

Overall Score:

44 - Very Weak

Legal Framework Score:

52 - Very Weak

Actual Implementation Score:

31 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ²¹Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

There are a few administrative procedures to create non-governmental associations, and the procedures differ for domestic and international ones. Founders of a domestic NGO must form a mobilization committee, which needs to be cleared and recognized by the relevant government body. This process takes 60 days, at no charge.

References:

Decree No. 88/2003/ND-CP, issued July 30, 2003, regulates the organization, operations and management of associations.

Decree No. 177/1999/ND-CP, dated Dec. 22, 1999, regulates the organization, operations and management of social and charity funds

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes

No

Comments:

Article 22 of Decree 88 states that associations are able “to receive lawful financial supports of domestic and foreign organizations and/or individuals under the provisions of law.” It adds: “Funds received from foreign sources must be approved by the competent government authorities, in accordance with the Regulations on Management and Utilization of foreign NGO Aid.”
— NGO Regulation Network

References:

- 1) Decision 340/TTg dated May 24, 1996, of the Prime Minister Issuing Regulations on Activities of Foreign Nongovernmental Organizations in Vietnam.
- 2) Decree 81/2002/ND-CP, 2002 Decree 88/2003/ND-CP, 2003.
- 3) Draft Decree On the Registration and Operation of Foreign Non-Governmental Organizations in Vietnam (2009).
- 4) NGO Regulation Network, 2006, Summary of Regulatory System for NGOs in Vietnam.
http://www.ngoregnet.org/country_information_by_region/Asia_and_Oceania/Vietnam.asp

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes

No

Comments:

No such public disclosure is mandated by law. Article 23 of Decree 88 (on associations) states that one obligation is to submit reports on financial settlements and send them to finance bodies “of same levels.” In the Vietnamese system, associations are also entitled to receive subsidies from the government.

References:

Decree No. 88/2003/ND-CP of July 30, 2003, provides for the organization, operation and management of associations.

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

50

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

While non-governmental organizations promoting good governance or anti-corruption are not formally prohibited, the government places a number of constraints on the creation of new NGOs, from bureaucratic procedures to a system that discourages freedom of information and asking questions.

References:

- 1) Interview with a staff member from the Swedish Embassy, October 2011
- 2) Interview with official from a national NGO, October 2011

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Although there is public interest in corruption, many local non-governmental organizations do not fully engage in this field. For example, they may not have the appropriate resources or the level of authority needed to undertake projects in this area, such as convening a meeting with government officials. Nevertheless, a small number of Vietnamese and international NGOs work directly or indirectly on this agenda. They include Towards Transparency (TT) and the Center for Community Support Development Studies (CECODES). While some NGOs collaborate with TT to work on corruption (for example, Live and Learn and the Research and Training Center for Community Development), others conduct independent work on governance and corruption.

References:

- 1) Interview with an official from a national NGO, October 2011.
- 2) International consultant working in Vietnam, October 2011.

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes

No

Comments:

Only a small number of national and international NGOs entirely and directly work on transparency, accountability and corruption (for example, Towards Transparency and the Center for Community Support Development Studies). Behind the scenes, any NGO wishing to set up operations and/or engage with this subject is discouraged.

In some cases, organizations have been disbanded because of the tough political environment, but this is not necessarily linked to their work on corruption. It is more common that unregistered groups are shut down.

References:

- 1) Interview with local NGO, October 2011.
- 2) International consultant working in Vietnam.

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | **No**

Comments:

Some activists promoting good governance were detained and eventually imprisoned over the past year. In the trial of Lu Van Bay in 2011, the prosecution referred to articles calling for multiparty democracy that he was alleged to have written as proof that he was writing “anti-government propaganda.” Cu Huy Ha Vu, a legal scholar and human rights activist, also was imprisoned on the same charges.

References:

- 1) Interview with local NGO, October 2011.
- 2) Interview with international consultant, October 2011.
- 3) Reporters Without Borders, Sept. 26, 2011, Blogger Lu Van Bay serving four-year sentence. <http://en.rsf.org/vietnam-blogger-lu-van-bay-serving-four-26-09-2011,41059.html> (accessed December 2011).
- 4) Tui Tre News, Augn 2, 2011, Cu Huy Ha Vu sentenced to seven years in prison. <http://www.tuoitrenews.vn/cmmlink/tuoitrenews/society/cu-huy-ha-vu-sentenced-to-7-years-in-prison-1.39212> (accessed December 2011)

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person’s work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. “Imprisoned” is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

Comments:

The non-governmental organization Towards Transparency (TT) received threats and intimidation when it launched the Global Corruption Barometer, a public opinion survey, in cooperation with Transparency International (see: http://www.transparency.org/policy_research/surveys_indices/gcb). There also is evidence of some journalists who covered the launching of the Global Corruption Barometer running into trouble.

References:

- 1) Interview with national NGO, October 2011.

2) Interview with international consultant.

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

There were no reported cases of activists being killed over the past year.

References:

1) Interview with national NGO, October 2011.

2) Interview with international consultant.

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

13

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Although Article 69 of the Vietnamese Constitution states that citizens have the right to assemble, and the Vietnamese Labor Code states that "an employee shall have the right to form, join and participate in union activities," they are allowed to do so only within the framework of the ideology of the party and of the law. The Law on Trade Unions states that newly formed unions must be approved by and affiliated with the sole real trade union in Vietnam, the Vietnam General Confederation of Labor (VGCL). This union operates under the party's leadership. Moreover, individual unions can join or participate in international labor bodies only with the agreement of the VGCL. It should be noted that unions affiliated with the VGCL have the right to bargain collectively, as well as to strike.

References:

ITUC (2011). Annual Survey of Trade Union Rights (<http://survey.ituc-csi.org/Vietnam.html?lang=en>).

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The Internet is often under surveillance (especially during important events, such as elections) in order to limit calls for protests and demonstrations. Moreover, many Vietnam General Confederation of Labor (VGCL) representatives in private companies are either closely associated with, or actually part of the management team. There have been cases in Vietnam of individuals forming trade unions without the party's approval and being imprisoned for doing so. For example, the journalist and writer Tran Khai Than Thuy, who was one of the founders of the Independent Workers' Union in 2006, has been under detention and house arrest many times. Human Rights Watch reported that she was sentenced to 3.5 years in prison.

References:

1. ITUC (2011). Annual Survey of Trade Union Rights (<http://survey.ituc-csi.org/Vietnam.html?lang=en>).

2. Human Rights Watch, Feb. 4, 2010, Vietnam: Expanding Campaign to Silence Dissent.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

0

05a. In law, freedom of the media is guaranteed.

Yes | **No**

Comments:

Article 69 of the 1999 Constitution states that “citizens are entitled to freedom of speech and freedom of the press.” However, Article 33 states that any works in the field of information, press, radio, television, cinema, publishing, libraries and other means of mass communication which are deemed “detrimental to the national interests and which undermine the fine personality, morality and way of life of the Vietnamese people are prohibited.” Article 70 guarantees citizens the right to freedom of belief and religion and declares that “no one has the right to infringe on the freedom of faith and religion”. The 1989 Law on Media (amended on June 12, 1999) declares that the media “is the essential means of providing public information in relation to social life, is the mouthpiece of party organizations, state bodies and social organizations (hereinafter called organizations), and a forum for the people.” And although Article 2 states that “no organization or individual is permitted to limit or obstruct the operation of the media or journalists,” Article 10 curtails what matters the media can report. For example, media organizations cannot incite people to rebel against the state or incite to the use of violence and must also abstain from disclosing state secrets.

References:

- 1) Law on Media (1989 as amended 1999).
- 2) Constitution of the Socialist Republic of Vietnam (1992 as amended Dec. 25, 2001).

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | **No**

Comments:

Article 2 of the Media Law says the state “shall create favorable conditions for the media to develop its proper role and for citizens to exercise their rights in relation to freedom of the media and freedom of speech through the media.” Freedom of speech in the media in this case means that citizens have the right to express their opinions on “domestic and world current affairs,” and (Article 4) “to contribute ideas and comments, submit petitions and complaints and make allegations through the media in respect of party organizations, state organizations and social organizations and their members.” The 1992 Constitution allows the freedom of speech and of the press (Article 69), so long as citizens are loyal to the homeland (Article 76).

References:

- 1) Law on Media (1989 as amended 1999).
- 2) Decree on the regulation on administrative penalties in press and publication activities (02/2011/ND-CP)
- 3) Constitution of the Socialist Republic of Vietnam (1992 as amended Dec. 25, 2001).

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

44

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

It is very hard to create a print media entity, though usually easier to start up tabloids and papers/magazines covering sports, leisure and other such topics. There are some examples of outlets being formed (for example, Saigon Life), but even then, the person who helped get the license had links to the party. All in all, it can take up to two years to obtain a license.

References:

- 1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.
- 2) Interview with Vietnamese journalist.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

An organization must have a license granted by the state management body (itself, under the authority of the government) before

being allowed to commence any activity. Article 19, paragraph 2 of the 1989 Law on Media states that when a license is refused, “the state management body responsible for the media shall reply in writing clearly stating its reasons for refusal within thirty (30) days from the date of receipt of an application. An organization which has had an application refused shall have the right to complain to the authorized body or to institute legal proceedings.”

