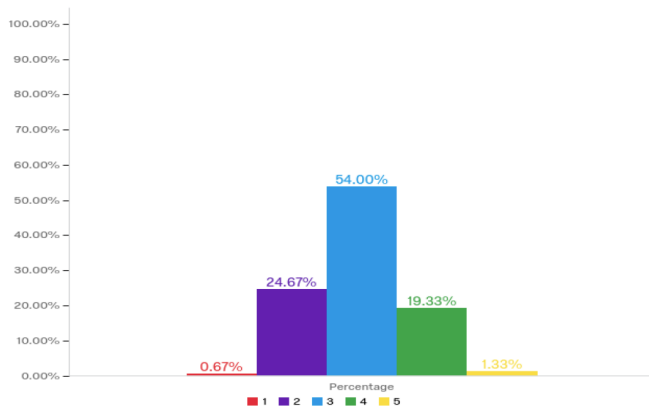
### Anti-Corruption Law Effectiveness

Survey Question 3 helps the researcher to obtain an objective assessment of the effectiveness of the anti-



**Figure 2:** The scale of official's sharing for investigation's effectiveness.

corruption law when applied to actual investigations of corruption and anti-corruption. It assists to evaluate the effectiveness of anti-corruption law in the period 1999–2014 in Vietnam. The survey's outcomes show that there are 54% of respondents said that the effectiveness of the anti-corruption law was only average, 19.33% claimed that it was effective in practice, while 24.67% said that it was not effective (see Figure 3).



**Figure 3:** The scale of official for anti-corruption law.

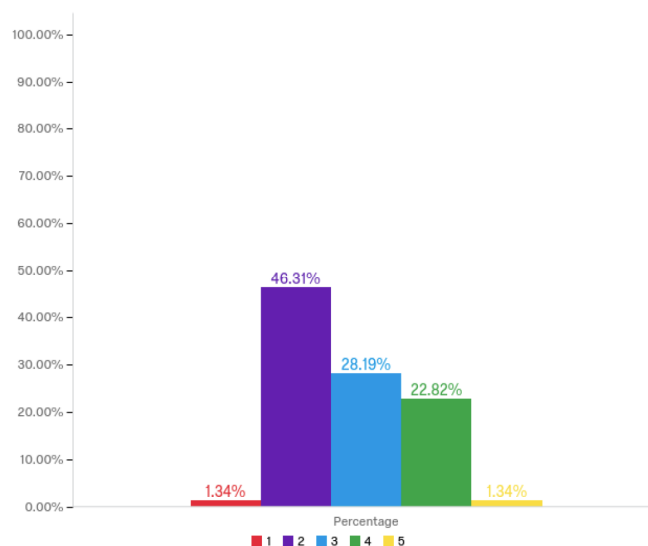
Based on the answer to the question, it can be seen that many documents directly related to anti-corruption have been issued, amended and supplemented, helping to create a stronger legal basis to contribute to prevent, detect and deal with corrupt acts. However, the document system is still overlapping and inadequate, creating a loophole for some corrupt officials and public servants to take advantage.

Regulations on publicity and transparency are not comprehensive and lack enforcement assurance measures. Particularly, the principle, form, content,

time and responsibility for publicity and transparency have not been clarified, in addition to the overlapping content of publicity and transparency by sector or domain. In addition, there are documents and remedies to control the dubious incomes of officials, civil servants and persons with positions and powers that are inadequate.

### Effectiveness of the Law in Deterring Corruption

Survey Question 4 helps the researcher to better understand whether the punishments in the Vietnam Criminal Law are sufficient to handle corrupt criminals and whether they comprise an effective tool to prevent corruption. It will collect opinions on the ability of the Vietnam Criminal Law punishment to deter corruption. According to Figure 4, 47.65% of participants responded that the punishments enforced in the Vietnam Criminal Law were not sufficient to deter corrupt individuals; only 24.16% believed they were effective and 28.19% believed they were just average.