References:

1) Law on Media (1989, as amended 1999).

2) Decree on the regulation on administrative penalties in press and publication activities (02/2011/ND-CP).

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It all depends what is meant by “citizens.” Anyone who applies for a license needs good connections (a patron) to obtain one, and the process can take anything between a few months to a few years.

References:

1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.

2) Interview with Vietnamese journalist.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Political connections help obtain print media licenses. Magazines covering light subjects (such as sports and lifestyle topics) are

now thriving. Vietnam Golf magazine, for example, is published by the Hanoi Golf Club, a subsidiary of the Sports Department of the Hanoi City People's Committee, which is a subsidiary of the Politburo. Political connections seem to be less prominent in the case of foreign-backed media, such as The Word magazine.

The real financial burden is the need to pay bribes needed to hasten the process.

References:

1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.

2) Interview with Vietnamese journalist.

3) Hayton, B, 2010, 'Vietnam, Rising Dragon', New Haven and London: Yale University Press, page 142.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

25

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Only state entities are allowed to apply for a broadcasting license. Broadcasting is the official face of state propaganda. The Voice of Vietnam radio (VoV) and Vietnam Television (VTV) are both run by the government.

References:

1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.

2) Interview with Vietnamese journalist.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Article 19, paragraph 2 of the 1989 Law on Media states that when a license is refused, “the state management body responsible for the media shall reply in writing, clearly stating its reasons for refusal, within thirty (30) days from the date of receipt of an application. An organization which has had an application refused shall have the right to complain to the authorized body or to institute legal proceedings.”

References:

1) Law on Media (1989 as amended 1999).

2) Decree on the regulation on administrative penalties in press and publication activities (02/2011/ND-CP).

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot apply for a broadcast license.

References:

1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.

2) Interview with Vietnamese researcher.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This question presupposes that citizens are able to apply for a license in the first place. In practice, citizens cannot apply.

References:

1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.

2) Interview with Vietnamese journalist.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

13

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

It is reported that the government recently obliged all Internet cafe owners to install monitoring software that can help track what users are doing. This software must be vetted by the government. Moreover, users are urged to report to relevant authorities any content that opposes the state or threatens state security. Some Internet Web sites are also monitored and/or have limited access, such as pages on religious freedom, though surprisingly, pornographic material is not blocked.

Some pages are still blocked by the government's firewall, including that of Human Rights Watch. Social media, like Facebook, are occasionally blocked. The government will usually monitor and crack down on Internet use before major events such as elections or National Assembly sessions.

References:

- 1) ITUC (2011). Annual Survey of Trade Union Rights (<http://survey.ituc-csi.org/Vietnam.html?lang=en>).
- 2) Open Net Initiative (May 2007), Vietnam (<http://opennet.net/research/profiles/vietnam>).
- 3) Interview with Vietnamese journalist.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Early in 2011, the government issued a decree further curbing the use of the blogosphere. The decree makes it an offense to publish information that is "non-authorized" or "not in the interest of the people." Fines can be imposed on people publishing letters/documentation online without identifying themselves or correctly referencing the sources. This therefore makes it even easier to censor citizens creating content online. There are also clear examples that the government censors bloggers online. Some Web sites that have been censored at times include the BBC, as well as the Vietnam Reform Party, which is based in the United States.

References:

- 1) Reporters without Borders (2011). 'Government adopts new Decree 'regulating' journalists and bloggers (<http://en.rsf.org/vietnam-government-adopts-new-decree-14-01-2011,39321.html>).
- 2) BBC (2008). 'Vietnam tightens rules on blogs (<http://news.bbc.co.uk/1/hi/world/asia-pacific/7798681.stm>).
- 3) Reuters (2008). 'Vietnam bans subversive blogging' (<http://uk.reuters.com/article/2008/12/24/oukin-uk-vietnam-blogs-idUKTRE4BN0E020081224?rpc=401&>).
- 4) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

Although journalists have the right not to be troubled in the conduct of their research, which they must conduct “properly and in accordance with law” (Article 15), they also have a list of obligations:

“To report truthfully domestic and world current affairs in conformity with the interests of the country and its citizens.”

“To protect the guidelines and policies of the party and the laws of the state.”

“To seek out and protect positive initiatives.”

“To fight against wrong ideology and wrongful conduct”

“Not to abuse their position as journalists to cause trouble or to breach the law.”

In fact, journalists have to correct and apologize where they report information that is untruthful, distorted or slanderous to the integrity of a person or organization.

This sets the framework within which journalists are allowed to report. In practice, it is very politicized, with a heavy-handed control exerted by the Ministry of Information and Communications.

References:

1) Law on Media (1989 as amended 1999).

2) Anti-Corruption Law (55/2005/QH11).

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil

service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

A degree of self-censorship exists in response to political pressure on journalists. While journalists are in a position to report on corruption and are generally free to carry out investigative duties, there seems to be an undefined glass ceiling making reporting on higher-placed officials by journalists sensitive. Journalists are routinely asked to meet with the government to discuss coverage. Editorial control may also be imposed (editors are usually appointed by the Vietnamese Communist party/government).

References:

1) McKinley, Catherine (2008). 'Can a state owned Media effectively monitor corruption? A study of Vietnam's printed press', Asian Journal of Public Affairs, Vol.2, No.1.

2) Interview with Vietnamese journalist.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Editors meet on a weekly basis with the chief censor – the vice-minister for media and information – where directives are taken regarding what news should be covered or not. Some interviewees said that there is still some relative flexibility, with some editors even distancing themselves from these guidelines. In practice, this system is meant to ensure that top leaders are not the subject of corruption-related stories, or that there is a structured and controlled way of breaking this kind of news. Thus, corruption can be discussed in the press, but it is kept under tight control. Ultimately, the media are monitored and controlled by the state apparatus (by issuing licenses), which minimizes the scope for freely covering corruption-based stories.

References:

- 1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.
- 2) Interview with Vietnamese journalist.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

15

10a. In law, print media companies are required to publicly disclose their ownership.

Yes

No

Comments:

There is no such requirement in the Law on Media. Print media companies are not required to disclose their ownership to the government, Article 18 only requires that a media entity “be able to provide from within its organization a person who satisfies all of the criteria necessary for him or her to be the head of the media organization.” The law further states that “Government shall regulate the organization and activities of specialized inspection of the media.”

References:

Law on Media (1989 as amended 1999).

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | **No**

Comments:

There is no such requirement. Like print media companies, broadcast companies must disclose their ownership to the government. There is little or no distinction in law between print and broadcast media.

References:

Law on Media (1989 as amended 1999).

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | **0**

Comments:

There is a code of practice drafted by the party, but journalists seldom abide by it. The Journalist Association also has a very primitive code of conduct. Ethics and professionalism is not something typically taught in journalism school. Many journalists are aware of ethics and have ethical concerns, but don't necessarily know how to put these into practice.

This lack of ethics means that some journalists seek sensationalist issues by colluding with the police and/or extorting money from potential sources, such as businessmen. Within the media, there is a lot of infighting, and issues are covered to protect patrons, usually high-ranking civil servants who may provide financial support and/or have helped with setting up the newspaper obtain the license.

References:

1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.

2) Interview with Vietnamese journalist.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

There are very few independent parties or candidates. Even then, they are submitted to a rigorous selection process by the Vietnamese Fatherland Front, the local committees.

During the recent elections, independent candidates were believed to have received attention from the local print media.

References:

- 1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.
- 2) Interview with Vietnamese journalist.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

Candidates are not allowed advertising space, since they all belong to the Vietnamese Communist Party. State outlets are used to serve the purpose of the party. However, as mentioned in the previous indicator, independent candidates have received some media coverage. The media are also known for holding some politicians to account on their promises and record.

References:

- 1) Interview with Nguyen Giang, BBC Editor, East Asia Hub & Vietnamese Service.
- 2) Interview with Vietnamese journalist.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes

No

Comments:

Journalists and bloggers have been arrested over the past year, but, as described in news articles, the government often charges them based on more general offences, such as anti-government propaganda or propaganda against the socialist state. In reality, this propaganda is likely to contain highly sensitive discussions about corruption in the country and the government.

These cases are not always well-documented. The last case of an arrest of a journalist or blogger that made headlines was in 2008, when Nguyen Viet Chien was jailed for two years after he wrote about state corruption in a report on the Transport Ministry (known as PMU 18). This case allegedly involved a high-ranking official who used aid money on gambling and "high living." The whistle-blower (a policeman) was also charged.

References:

1) Reporters Without Borders, 26 April, 2011, Even after sentence reduction, cyber-dissident still has to serve five years in prison. http://en.rsf.org/china-cyber-dissident-gets-eight-years-27-01-2011_39407.html (accessed November 2011).

2) AFP, Oct. 14, 2008, Vietnam jails reporter who wrote about state corruption afp.google.com/article/ALeqM5id8yU6vX0PBggXj2gDg8YnRe5Epg.

3) Interview with Vietnamese journalist.

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | **No**

Comments:

In 2011, Vo Thanh Mai, a reporter at the Vietnam Agriculture Newspaper who had been covering cases of illegal sales of forest land, was attacked with a sword and injured while refueling his motorcycle at a petrol stop. There are also reports of a journalist being beaten because of his/her investigation of smuggling near the Chinese border.

References:

1) DPA (May 30 2011) Reporter in Vietnam injured in mystery sword attack (http://www.monstersandcritics.com/news/asiapacific/news/article_1642389.php/Reporter-in-Vietnam-injured-in-mystery-sword-attack).

2) Interview with Vietnamese journalist.

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | **No**

Comments:

Le Hoang Hung, a reporter for the newspaper Nguoi Lao Dong, was killed on Jan. 30, 2011. Officials claim he was killed by his wife over money and family issues, but news reports stated that Hung had been covering official misconduct in the Mekong Delta region in recent years. At the time of his death, Hung was covering a case in which a local authority in the southern province of Long An was being sued for misappropriating some land, according to news reports.

References:

1) Committee to Protect Journalists Asia (<http://www.cpj.org/killed/asia/vietnam/>).

2) BBC (23 February 2011). Vietnam journalist Le Hoang Hung's wife held for murder (<http://www.bbc.co.uk/news/world-asia-pacific-12548722>).

3) Thanh Nien News (1 Sept 2011). Prosecutors delay charges in journalist murder trial (<http://www.vnnnews.net/prosecutors-delay-charges-in-journalist-murder-trial>).

4) Interview with Vietnamese Journalist

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to

his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

21 1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

0

12a. In law, citizens have a right to request government information and basic government records.

Yes

No

Comments:

There is no mechanism for citizen access to information at the national level. Only public servants, state agencies, political organizations or socio-political organizations may access information. Articles 31 and 32 of the 2005 Anti-Corruption Law state that "State agencies, political organizations, socio-political organizations, press agencies shall, within the ambit of their tasks and powers, have the rights to request responsible agencies, organizations and units to supply information on their respective activities according to the provisions of law." Generally, the requested agencies must provide this information within 10 days. If the information is not made public, a written statement must be provided. Article 32 states that "Public servants and other laborers shall have the rights to request heads of the agencies, organizations or units where they work to supply information on activities of such agencies, organizations or units."

Moreover, "Citizens shall have the rights to request presidents of the people's committees of communes, wards or district townships where they reside to supply information on activities of such people's committees." Here, there is also a 10-day period for the authorities to respond, and a requirement to issue a written statement if no information is supplied.

But the ordinance gives citizens the right only to basic information related to their community. Further, it is likely that this does not happen in practice, and that there is a system of control (through Neighborhood Committees) over any citizen who would petition for any such information.

Finally, it should be noted that the National Assembly is considering a draft law to allow citizens to petition at the national (federal) level administrative on decisions and administrative actions.

References:

1) Anti-Corruption Law (55/2005/QH11), Ordinance on exercise of democracy in communes, wards and townships (34/2007/PL-UBTVQH11).

2) VNS (25 October 2011) Budget a hot topic at National Assembly (<http://vietnamnews.vnagency.com.vn/Politics-Laws/216901/Budget-a-hot-topic-at-National-Assembly.html>).

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | **No**

Comments:

There is no indication of a right to appeal. Article 32 of the 2005 Anti-Corruption Law states that: “Public servants and other laborers shall have the rights to request heads of the agencies, organizations or units where they work to supply information on activities of such agencies, organizations or units. Citizens shall have the rights to request presidents of the people’s committees of communes, wards or district townships where they reside to supply information activities of such People’s Committees.” Information must be supplied within 10 days if it hasn’t already been published/supplied in the mass media. If no information is provided, a written statement explaining why the information was denied must be provided to the requesting persons.

References:

Anti-Corruption Law (55/2005/QH11).

Ordinance on exercise of democracy in communes, wards and townships (34/2007/PL-UBTVQH11).

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | **No**

Comments:

A request for information must be addressed to “Presidents of the people’s committees of communes, wards or district townships where [people] reside to supply information activities of such people’s committees” (Article 32 of the 2005 Anti-Corruption Law). On this basis, citizens are entitled to know only basic government records at the commune level, not at the national level.

References:

1) Anti-Corruption Law (55/2005/QH11).

2) Ordinance on exercise of democracy in communes, wards and townships (34/2007/PL-UBTVQH11).

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

0

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

While there is no impediment to citizens obtaining information, they seldom have the possibility of doing so. Only accredited journalists can ask the government for information (for instance, through the weekly press conferences). Officials usually ignore people asking for information when a formal request is issued.

References:

- 1) Former Vietnamese civil servant, Interview on Sept. 27, 2011.
- 2) Interview with Vietnamese expert in law, Sept. 21, 2011.
- 3) Interview with Nguyen Giang, BBC Editor for East Asia Hub & Vietnamese Services, Sept. 23, 2011.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Only accredited journalists can ask the government for information on a weekly basis. Officials usually ignore people asking for information when a formal request is issued.

References:

- 1) Interview with Vietnamese expert in law, Sept. 21, 2011.
- 2) Interview with Nguyen Giang, BBC Editor for East Asia Hub & Vietnamese Services.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is a mix of laziness and negligence in how public officials deal with public requests for information. Their objective is to try to be as uncontroversial as possible. For that reason, they avoid contact.

References:

- 1) Interview with Vietnamese expert in law, Sept. 21, 2011.
- 2) Interview with Nguyen Giang, BBC Editor for East Asia Hub & Vietnamese Services.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Given the difficulty in accessing information in the first place, there is little scope for issuing an appeal.

References:

- 1) Interview with Vietnamese expert in law, Sept. 21, 2011.
- 2) Interview with Nguyen Giang, BBC Editor for East Asia Hub & Vietnamese Services.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Given the difficulty in accessing information in the first place, there is little scope for issuing an appeal.

References:

- 1) Interview with Vietnamese expert in law, Sept. 21, 2011.
- 2) Interview with Nguyen Giang, BBC Editor for East Asia Hub & Vietnamese Services.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

Comments:

Formally, the government might say it will consider issuing an explanation within a reasonable time. However, officials also avoid contact, for example, by ignoring repeated calls for issuing information.

References:

- 1) Interview with Vietnamese expert in law, Sept. 21, 2011.
- 2) Interview with Nguyen Giang, BBC Editor for East Asia Hub & Vietnamese Services.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category 2. Elections

2.1. ³²Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

Comments:

Article 25 of the law reads: "Those persons who are being deprived of the voting right under legally effective judgments or decisions of courts, serving prison terms, temporarily detained or have lost their civil-act capacity, shall not have their names inscribed in the lists of voters."

References:

Law on the election of deputies to the People's councils (No. 12/2003/QH11, November 26, 2003)
(http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=8281).

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

Comments:

Article 85 of the 1992 Constitution of the Socialist Republic of Vietnam states that "the term of each legislature of the National Assembly is five years." This means that citizens are to elect members of the National Assembly every five years, which is "co-extensive" with the term of the president, who is elected by representatives of the National Assembly, as outlined in Article 102.

References:

1) Constitution of the Socialist Republic of Vietnam (1992 as amended Dec. 25, 2001).

2) Law on Election of National Assembly (1997) and its 2001 amendment 31/2001/QH10
(<http://asemconnectvietnam.gov.vn/lawdetail.aspx?lawid=1917>).

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

All adult citizens can vote, except those declared to be mentally unfit, prisoners and those who are determined illegible by a court. In practice, there are several ways for the authorities to stop a person they deem unwanted from voting because they consider that person's political affiliations to be dubious.

References:

1) International Parliamentary Union (Date Unknown). http://www.ipu.org/parline-e/reports/2349_B.htm.

2) Interview with Vietnamese expert in law.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | **25** | 0

Comments:

While ballots are not tampered with directly, as candidates have been preselected, it is the case that proxy voting is informally permitted with a view to increasing voter turnout. In such cases, a household might send only one person. One academic has estimated this practice to increase voter turnout by 20 per cent (Koh, 2005). Also, there have been reports of official organizations voting on behalf of voters who had indicated that they could not make it to the ballot station (Hayton, 2010).

References:

1) Koh, David (2005). Wards of Hanoi, Institute of Southeast Asian Studies.

2) Hayton, Bill (2010). Vietnam – Rising Dragon, YUP.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

Comments:

A mandatory vote for National Assembly deputies takes place every five years. Recent practice show that this is indeed the case.

References:

1) Inter Parliamentary Union (May 2011) (http://www.ipu.org/parline-e/reports/2349_E.htm).

2) Interview with Vietnamese expert in law.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

25

16a. In law, all citizens have a right to form political parties.

Yes | **No**

Comments:

Vietnam has a one-party political system. As stated in Article 4 of the 1992 Constitution of the Socialist Republic of Vietnam, the Communist Party is the sole force leading the country.

References:

Constitution of the Socialist Republic of Vietnam (1992 as amended Dec. 25, 2001).