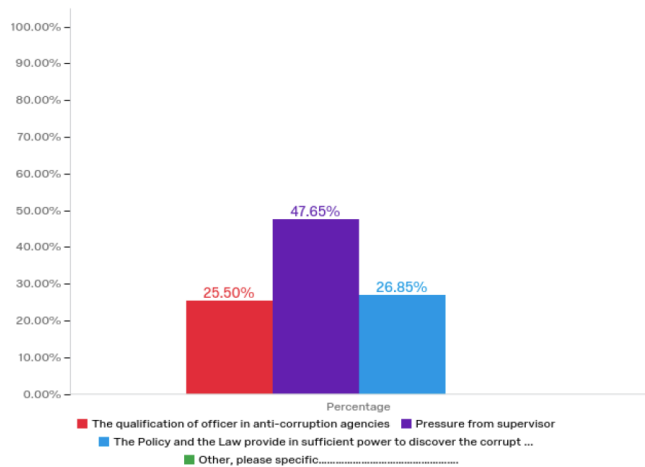
**Figure 4:** The scale of criminal law to deter corruption's cases.

Vietnamese criminal law covers most types of bribery, including giving a bribe, receiving a bribe and acting as an intermediary for bribery. The code prescribes elements of each offence to a certain extent. However, the prescription seems rather general. The penalties provided express the criminal law policy of strict treatment of such offences, reflecting the determination of Vietnam in the struggle against bribery. Apart from the seriousness of the penalties, lenient treatment of offenders is permitted via provisions on the exclusion of and exemption from criminal responsibility. Thus, Vietnamese criminal law

covers notable types of bribery but not all prevalent kinds.

**Participants’ Obstacles When Trying to Prevent Corruption**

Survey Question 5 helps the researcher to determine the main difficulties in the process of preventing corruption in the field of public investment. This question aims to assess challenges faced when trying to prevent corruption. According to Figure 5, 47.65% said that their challenges include pressure from supervisors, while the rest claimed that the qualifications of officers in anti-corruption agencies and insufficient power to discover corrupt individuals were the main barriers to anti-corruption (25.50% and 26.85%, respectively).



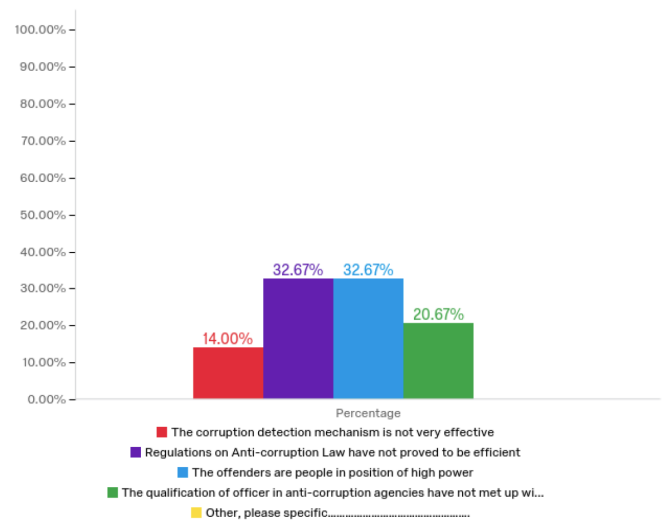
**Figure 5:** Obstacles to prevent corruption in public investment.

After a comparison between the United Nations Convention against Corruption requirements and Vietnam’s existing criminal law, within the provisions on crimes of corruption and related acts, there are some weaknesses and disadvantages.

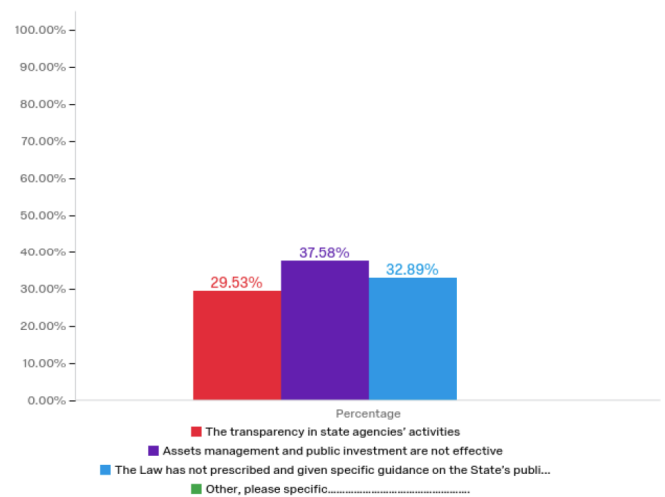
**Discovery of Corruption in Public Investment and Shortcomings in Corruption Prevention**