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes

No

Comments:

Article 54 of the Constitution of the Socialist Republic of Vietnam states that “all citizens regardless of their ethnic origin, sex, social status, belief, religion, educational level, occupation and term of residence have the right to vote upon reaching the age of 18 and stand for election to the National Assembly and the People’s Councils upon attaining the age of 21 as provided by law.”

References:

Constitution of the Socialist Republic of Vietnam (1992 as amended Dec. 25, 2001).

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100

75

50

25

0

Comments:

The Vietnamese Communist Party (VCP) is the leading political force of the country. The constitution does not ban citizens from forming political parties, but it is well understood that no other political parties are allowed. The Socialist Republic of Vietnam had a history of two smaller political parties coexisting with the VCP, but these smaller parties were disbanded after 1987. All citizens may apply to join the VCP, but there are strict selection criteria to be met. A zero score is given as there is no scope for effectively creating a party.

References:

1) Interview with researcher from Singapore.

2) Interview with Vietnamese expert in law.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties’ political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

All citizens can run for office as a constitutional right, but other informal mechanisms limit this right. For instance, for the election of all important political offices of any level, the slate of candidates must be approved by the Vietnamese Communist Party organization for that level and the level immediately above it. There are also processes of peer review to screen candidates, which could be engineered to arrive at the decision of the VCP. This process of screening potential candidates is carried out studiously and serves to weed out candidates that party officials of the given levels deem undesirable.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with Vietnamese expert in law.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There is no opposition party and therefore there is no political representation other than the Vietnamese Communist Party and independents (only one or two in the present legislature) and non-party members. This however does not mean there is a lack of diversity in the voices now represented in the legislature.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with Vietnamese expert in law.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

0

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes

No

Comments:

There are electoral agencies established ad hoc to oversee and organize elections. The overall agency in charge is usually the electoral commission while electoral committees organize the election, taking care of the logistics. The electoral commission makes the substantively important decisions, such as declaring the validity of elections in the constituencies under its charge and deciding on the legal credentials of candidates. The Fatherland Front oversees political credentials of the candidates by screening them when they are nominated and the Fatherland Front then decides on the slate of candidates. Top Vietnamese Communist Party members of any level usually also are the top leaders of the Fatherland Front and the electoral commission and electoral committee of that level.

References:

1) 1997 Law on Election of Deputies to the National Assembly.

2) Law No. 31/2001/QH10 and Law No. 13/2003/QH11 on Election of Deputies to the People's Councils.

3) Law No. 63/2010/QH12 Amending and supplementing a number of articles of the law on election of deputies to the national assembly and the law on election of deputies to the people's councils.

4) Interview with researcher from Singapore.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

30

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes

No

Comments:

As stated in Article 1 of the Law of the Vietnam Fatherland Front, the VFF operates under the wing of the Party: "The Vietnam Fatherland Front is a part of the political system of the Socialist Republic of Vietnam under the leadership of the Communist Party of Vietnam, a political platform for people." The Administration expresses the people's will and aspirations through a constituent national unity block. Bringing into play the people's right to be their own masters, the platform is a venue for the consultation, coordination and unity of action of its member organizations. Its contribution is to safeguard the national independence, sovereignty and territorial integrity by successfully exercising the cause of modernization and industrialization of the country in striving for the objective of a strong country, a prosperous people, and a just and civilized society."

References:

- 1) Law of the Vietnam Fatherland Front (1999) (<http://www.mattran.org.vn/home/gioithieumt/luatmt/lmttqvn1.htm>).
- 2) Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).
- 3) Law No. 31/2001/QH10 and Law No. 13/2003/QH11 on Election of Deputies to the People's Councils.
- 4) Law No. 63/2010/QH12 Amending and supplementing a number of articles of the law on election of deputies to the National Assembly and the law on election of deputies to the people's councils.

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100

75

50

25

0

Comments:

Appointments to these agencies are by elections, but the candidates are screened and approved by the Vietnamese Communist Party. The VCP organization decides on the composition of the electoral commission and the electoral committee just before the election (usually 90 days), while the officers of the Fatherland Front are elected at congresses held every five years.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Officeholders in the Fatherland Front are full-time staff. Staff members of the electoral commissions and electoral committees are part-time. The electoral bodies are disbanded after the elections are completed, and the staff of these electoral bodies usually hold full-time jobs elsewhere.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Some information is made available to the public, but sensitive information is concealed. The electoral bodies have to make public their decisions and explanations. The Fatherland Front conducts most of its candidate screening meetings in the open, but some screening is carried out behind closed doors.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

“Penalties” need to be appropriately defined and put in context. They may vary according to the offense. The laws against dishonesty, for example, penalize electoral fraud. In practice, though, candidates are rigorously screened, including for an understanding of their ethics. Thus, the system works to prevent any conflict or problems and is heavily controlled by the Vietnamese Fatherland Front. Ultimately, therefore, there is little scope for knowing whether penalties are truly enforced.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.
- 3) Interview with Vietnamese activist.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

50

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There is a system of voter registration, but it is not fully computerized or integrated into a national system. The system deals with migrant voters in a very ad hoc manner, and not every electoral committee knows the full number of voters in every polling district. In practice, representatives from each neighborhood gather up voters and invite them to vote at people's committees, where there are voters lists.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

Comments:

The Law on Election allows citizens to send complaints and denunciations.

Article 64 states, “Before opening ballot boxes, election teams must compile statistical data, write minutes, seal the unused ballots, and invite two voters, who are not candidates, to witness the counting of votes. Candidates and representatives of the organs, organizations, and units that have recommended candidates, or the people acting as their proxies, have the right to witness the counting of votes and to make complaints about the counting. Press reporters can witness the vote counting”.

The responsible body for dealing with complaints about elections is a special Standing Committee set up by the National Assembly and part of the government, the Vietnamese Fatherland Front Central Committee.

Article 78 reads: “All complaints about the results of the election must be sent to the electoral council no later than 10 days from the day the electoral council makes public the electoral results. ... The electoral council is responsible for considering and resolving complaints about electoral results within 30 days from the day it has received these complaints. Decisions of the electoral council on resolution of complaints are final.”

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The electoral commission has the final say on election results. There has never been any judicial challenge, and none is provided for in the constitution.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Military and security forces in theory remain neutral, and members are free to vote for anyone on the list. However, the slate of candidates that is screened and approved result from the influence of assertive officers who “advise” their subordinates on who to vote for. The military and security forces ensure that the election process happens smoothly.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

Press reporters can witness the vote counting (Article 64).

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

There are no independent election observers. There is a reporting system that reports from every polling station right up to where it is necessary.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

27 2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are limits on individual donations to political parties.

Yes | No

Comments:

There is no mechanism for donating to the Communist Party.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | **No**

Comments:

There is no mechanism for donations to the Communist Party.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | **No**

Comments:

There are no limits on how much the Communist Party can spend.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | **No**

Comments:

In the Law on Election, there is no mechanism for donations to the Communist Party.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | **No**

Comments:

There is no information on how the party is financed, let alone whether the accounts are audited by an independent group or how inconsistencies or problems are dealt with.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | **No**

Comments:

There is no information on how the party is financed, let alone whether the accounts are audited by an independent party.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

Yes

No

Comments:

There is no information provided on this in either of the legal documents. Part of the explanation may be that election campaigns, while they do exist at the local level, may not require large financing efforts due to the nature of the political system. Also, there does not seem to be a mechanism to formally donate to the Communist Party as a whole.

References:

1) Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes

No

Comments:

There is no information provided on this in either of the legal documents. Part of the explanation may be that election campaigns, while they do exist particularly at the local level, may not require large financing efforts due to the nature of the political system. Also, there does not seem to be a mechanism to formally donate to the Communist Party as a whole.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | **No**

Comments:

There is no information provided on this in either of the legal documents. While there is no formal system to donate either to individual candidates or the Communist Party as a whole, there is also no formal system for declaring donations.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

There is no information provided on this in either of the legal documents. There is no formal system to donate either to individual candidates or the Communist Party as a whole, and there is also no formal system for auditing donations.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | **No**

Comments:

There is no information provided on this in either of the legal documents. There is no formal system for donating either to individual candidates or the Communist Party as a whole, and there is also no formal entity in charge of monitoring.

References:

Law on Election (63/2010/QH12) (<http://coombs.anu.edu.au/~vern/luat/english/Law-nat-assem-elect.txt>).

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

17

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | **50** | 25 | 0

Comments:

No alternative political parties are allowed; therefore, this question could be better asked about individuals' support for political movements or informal groups. Individuals are free to fund any political movement or informal groups, but their activities would be curtailed if they ever become a threat to the Vietnamese Communist Party and the state.

State regulation mandates that there cannot be any external funding. The party owns land and assets. This is a channel through which they get some funding in addition to the state budget and party member dues.

References:

1) Interview with researcher from Singapore.

2) Interview with employee from international organization.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits. However, corporations usually do not donate to the election or to candidates, given that their expenses are low. Some government institutions have extra-budgetary income. For example, the Vietnam Fatherland Front receives income from leasing land.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

The issue of the limit has never been raised although there are statistics, if they are true, that indicate how much money the state was spending on each candidate in the election. During the 1997 elections, it is claimed that total expenses for the National Assembly was US\$ 17,000, or US\$ 25 per candidate. These costs include payment to election workers and campaign budgets. These figures are still estimated to be relevant today. There is no publicly available audit of the party's finances, so nobody knows what if any limits there are on total party expenditures are or the real sources of the party's budget.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.
- 3) Reuters, 16 July 1997, Cheating Reported ahead of Vietnam elections.
- 4) Vietnamese activist

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Independent investigations can be initiated, especially if the Fatherland Front or the Electoral Commission feels that candidates are spending money in a big way or have sources of money to fund campaign that are not clear. The central committee of the party eventually looks into party members, but this type of information is not disclosed to the public.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Financial monitoring is done by asking the offending candidate to withdraw or by imposing a withdrawal. In cases where financial offenses have been detected, party members have been asked to repay.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Contributions are not audited. The Vietnamese Communist Party has funds for the elections drawn from government funds.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview with employee from international organization.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

5

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | **25** | 0

Comments:

In reality, there is no law regulating individual candidates running for the elections, so there is little likelihood of there being any limits. However, nobody has been known to donate to political candidates or to do so openly. Donations might not be for an electoral contest itself but could be to help a candidate draw attention to himself.

References:

- 1) Interview with researcher from Singapore.
- i2) Interview with national advisor from international organization

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party

groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable would be the more appropriate response. Corporations are not known to donate to individual candidates for the specific purpose of running for elections.

References:

- 1) Interview with researcher from Singapore.
- 2) interview with national adviser, international organization.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable to current political system. The Vietnam Fatherland Front, which would technically be in charge of this, has not as of yet investigated the financing of individual candidates.

References:

1) Koh, David (2008). 'Leadership Changes at the 10th Congress of the Vietnamese Communist Party', Asian Survey, Vol.48, No.4, pp.650-672.

2) Malesky, Edmund and Paul Schuler (2009). Paint-by-Numbers Democracy: The Stakes, Structure and Results of the 2007 Vietnamese National Assembly Election, Journal of Vietnamese Studies, Vol.4, No.1, pp.1-48.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable to current political system. The Vietnam Fatherland Front, which would technically be in charge of this, has not as of yet investigated the financing of individual candidates.

References:

1) Koh, David (2008). 'Leadership Changes at the 10th Congress of the Vietnamese Communist Party', Asian Survey, Vol.48, No.4, pp.650-672.

2) Malesky, Edmund and Paul Schuler (2009). Paint-by-Numbers Democracy: The Stakes, Structure and Results of the 2007 Vietnamese National Assembly Election, Journal of Vietnamese Studies, Vol.4, No.1, pp.1-48.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable to current political system. The Vietnam Fatherland Front, which would technically be in charge of this, has not as of yet investigated the financing of individual candidates.

References:

1) Koh, David (2008). 'Leadership Changes at the 10th Congress of the Vietnamese Communist Party', Asian Survey, Vol.48, No.4, pp.650-672.

2) Malesky, Edmund and Paul Schuler (2009). Paint-by-Numbers Democracy: The Stakes, Structure and Results of the 2007 Vietnamese National Assembly Election, Journal of Vietnamese Studies, Vol.4, No.1, pp.1-48.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Vietnamese Communist Party does not disclose such data. It reports its finances to the Central Committee, and the reporting trail ends there. The Electoral Commission usually submits a report to the corresponding legislature/people's committee on the revenue/expenditure for the election.

References:

1) Interview with researcher from Singapore.

2) Interview with employee from international organization.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Vietnamese Communist Party does not provide routine access to its financial records.

References:

- 1) Sidel, Mark (2009). The Constitution of Vietnam – A Contextual Analysis, Oxford: Hart Publishing.
- 2) Hayton, Bill (2010). Vietnam – Rising Dragon, New Haven: YUP.
- 3) Interview with employee from international organization.
- 4) <http://english.vietnamnet.vn/en/politics/6031/difficult-to-check-asset-declaration-of-na-candidates.html>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Vietnamese Communist Party does not provide routine access to its financial records.

References:

- 1) Interview with researcher from Singapore.
- 2) Interview from employee of international organization.
- 3) <http://english.vietnamnet.vn/en/politics/6031/difficult-to-check-asset-declaration-of-na-candidates.html>.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The Vietnamese Communist Party does not provide routine access to its financial records.

References:

- 1) Sidel, Mark (2009). The Constitution of Vietnam – A Contextual Analysis, Oxford: Hart Publishing.
- 2) Hayton, Bill (2010). Vietnam – Rising Dragon, New Haven: YUP.
- 3) <http://english.vietnamnet.vn/en/politics/6031/difficult-to-check-asset-declaration-of-na-candidates.html>.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Candidates can provide as much information as they want to the public, but the amount of disclosure is usually restrained. The Electoral Commission and the Fatherland Front usually demand full disclosure of the candidate's personal history.

References:

1) Interview with researcher from Singapore.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Individual candidates do not provide routine access to their financial records. There is no formal way to request these.

References:

1) Sidel, Mark (2009). *The Constitution of Vietnam – A Contextual Analysis*, Oxford: Hart Publishing.

2) Hayton, Bill (2010). *Vietnam – Rising Dragon*, New Haven: YUP.

3) <http://english.vietnamnet.vn/en/politics/6031/difficult-to-check-asset-declaration-of-na-candidates.html>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no routine way to access individual candidates' financial records. This indicator should not be scored at all, as it would be impossible to estimate how much such access would cost in the hypothetical eventuality that it were available.

References:

- 1) Sidel, Mark (2009). The Constitution of Vietnam – A Contextual Analysis, Oxford: Hart Publishing.
- 2) Hayton, Bill (2010). Vietnam – Rising Dragon, New Haven: YUP
- 3) <http://english.vietnamnet.vn/en/politics/6031/difficult-to-check-asset-declaration-of-na-candidates.html>.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

This indicator should not be scored based on speculation about the quality of the records, given that there is no formal means of obtaining them.

References:

- 1) Sidel, Mark (2009). The Constitution of Vietnam – A Contextual Analysis, Oxford: Hart Publishing.

2) Hayton, Bill (2010). Vietnam – Rising Dragon, New Haven: YUP.

3) <http://english.vietnamnet.vn/en/politics/6031/difficult-to-check-asset-declaration-of-na-candidates.html>.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ³⁴Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

No

Comments:

Article 1 reads: "Individuals, state agencies and organizations have, under law, the right to initiate administrative lawsuits to request the court to protect their legitimate rights and interests."

References:

1996 Ordinance On The Procedures For The Settlement Of Administrative Cases

<http://www.wipo.int/wipolex/en/details.jsp?id=6688>.

No. 29/2006/PL-UBTVQH11, Ordinance amending and supplementing a number of articles of the Ordinance on procedures for the settlement of administrative cases

<http://www.wipo.int/wipolex/en/details.jsp?id=6692>.

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

19

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

The government as a whole is accountable to the National Assembly and the president. In 2007, the National Assembly introduced a “question time” to quiz Cabinet ministers, and this now happens biannually. Although the prime minister can be summoned to justify and defend his decisions, this has seldom happened in practice and has very little influence on how decisions are made.

References:

Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.

VNS, Oct. 14, 2011, NA prepares for Second Session, Vietnam News

<http://vietnamnews.vnagency.com.vn/Politics-Laws/216522/NA-prepares-for-second-session.html>.

U.S State Department, June 3, 2011, Background Note: Vietnam

<http://www.state.gov/r/pa/ei/bgn/4130.htm>.

Malesky, Edmund J. and Schuler, Paul J., Measuring Accountability in Authoritarian Legislatures: The Representativeness of Vietnamese National Assembly Delegates.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes

No

Comments:

The law that prescribes the organization and operation of the People's Courts does not establish judicial review of the executive.

References:

Law on Organization of People's Court (No. 33/2002/QH10)

(http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020002_en/lawdocument_view).

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100

75

50

25

0

Comments:

In regard to normative decisions, the judiciary is not assigned the power to interpret, review and evaluate the legitimate and constitutional nature of normative legal documents (Asia Foundation et.al. 2009, p.8).

References:

1) Asia Foundation and PLD (2009). The Mechanism to Settle Administrative Complaints in Vietnam. <http://asiafoundation.org/resources/pdfs/VNAdminComplaintSettleReportEnglish.pdf>.

2) Interview with staff from Swedish Embassy, Hanoi.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

A “not applicable” score would be more realistic and useful in assessing this indicator. While the use of executive orders is routine, it does not render the legislature useless and is not “abused” by the executive. Rather, the use of executive orders issued by the prime minister is an accepted institutional norm.

References:

- 1) Interview with Ph.D. candidate in political science, University of California.
- 2) Interview with Vietnamese expert in law.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

The Anti-Corruption Law in Article 3 designates the officials that fall under the law, and this would seem to include the prime minister or president and “public servants” and “persons assigned tasks or official duties.”

Yet, it would be negligent to indicate “Yes” to this question as there is no mechanism to prosecute the state/government heads considering that they, senior party members, ultimately would decide on their own prosecution and immunity.

Nevertheless, strictly in “law” they can be prosecuted. (See also interview with Vietnamese expert in law.)