Anti-corruption law in Vietnam has not yet fully and comprehensively regulated measures to control conflicts of interest for cadres, public servants and officials in the performance of duties and public duties, decreasing the efficiency of corruption prevention and detection. The provisions on the handling of responsibilities of heads of agencies, organisations or units when corruption acts occur in their agencies, organisations or units are not yet specific, failing to encourage the heads in prevention and detection of corruption.

Regulations on anti-corruption have not performed efficiently and criminals are those in positions of power; these factors have obstructed corruption detection in Vietnam. While survey Question 6 helps to identify the causes of ineffective corruption prevention in public investment, survey Question 7 points out the main weaknesses in the anti-corruption process. We probed at least three main reasons that led to the failure of corruption prevention in recent years in Vietnam, including 1) the transparency in state agencies’ activities, 2) asset management and public investment are not effective, and 3) the law has not prescribed or given specific guidance on the state’s public investment checking mechanism.



**Figure 6:** Causes of ineffective corruption prevention in public investment.



**Figure 7:** Weakness in corruption prevention.

Some 56 of 150 responded that poor management of assets and public project investment (37.58%) were responsible, 49 said that there was insufficient

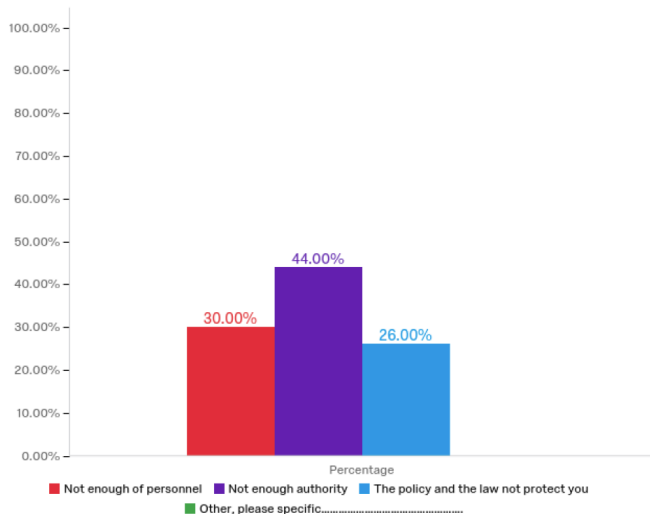


guidance from the state on the public investment mechanism (32.89%) and 44 stated that the law has not prescribed or given specific guidance on the state’s public investment checking mechanism (29.53%).

Corrupt objects are persons with a position and authority, so they are often aware of the law and have access to information, economic resources and broad relationships. Some may make great contributions to society and have a certain level of prestige; thus, this situation is difficult to detect and handle.