References:

Anti-Corruption Law (55/2005/QH11).

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes

No

Comments:

The Anti-Corruption Law in Article 3 designates the officials that fall under the law as “public servants” and “persons assigned tasks or official duties.” This would seem to include the ministers.

Yet, it would be negligent to indicate “Yes” to this question as there is no mechanism to prosecute ministers, considering that they are senior party members who ultimately would decide on prosecution and immunity.

While there have been prosecutions, most notably of the deputy transport minister (PMU18), this cannot be considered as routine, and the continuing role of the party in allowing prosecutions is clear.

Nevertheless, strictly in “law” they can be prosecuted. (See also interview with Vietnamese expert in law.)

References:

Anti-Corruption Law (55/2005/QH11).

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

25

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes

No

Comments:

Article 5 of the law states that persons with positions and/or powers need to declare their property. According to Article 44, other

people needing to make property declarations include:

- a) Officials holding the rank of deputy head of section of people's committees of rural districts, urban districts, provincial capitals or towns or higher and equivalent rank in agencies, organizations and units.
- b) A number of officials and public employees in communes, wards and district townships and persons managing state budgets and properties or directly involved in handling affairs of agencies, organizations, units and individuals.
- c) Candidates for the National Assembly and People's Councils.

Article 45 states which properties must be declared. These include: houses, land use rights, precious metals and gemstones worth 50 million VND or more; properties and foreign accounts; and taxable incomes.

Article 6 of Decree 37 states that deputy heads of sections or higher positions in agencies, organizations, and units must make property declarations, which includes the prime minister and president.

References:

Law no.55/2005/QH11, also known as the 2005 Anti-Corruption Law.

Decree 37/2007/ND-CP on asset and income transparency

<http://luatriminh.vn/en/law-dissemination/legal-documents.html>.

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes

No

Comments:

Article 5 of the Anti-Corruption Law states that persons with positions and/or powers need to declare their property. According to Article 44, others needing to make property declarations include:

- a) Officials holding the rank of deputy head of section of people's committees of rural districts, urban districts, provincial capitals or towns or higher and equivalent rank in agencies, organizations and units.
- b) A number of officials and public employees in communes, wards and district townships; persons managing state budgets and properties or directly involved in handling affairs of agencies, organizations, units and individuals.
- c) Candidates for the National Assembly and people's councils.

Article 45 states which properties must be declared. These include: houses, land use rights; precious metals and gemstones worth 50 million VND or more; properties and foreign accounts; and taxable incomes.

Article 6 of Decree 37 states that ministers must declare their assets.

References:

Law no.55/2005/QH11, also known as the 2005 Anti-Corruption Law.

Decree 37 (37/2007/ND-CP) on asset and income transparency

<http://luatriminh.vn/en/law-dissemination/legal-documents.html> .

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | **No**

Comments:

Article 40 of the Anti-Corruption Law discusses the issue of gifts and hospitality, but only for public servants.

References:

Law no.55/2005/QH11, also known as the 2005 Anti-Corruption Law.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | **No**

Comments:

There is no such requirement.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Decree No 37/2007/ND-CP on asset and income transparency
<http://luatriminh.vn/en/law-dissemination/legal-documents.html>.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes

No

Comments:

Although the Anti-Corruption Law states that public servants cannot be involved in setting up private enterprises, there is no such provision for post-government employment in the private sector, and this is a well-known practice.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100

75

50

25

0

Comments:

As stated in the previous question, there are no such restrictions. Heads of state and ministers are involved in the private sector, both during government employment (through relatives) and after leaving public office. At higher levels, it doesn't really make sense to leave government.

References:

1) Interview with staff from the Swedish Embassy, October 2011.

2) Interview with former Vietnamese civil servant, September 2011.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Gifts and hospitality are part of the Vietnamese culture, and people in lower branches may rely a lot on this. A lot of gifts may be given from people in a lower-level positions to their superiors on Tet or other holidays. "Not applicable" might therefore be a better suited response.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Ph.D. candidate in political science, University of California.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Assets are not audited.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | **No**

Comments:

While there the law prescribes disclosure, there does not seem to be a formal mechanism to publicize them other than by making a formal, written request (Article 9 of Decree 120).

References:

Anti-Corruption Law (55/2005/QH11).

Decree No. 120/2006/ND-CP of 20 October 2006 guiding the Anti-Corruption Law.

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

This is an issue related to the access of information in general. As in many other cases, it is difficult for citizens to access asset disclosures by heads of state.

Decree 68 of 2011 states that civil servants need to file asset disclosures within their offices without disclosure to the public.

References:

1) Interview with staff from the Embassy of Sweden, October 2011.

2) Interview with former Vietnamese civil servant, October 2011.

3) Interview with employee from international organization, October 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As mentioned in the previous question, it is not so much that costs are prohibitive, but that this information is out of reach of most people.

References:

1) Interview with staff from the Embassy of Sweden, October 2011.

2) Interview with former Vietnamese civil servant, October 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

As per the previous questions, this question is irrelevant in this context.

References:

- 1) Interview with staff from the Embassy of Sweden, October 2011.
- 2) Interview with former Vietnamese civil servant, October 2011.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The government bureaucracy really is an extension of the ruling party with very few boundaries in between. In practice, all government cadres are party members, especially at the highest levels (prime minister, ministers, provincial leaders, etc). High-level appointments such as judges must be approved by a special party committee. The party is financed through the state budget, as well as its own business activities, and to a minor extent, by member contributions.

References:

- 1) Hayton, Bill (2010). Vietnam – Rising Dragon, New Haven: YUP.
- 2) Sidel, Mark (2009). The Constitution of Vietnam – A Contextual Analysis, Oxford: Hart Publishing.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government

funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

0

32a. In law, the judiciary can review laws passed by the legislature.

Yes | **No**

Comments:

There are no courts with the jurisdiction to review the output of the National Assembly. There is no “constitutional court.”

References:

No. 33/2002/QH10 of April 2, 2002, Law on organization of the People’s Court
http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020002_en/lawdocument_view.

Interview with Vietnamese expert in law.

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | **0**

Comments:

The judiciary does not review either draft or final laws. Legal experts may however be asked informally for their advice.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | **No**

Comments:

Although a member of the legislature can be prosecuted, Article 99 of the Constitution states that “National Assembly representatives may not be arrested or prosecuted without the consent of the National Assembly and, when the latter is not in session, without the consent of the Standing Committee of the National Assembly.” In other words, the legislative branch controls who, from within its ranks, can or cannot be investigated.

References:

1992 Constitution as amended in 2001.

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

The legislation mandates that full-time deputies, candidates for the National Assembly and sub-national parliamentarians and candidates for sub-national parliaments need to declare properties such as land and houses, precious metal over a certain value and properties or taxable income.

References:

Anti-Corruption Law, Law no.55/2005/QH11.

Decree 37/2007/ND-CP on asset and income transparency

<http://luatriminh.vn/en/law-dissemination/legal-documents.html>.

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

The law prohibits public servants from involvement in the running or administration of a private enterprise, a limited liability company, joint stock companies, etc. (Article 37). However, there is no such provision for national legislators who retire.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

The law is relatively vague in this regard. Article 40 concerns the provision of gifts and hospitality to "public servants." Insofar as a public servant is an elected or appointed holder of a public office, then there are clear restrictions about giving and receiving

gifts and hospitality. The law, however, does not explicitly mention that this applies to any other member of the executive, judiciary or legislature.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

Comments:

The law does not contain any provision regarding the auditing of the legislative branch or self-auditing.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

Any rule that exists regarding post-government employment is not “particularly designed with National Assembly members in mind” (Gainsborough). Rules are not routinely enforced and while in office, legislators may continue their work in the private sector through their relatives. A person can easily stay working for the Government for all of his/her life.

References:

1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Country Study Report: Vietnam..

2) Interview with Vietnamese expert in law.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Any rule on gifts is not “particularly designed with National Assembly members in mind” (Gainsborough). Gifts and hospitality are relatively common, and there are many different instances in which this occurs.

References:

- 1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Country Study Report: Vietnam.
- 2) Interview with Vietnamese expert in law.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure does not happen.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes

No

Comments:

There are no such provisions. Article 11 refers to assets of party members: "Asset and income declaration sheets of cadres and civil servants who are party members shall be managed in accordance with this decree and the party's regulations; where the party regulations require the publication of asset and income declaration sheets, the publication shall be conducted in strict accordance with those regulations."

References:

Decree on Asset and income transparency, No: 37/2007/ND-CP
<http://luattrinh.vn/en/law-dissemination/legal-documents.html>

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No law grants citizen access. This would be extremely difficult, not least because candidates for the National Assembly are only announced three weeks before the elections.

References:

- 1) Ph.D. candidate in political science, University of California.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No law grants citizen access. Should this be possible (see previous question), it would probably imply having good contacts, and may or may not involve a cost. However, the score above does not entirely reflect this.

References:

- 1) Ph.D. candidate in political science, University of California.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | **0**

Comments:

It is difficult to ascertain the quality of assets disclosure records, for reasons explained in previous questions. One can expect, however, that if and when assets are disclosed within restricted circles, this is held confidential.