**Challenges in Corruption Investigations and Prosecutions**

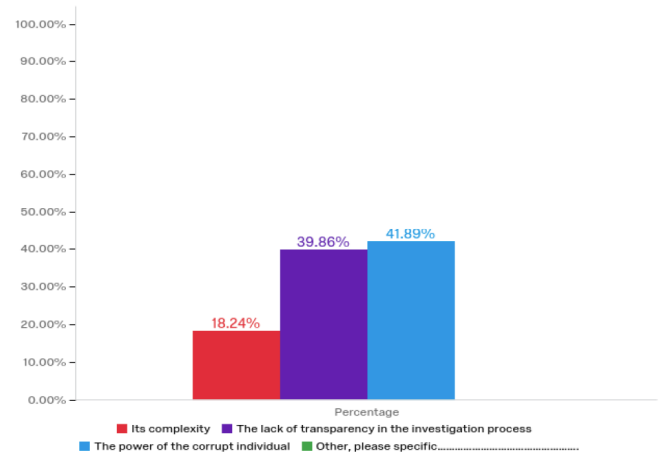
Survey Question 8 helps the researcher to identify the main causes that obstruct the investigation of a corruption case and Survey Question 9 explains why the investigation process is so time-consuming. This question helps clarify the causes of obstruction in the investigation of corruption cases in public investment. Some 111 respondents answered that not enough personnel (30%) and not enough authority (44%) were the two main causes of obstruction during corruption case investigations, while 39 said that the policy and the law not protecting you (26%) was the main cause (see Figure 8).



**Figure 8:** Challenges to investigate and prosecute corruption’s public investment.

There are no dedicated regulations on the protection of corruption denouncers in Vietnam. The current law regulations on the protection of corruption denouncers are evaluated in principle only, are not specific and dispersed through many legal documents and lack consistency. Some regulations on the protection of corruption denouncers are inadequate, difficult to implement and ineffective in reality, so they

are difficult to bring to life. There is a lack of documents stipulating effective mechanisms and measures to protect denouncers from revenge. We also hypothesized with at least three basic concerns impacted on the time of investigating a corruption case always longer than for other kinds of crime, including 1) its complexity, 2) lack of transparency in the investigation process, and 3) the power of corruption criminals. These tests will identify the causes of prolonged and difficult detection and investigation of corruption offenders in a public investigation.



**Figure 9:** The nature of complication to investigate corruption’s public investment cases.

In this question on why corruption cases take longer than other kinds of crime (see Figure 9), 62 of 149 responded because of the high position of power of the corrupt individual (41.89%), followed by 59 blaming the lack of transparency during the investigation process (39.86%). Some 27 respondents said that prolonged investigations of the corruption cases were due to their complexity (18.24%).

A current difficulty in inspection and investigation is the requirements for inspection in finance, banking, capital construction and science and technology: the appointment of inspectors and prolonged assessment duration, the refusal and avoidance of inspection agencies, and even incorrect inspection conclusions and repeated inspections. One case took 13 months to inspect, longer than the investigation duration; this is an important reason for prolonged cases violating the investigation time limit.

The majority of corruption offenders are those holding high positions and power; offences are carefully conducted via many sophisticated tricks and corrupted assets are carefully hidden. In many cases, corrupted assets are transformed, transferred,



**Table 2: Length of Corruption Case Investigations**

#	Answer	%	Count
1	Its complexity	18.24%	27
2	The lack of transparency in the investigation process	39.86%	59
3	The power of corrupt individuals	41.89%	62
4	Other, please specific.....	0.00%	0
	Total	100%	148

dispersed, and even used for extravagant expenditures, so they are no longer capable of being detected or returned. In the course of legal proceedings, many procedural bodies have not been decisive in combating corruption offenders and failed to apply urgent provisional measures, such as seizing assets and prohibiting asset transfer.

## DISCUSSIONS

There is a contradiction between high investment and poor performance in national infrastructure, supporting the finding and pointing to the important question of public investment efficiency (Maruichi and Abe 2019). If many public facilities projects are wasteful and imbued with corruption and many funded projects are delayed and fail because of poor management, the investment return will be low or zero (Nguyen 2019). Excessive bureaucracy and red tape, overregulation, corruption, dishonesty in dealing with public contracts, lack of transparency and trustworthiness, inability to provide appropriate services for the business sector, and political dependence of the judicial system impose significant economic costs on businesses and slow the process of economic development (Phuong Linh 2018, Maruichi and Abe 2019).

### Investigation Activity Effectiveness

As the time from committing criminal offences to the time of detecting criminal offences is lengthy, offenders have the knowledge, position, power, relationships and other conditions to influence the investigation of cases. The ability of investigators and prosecutors to deal with corruption crimes is limited. Due to the large scale of corruption cases, some of which are up to USD 1 million, requiring the identification of damage, many projects are unfinished or not put into operation; thus, project damage assessment is very difficult. The scale of the project is not within the legal period for judgement. Yet, major corruption cases involve many

people with close connections, who keep information secret at any cost, and so it is tough to uncover them that led to difficulty for outside people to unearth corrupt acts (Nguyen 2017, Birdsall, Kenny *et al.* 2018). They try to conceal their acts by various tricks such as providing falsified documents, hiding documents and giving misleading information. In many cases, people are denounced but competent authorities do not have sufficient evidence to handle the cases in line with the law. Police at all levels have filed charges in almost 3,000 corruption cases and the number of people involved has exceeded 7,000. Those cases have caused losses of over VND 23.5 trillion (over USD 1 billion). Corruption is prevalent in the fields of banking, land management, natural resources, mining, infrastructure construction and management of state capital and assets (Luong 2016). Losses caused by those corruption cases exceed VND 60 trillion, along with 400 hectares of land. However, only VND 5 trillion and around 200 hectares have been recovered (Luong 2016).

### Anti-Corruption Law Effectiveness

The current anti-corruption law stipulates that corruption is the act of a person holding a high position or authority who misuses his position and power for the sake of the self and the subject of corruption as 'a person with a position of authority for specific objects (Nguyen, Nguyen *et al.* 2016). In reality, however, there are those who, despite their lack of authority, have exploited the influence of other persons holding positions of authority to gain profit (for example, parents, spouses, siblings and grandchildren of said persons with position and power).

Current legislation also lacks a mechanism to supervise, receive and process information, and reflect violations of receiving and giving gifts. The giving and receipt of gifts to relatives of persons holding positions and powers related to public duties have not been remedied, leading to uncontrolled activities and off-duty

income of persons holding positions and powers. The first concern is the current status of Vietnam's legislation. The implementation of investigative activities has shown that Vietnam's legal framework in anti-corruption is insufficient, outdated and incomprehensive (Nguyen and Quach 2019). Accordingly, Vietnam's legal framework does not sufficiently define all forms of corruption as criminal acts. For those acts of corruption that are classified as criminal, criminal sanctions are not always enforced (Phuong Linh 2018). Investigative bodies often lack the necessary powers and capacities to conduct effective investigations. An example of this is dealing with instruments and/or proceeds of crime, which is as important as the prosecution of the corruption offender (Nguyen 2017). The purpose of the provisions in tracing, restraining, freezing and seizing assets in the Criminal Procedure Code is to facilitate the prosecution of the crime and is not aimed at the confiscation of the unlawful assets themselves (Le 2020). Vietnam is now implementing policies to make assets transparent. However, this does not seem to be effective. This may allow the corrupt offender to conceal the proceeds of crime (Cao 2020). Meanwhile, the criminal procedure legislation of well-developed countries considers asset recovery and confiscation as equally essential as the prosecution of the offender, and civil forfeiture is a process separate from the prosecution of the offender (Maruichi and Abe 2019). Vietnam's Criminal Procedure Code is not an effective legal instrument to deal with the proceeds of corrupt acts.

It can be seen that the application of the Law on Anti-Corruption in Vietnam has encountered many problems and barriers, making anti-corruption ineffective; that more than 70% of respondents said that the anti-corruption law is not effective and only below average is reasonable (Nguyen and Quach 2019).

### **Effectiveness of the Law in Deterring Corruption**

Based on the results of this question, the satisfaction with the effectiveness of punishments for corruption is low (up to 75.84% thought that the level of effectiveness was average or inefficient). According to a Steering Commission to Anti-Corruption, the suspended sentence rate for corruption cases was about 36.5%; this was 37.1% in 2011 and 30.2% in 2012 (Do 2014). In the latest report of the government on anti-corruption (submitted to the 21st session of the Standing Committee of the National Assembly), compared with the same period in 2012, the

investigation, prosecution and trial of corruption cases increased both in a number of cases and a number of offenders (prosecution increased by eight cases, with 91 defendants, and prosecution increased by 91 cases with 202 defendants) (Do 2014). However, the handling of the responsibility of heads of agencies and units for corruption decreased 34%; only 36 heads were dealt with, of which four were subjected to criminal proceedings (Do 2014). In the first half of 2013, although the rate of corruption suspended sentences was only 28%, the lowest level yet, according to legal experts, this rate remains too high for a crime that leaves society with serious consequences (Do 2014).