References:

- 1) PhD Candidate and political science, University of California.
- 2) Nguyen Thi Kim Lien, Governance Advisor, UK Department for International Development
- 3) Renwick Irvine, Team Leader, Governance and Social Development, UK Department for International Development

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

42

35a. In law, citizens can access records of legislative processes and documents.

Yes | **No**

Comments:

There is no clear indication in the law that citizens have a legal right to access legislative records, although citizens have obtained access in some instances.

Article 67 of the law states that the National Assembly meets openly but that in case of necessity, at the request of the state president, the National Assembly Standing Committee, the prime minister or at least one-third of the total number of National Assembly deputies, the National Assembly may decide to meet behind closed doors. There is a secretariat in charge of recording the minutes of each National Assembly meeting (Article 86).

References:

Law on Organization of National Assembly, Article 67. No. 30/2001/QH10
<http://www.asianlii.org/vn/legis/laws/loootna442/>.

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Some debates are televised, while some records are available on the National Assembly Web portal or through other governmental resources. Some records also may be available through non-governmental resources. How long records take to obtain is arbitrary, with the possibility of delay.

References:

- 1) Interview with a Ph.D. candidate in political science, University of California.
- 2) Interview with national adviser, international organisation.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

Records are generally available and free.

References:

1) Interview with a Ph.D. candidate in political science, University of California.

2) Interview with national adviser, international organization.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

18

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

17

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes

No

Comments:

There is no public oversight system for the appointment of judges. The chief judge of the Supreme Court is appointed by the National Assembly, while his deputies and specialized judges are appointed by the state president (Article 40 of Law on Organization of People's Court).

In the ordinance, appointments are based on the following:

- Demonstrate loyalty to the motherland and the Constitution of the Socialist Republic of Vietnam.
- Have good morality, not be corrupt and be truthful.
- Firmly defend socialist legality.
- Have a bachelor of law degree and be trained professionally in trial work.
- Have judicial capacity.
- Have good health for the exercise of the assigned tasks.
- Have a number of years of legal work experience: (i) A Supreme Court appointment must have five years of trial experience in provincial courts or 15 years' relevant experience; (ii) a provincial court judge must have five years of trial experience in district courts or 10 years of relevant experience; and (iii) a district court judge four years' experience.

References:

Law on Organization of People's Court (33/2002/QH10).

2002 Ordinance on Judges and Assessors of People's Courts.

Inter-Circular No. 01/2003/TTLT-TANDTC-BQP-BNV-UBTWMTTQVN dated April 1, 2003, of the Supreme People's Court, Ministry of National Defence, and Central Committee of Vietnam's Fatherland Front.

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

The system of appointment is relatively complex. A district-level judge will be appointed by the chief justice of the Supreme People's Court, based on the advice/guidance of the relevant local people's council and party authorities. The latter need to check the "ethics" of the candidate, a very loose term which probably means belonging to the party first and foremost. In addition to this, some professional criteria matter, such as education and experience (for example, a district court judge must have four years' experience; a provincial court judge must have five years of trial experience in district courts, etc.), but even these are sometimes waived. Some appointments are based on merit, and some are based on nepotism.

References:

1) Nicholson, P, Nguyen, H, Q, 2005, The Vietnamese Judiciary: the politics of appointment and promotion, Pacific Rim Law & Policy Journal, 14(1).

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | **No**

Comments:

According to the Law on Organization of People's Court, there is no formal confirmation mechanism.

References:

Law on Organization of People's Court (33/2002/QH10).

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

38

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

Article 224 of the Criminal Procedure Code prescribes: "A judgment must describe the commission of the offense by the defendant, analyze evidences arraigning and exculpating the defendant, determine where or not the defendant is guilty, and if guilty, which offense he/she has committed under which article and clause of the Penal Code, circumstances aggravating and extenuating his/her penal liability and how should they be handled. If the defendant is not guilty, the judgment must clearly state the grounds to confirm that the defendant is not guilty and deal with the restoration of his/her honor, legitimate rights and interests."

References:

Criminal Procedure Code (19/2003/QH11).

Civil Procedure Code (24/2004/QH11).

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

In general, a judge is required to discuss the case with a council of judges in the courts, which is supposed to ensure he/she applies the relevant laws and takes into consideration all relevant factors. Together with the people's assessors (a jury), a decision is taken, though there is a high likelihood of this being agreed on even before the trial, the hearing or a formal procedure.

References:

Interview with staff from Swedish Embassy Hanoi, October 2011.

Interview with international policy adviser.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

As described in Article 9 of the Law on Organization of the People's Procuracies, the directors of the local people's procuracies — the Vietnamese judiciary — are subject to the supervision of the people's councils of the same levels; have the responsibility to report on their activities before the people's councils; and must answer questions, petitions and requests of people's council deputies.

References:

No. 34/2002/QH10, Law on Organisation of the People's Procuracies, Article 9:

http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10198.

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | **No**

Comments:

This question is irrelevant in the Vietnamese context, where everything is political, and where there is no specific disciplinary agency.

Appointment of the top leadership of the Supreme People's Procuracy depends on the National Assembly, which receives a proposal from the president. Selection of procurators and investigators within the Supreme People's Procuracy is determined by the National Assembly Standing Committee (Article 43) . Moreover, they must be loyal to the Fatherland Front.

References:

Law on organisation of People's Procuracies (No. 34/2002/QH10 of April 2, 2002)

http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020003_en/lawdocument_view.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | **0**

Comments:

As stated previously, there is no real disciplinary agency, other than through internal/peer mechanisms (i.e. a provincial court judge is reprimanded by provincial authorities, such as other judges at the same level). Should a judge be found guilty of corruption, he would be referred to the police

References:

1) Interview with international policy adviser.

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no such agency. Judges are appointed for five years, and every term, the judicial selection committees reviews moral issues. If a judge was reported for corruption, an investigation would be initiated.

References:

- 1) Interview with international policy adviser.
- 2) Nguyen Hung Quang, managing prtner, NHQUANG & ASSOCIATES.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

Article 6 of Decree 37 mandates that judges must declare their assets. Decree 68 also states that assets must be declared to organization and personnel sections within 10 days of the annual November 30 deadline. All declaration must be completed by December 31.

References:

1) Decree No 37/2007/ND-CP on asset and income transparency
<http://luattriminh.vn/en/law-dissemination/legal-documents.html>

2) Decree No. 68/2011/ND-CP of August 08, 2011, amending and supplementing a number of articles of the Government's Decree No. 37/2007/ND-CP of March 9, 2007, on property and income transparency.

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes

No

Comments:

Article 84 addresses corruption activities by judges. Article 40, which also regulates gift giving, applies to such professionals.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes

No

Comments:

Although judges must declare their assets and incomes, there is no requirement for independent auditing of the declarations. A request for asset and income verification of judges can be undertaken if, upon preliminary inspection, there is proof that a judge is engaged in fraudulent activities. The Supreme People's Court is responsible for deciding whether to verify assets and income (Article 17).

References:

1) Decree No 37/2007/ND-CP on asset and income transparency
<http://luattriminh.vn/en/law-dissemination/legal-documents.html>

2) Decree No. 68/2011/ND-CP of August 08, 2011, amending and supplementing a number of articles of the Government's Decree No. 37/2007/ND-CP of March 9, 2007, on property and income transparency.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

The above law does not have such provisions for civil servants, and thus judges.

References:

Law on Cadres and Civil Servants (22/2008/QH12) (<http://civillawnetwork.wordpress.com/2010/01/26/law-on-cadres-and-civil-servants/>).

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are very few barriers to prevent judges from taking on a job in the private sector after their service in the judiciary.

References:

1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.

2) Meeting with staff from Swedish Embassy Hanoi, October 2011.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no specific rules for judges, other than those that apply to public servants. Gifts and hospitality are ingrained in Vietnam, and that trickles through government and day-to-day life.

References:

- 1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.
- 2) Meeting with staff from Swedish Embassy Hanoi, October 2011.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

This is unlikely to happen in practice.

References:

- 1) Interview with international policy adviser.
- 2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes

No

Comments:

Decree 37 only mentions that the person in charge of managing asset and income declaration sheets must provide these to agencies, organizations and units when requested. The citizens are notably absent. Decree 68 only mandates that assets are disclosed to an individual's organization and personnel management for 30 days, not to the citizenry.

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Decree No 37/2007/ND-CP on asset and income transparency
<http://luatriminh.vn/en/law-dissemination/legal-documents.html>.

Decree 68/2011/ND-CP, regulating how officials are required to disclose their properties and income for anti-corruption purposes.

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This question is irrelevant because citizens are not able to access this type of information. Not applicable would be a more correct response.

References:

1) Interview with international adviser.

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This question is irrelevant because citizens are not able to access this type of information. Not applicable would better reflect the situation in Vietnam.

References:

1) Interview with international policy adviser.

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

This question is irrelevant because citizens are not able to access this type of information. Not applicable would better reflect the situation in Vietnam.

References:

i1) Interview with International policy adviser.