The investigation, prosecution and trial of corrupt offenders are not serious and definitive; a situation of covering up exists in some places, despite the law. Many corruption cases are not judged seriously, and penalties are lenient. According to the Central Committee of CPV, the suspended sentence rate for corruption-related cases is 30.8% (36.5% in 2010, 37.1% in 2011 and 34.2% in 2012), which is higher than other types (on average, only 21%) (Do 2014). Corruption is a serious crime, but the National Assembly Standing Committee reports that many of the courts make light judgements in such cases. The yearly review of the Supreme People's Court shows that in some localities, of nine corrupt defendants adjudicated, eight were suspended; in some localities, with 10 defendants accused of corruption, all 10 were sentenced below the lowest level of penalty (Do 2014).

Bribery is often considered a crime with no visible victim (Ngo 2017). To some extent, the real nature of bribery is usually masked or justified by customs, traditions, cultures or misguided perceptions, and the wrongfulness of bribery is often hard to recognise (Nguyen 2017). Consequently, the condemnation of bribery and the fight against bribery offences are not always supported (Nguyen 2017). That perception also leads to the fact that some criminal systems adopt inadequate punishments and measures when dealing with corruption crimes and this creates an opportunity for some people to commit corruption (Cao 2020, Le 2020).

### **Participants' Obstacles When Trying to Prevent Corruption**

The state apparatus is cumbersome and heavily bureaucratic, the process of administrative reform is slow and there are many administrative procedures that are cumbersome; these provide conditions for

officers to engage in harassment and corruption. Laxity in economic management and the continued popularity of 'asking and giving' provide conditions for corruption to arise.

The legal framework and conditions to ensure anti-corruption are not guaranteed. Although the anti-corruption law has seen positive changes in recent years, many laws relating to anti-corruption have been issued (Herr, Schweisshelm *et al.* 2016). However, they are not complete nor clear, and there is insufficient determination to fight against corruption, leading to ineffectiveness in reality (Herr, Schweisshelm *et al.* 2016). Vietnam has no law on information transparency and access to information, so it is difficult for agencies, organisations and people to access information on finance, production or business and investment activities of enterprises, managers of production and business, and monitoring the state budget (Nguyen and Quach 2019). Besides that, transparency in the income of officials with high positions and power has not been attained (Gillespie and Toan 2018, Nguyen 2019). Proof of income has not been realised, and, moreover, no mechanism is available to regularly inspect and assess the assets of officials who hold the position and have the right to fight corruption (Nguyen, Nguyen *et al.* 2016). Fighting corruption and waste is, therefore, notoriously difficult.

The process of judicial reform in the fight against corruption has been slow and ineffective. Vietnam has an anti-corruption law; although the Penal Code has a chapter on corruption, the law is not clear, specific or strict; therefore, deterrence is not significant (Transparency International 2017). The functionality of many agencies is overlapping and unclear, resulting in a lack of publicity and transparency and difficulties in monitoring (Nguyen 2017). The responsibility and responsibility regime of the head are unclear, so mistakes are attributed to the collective leadership and it is difficult to handle individuals (Ngo 2017). Civil servants lack professionalism as well as modernity. The culture of resignation and culture of error confession when mistakes are made is ineffective (Dao 2017).

Investigation of foreign cases is difficult because Vietnam has not yet signed a judicial assistance agreement with many countries, so the investigation is mainly based on reciprocal relations between judicial authorities from country to country (Tromme 2016). Delegating investigation and reception of the results of investigative entrustment must be carried out through

the Supreme People's Procuracy, the Ministry of Foreign Affairs, the Embassy and dependence on foreign countries; thus, investigation work is prolonged (Maruichi and Abe 2019, Nguyen 2019). Judicial trust documents must be translated into a foreign language and legally binding on translation companies, so it is time-consuming and non-confidential, and knowledge of international law and experience of investigation of cases with foreign elements is very limited (Maruichi and Abe 2019).

As explained by Do (2014), in the fight against corruption, the UN convention recommends states to turn the following specified acts into criminal offences, as described in Articles 15 and 25: national public officials giving or receiving bribes, obstruction of justice, foreign public officials or public international organisations giving or receiving bribe, concealment, abuse of functions, laundering of proceeds of crime, trading in influence, embezzlement or misappropriation of property by public officials and civil servants, illicit enrichment, private sector giving or receiving, and embezzlement of property in the private sector.

### **Discovery of Corruption in Public Investment and Shortcomings in Corruption Prevention**

Anti-corruption law in Vietnam has not yet fully and comprehensively regulated measures to control conflicts of interest for cadres, public servants and officials in the performance of duties and public duties, decreasing the efficiency of corruption prevention and detection (Transparency International 2020). The provisions on the handling of responsibilities of heads of agencies, organisations or units when corruption acts occur in their agencies, organisations or units are not yet specific, failing to encourage the heads in prevention and detection of corruption (Le 2020).

The regulations on assets and income transparency have not helped control asset and income fluctuations (Cao 2020). The handling of declarants who are dishonest or unable to reasonably explain changes in their assets and incomes are ineffective. The provisions on accusations and denunciation settlements are still incomplete and cannot promote the participation of people in detecting corrupt acts (Nguyen 2019). Roles and relationships between the anti-corruption law and other legal documents have led to incomprehensible and inconsistent applications and a lack of measures to deal with organisations and individuals that violate the provisions of the anti-corruption law (Maruichi and Abe 2019).

## Challenges in Corruption Investigations and Prosecutions

Corruption is often difficult to detect and investigate, particularly embezzlement and bribery. Offenders can be state officials who hold positions of power and are capable of engaging in criminal acts and concealing proceeds of crime (Tromme 2016). Further, in Vietnam, there is a gap in the legislation to control cash flows, economic transactions and incomes.

Most investigators are transferred from another force; some have never investigated crimes before, and this affects the quality of criminal case investigations, leading to the return of records for further investigation, prolonged investigation duration and failure of settlement (Nguyen, Nguyen *et al.* 2016). In particular, knowledge of international law and experience in investigating cases with foreign factors are very limited, resulting in many difficulties in the investigation and settlement, especially in countries that have not yet signed the Mutual Legal Assistance Treaty with Vietnam or have signed the treaty but do not cooperate with Vietnam (Nguyen and Quach 2019, Cao 2020). In addition, the mandate of the investigation must be approved by the Supreme People's Procuracy, the Ministry of Foreign Affairs, and the Embassy, which leads to a lengthening of the investigation time, and affects the investigation progress of current cases with foreign factors (Nguyen 2019). Judicial mandate documents must be translated into foreign languages and legally enforceable, involving contracts with translation companies, resulting in a waste of time, lack of confidentiality and require a source of funding (Dao 2017, Ngo 2017).

## CONCLUSION

Vietnam is a Southeast Asian country with a culture of too much respect for seniors and acquaintances; a subjective concept of justice still exists in the way of life and thoughts of the Vietnamese people, especially those who hold power. Those who commit crimes of corruption are persons with a high level of power, professional qualifications, broad social relationships and substantial economic resources, so they often find ways to conceal the offence. Due to the position of the offender, they have extensive work networks; the investigation is often difficult because the offender seeks information and hide offences through these relationships. This research examines corruption offences in public investment in Vietnam. Vietnam has many enterprises entirely owned by the state, leading

to government protection for these enterprises. Those who are assigned the task of managing these enterprises have taken advantage of this protection and used their power for profiteering. Corruption offences in public investment often occur in these enterprises. Almost all participants believed that challenges included a lack of authority as well as lacking professional personnel in investigation, prosecution and conviction corruption's cases, while the rest indicated that the policy and law does not protect them.

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