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

Article 3 states that the National Assembly decides the draft state budget, the allocation of the central state budget and ratifies the state budget's accounts. Article 15 states that the National Assembly has the powers to "make laws and amend laws in the field of state finance and budget."

References:

Law No. 01/2002/QH11, or State Budget Law.

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

According to Gainsborough, "The National Assembly now approves total revenue and expenditure and allocations to ministries, central agencies and provinces. It can also amend the budget. The National Assembly is also becoming more involved in financing norms. The Standing Committee (that is, the permanent body of the legislature) now approves financial norms prior to their issuance" by the Ministry of Finance. The National Assembly normally needs to approve projects over a certain threshold, though this is likely to be relatively formalistic, with most decisions being taken beforehand.

References:

1) Gainsborough, M, 2006, NIS.

2) Interview with a Ph.D. candidate in political science, University of California.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

There is a full-time staff for the National Assembly and the standing committees.

References:

1) Interview with a Ph.D. candidate in political science, University of California.

2) Interview with national adviser, international organization.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

33

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | **25** | 0

Comments:

The budget first goes to the National Assembly, then to people's committees to be discussed. However, there is little time to negotiate or analyze the budget. Moreover, 60 percent to 70 percent of National Assembly members are part-time only, making it hard to form coalitions. Even when there are opposing voices, they are easily ignored. The process is not open to the public.

References:

1) Interview with a Ph.D. candidate in political science, University of California.

2) World Bank (2010), "Vietnam Development Report 2010: Modern Institutions", Joint Donor Report to the Vietnam Consultative Group Meeting, World Bank

<http://www.presscenter.org.vn/en/images/WBreport2010.pdf>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of

individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

Comments:

At the national level, citizens are not able to input at budget hearings directly, especially as there is a short time between when one finds out when the budget is being debated and when it is voted on.

There are permanent offices of the National Assembly in every province, tasked with receiving citizens. In addition, there is a requirement for delegates to go back to their provinces at least four times a year to receive opinions, but who turns up at these hearings and/or what is their quality remains an open question.

Perhaps the best example is that of the commune level, where budgets and final accounts need to be publicized, and citizens are allowed to comment.

References:

- 1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.
- 2) Interview with Ph.D. candidate in political science, University of California.

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

Comments:

This information is typically available through the Ministry of Finance and is of fairly good quality.

References:

- 1) Interview with Ph.D. candidate in political science, University of California.
- 2) Interview with national policy adviser, international organization.

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

Comments:

There is both an Economic Commission and a Financial and Budgetary Commission, with responsibility for oversight of public funds. Article 28 of the 2007 law states that part of the Economic Commission's duty is to "assume the prime responsibility for verifying the state's socioeconomic development programs, projects and plans, and the government's reports on implementation of socioeconomic development tasks and plans."

The Financial and Budgetary Commissions has the powers to "verify bills and draft ordinances in the financial and budgetary domain and other drafts as assigned by the National Assembly or its Standing Committee", as well as to "assume the prime responsibility for verifying state budgeted estimates, central budget allocation plans and state budget finalization."

References:

The Law on Organisation of National Assembly, No 30/2001/QH10.

Law Amending and Supplementing a number of articles of the Law on Organization of the National Assembly, No 83/2007/QH11.

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Committee on Finance and Budget Affairs (CFBA) has the function of reviewing and approving the annual budget allocation plan and giving an opinion on longer-term plans like national target programs, national programs, socioeconomic development plans, etc. These plans are drafted by government agencies like Ministry of Finance and the Ministry of Planning and Investment. As part of this, therefore, it is likely that department heads submit reports to the CFBA, though they might not need to stand in front of committees and/or the Assembly. Also, committees can't call for hearings. The only way a more formal questioning can happen is through the query session in the National Assembly.

References:

- 1) Interview with Ph.D. candidate in political science, University of California.
- 2) Interview with national adviser, international organization.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

This question doesn't apply to Vietnam, as there are only very few independent candidates in the current legislature, and none of them is known to take part to the CFBA (Committee for Finance and Budget Affairs) . As explained earlier, their formal participation in the electoral process needs to be approved, shedding doubt on how independent they truly are.

References:

- 1) Interview with Ph.D. candidate in political science, University of California.
- 2) Interview with national policy adviser, international organization.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The National Assembly, not the committee itself, investigates irregularities such as a corruption scandal. The Committee for Finance and Budget Affairs usually undertakes oversight work and monitors the implementation of financial policies.

References:

- 1) Interview with Ph.D. candidate in political science, University of California.
- 2) Interview with national policy adviser, international organization.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁴⁸Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

0

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | **No**

Comments:

Article 5 of the law states that both cadres and civil servants are selected based on their political qualities. The fact that the law covers both cadres and civil servants is illustrative of the lack of independence of the civil service. Article 8 requires loyalty to the Communist Party.

References:

2008 Law on Cadres and Civil Servants (22/2008/QH12) (<http://civillawnetwork.wordpress.com/2010/01/26/law-on-cadres-and-civil-servants/>).

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | **No**

Comments:

Article 44 of the law directs that promotion be based on “principles of competitiveness, publicity, transparency, objectivity and legality.” These principles of competitiveness do not equate, however, to regulations against nepotism or cronyism.

References:

2008 Law on Cadres and Civil Servants (22/2008/QH12) (<http://civillawnetwork.wordpress.com/2010/01/26/law-on-cadres-and-civil-servants/>).

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | **No**

Comments:

Art 75 of the law only mentions that "Inspectors from ministry and service providers at the provincial-level and district-level shall, within the ambit of their tasks and powers, inspect the performance of tasks and exercise of powers by cadres and civil servants."

References:

2008 Law on Cadres and Civil Servants (22/2008/QH12) (<http://civillawnetwork.wordpress.com/2010/01/26/law-on-cadres-and-civil-servants/>).

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

Article 82 of the law states only that cadres and civil servants who have been removed from office are not eligible for management or leadership positions.

References:

2008 Law on Cadres and Civil Servants (22/2008/QH12) (<http://civillawnetwork.wordpress.com/2010/01/26/law-on-cadres-and-civil-servants/>).

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

22

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Many civil servants are affiliated with the Communist Party, especially in positions of responsibility such as director. Moreover, any appointment within the civil service is ultimately vetted by the Vietnamese Communist Party's Commission for Organization and Personnel.

References:

- 1) Interview with international policy adviser.
- 2) Interview with former Vietnamese civil servant.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There is an academic exam test. Merit may be evaluated, especially at higher levels. Otherwise, money, political loyalties and connections dominate.

References:

- 1) Vietnamese academic in the U.S, a former civil servant.
- 2) Interview with international policy adviser.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Political affiliations and connections are important and help advance an individual's career, particularly for senior positions, even if the individual was initially chosen based on merit. Overall, there are instances of predatory cronyism and patronage within the public sector. Although from 2007, this example is a good example: Papin and Passicousset reported that a businessman from a Northern province offered the equivalent of 80,000 Euros to the Fatherland Front if they would nominate him as a National Assembly member, but this offer was turned down because other potential nominees offered more (page 140).

References:

- 1) Saskia P. Bruynooghe et al, 2009, Implementation of Civil Service Legislation in Vietnam: Strengthening Elements of a Position-Based System, New Jersey: Princeton University.
- 2) Papin, P, Passicousset, L, 2010, Vivre avec les Vietnamiens, Paris: L'Archipel.
- 3) Vietnamese academic in the U.S, a former civil servant.
- 4) International policy adviser.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

There are no job descriptions, though the Ministry on Home Affairs is currently working on this and is expected to start introducing them. Each ministry has a guiding document outlining its roles and responsibilities, and this roughly determines what people within each ministry do.

References:

- 1) Vietnamese academic in the U.S, a former civil servant.
- 2) Interview with international policy adviser.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

Comments:

There is only a limited use of bonuses or "supplemental" pay (luong phu cap), particularly for low-paid civil servants. Bonuses are paid for "exceptional services." Bonuses may be paid in cash or in kind, such as honor-related bonuses or the right to buy land at below-market prices. Bonuses in state-owned enterprises can be high.

References:

- 1) Vietnamese academic in the U.S, a former civil servant.
- 2) Interview with international policy adviser.
- 3) Saskia P. Bruynooghe et al, 2009, Implementation of Civil Service Legislation in Vietnam: Strengthening Elements of a Position-Based System, New Jersey: Princeton University.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Figures on the size of the civil service are not publicly disclosed or are difficult to find. One official estimate for the number of civil servants and cadres is approximately 2 million, with 1.8 million from the district level upwards.

A labor force survey by the General Statistics Office indicated a civil service of approximately 2.5 million. A survey on public officials and the civil service by the Ministry of Home Affairs in 2005 suggested a figure of about 500,000.

References:

1) Vietnamese academic in the U.S, a former civil servant.

2) Interview with international policy adviser.

3) Department of Civil Servants and Public Employees Ministry of Home Affairs, Vietnam, 29 October 2009, Technical report Renovation of civil servants and civil service system in Vietnam.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Within each department is a bureau that processes complaints, but it is unlikely to be very effective.

References:

1) Former civil servant.

2) Interview with international policy adviser.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

The government does not have any liquidity problems, and there are no reported cases of civil servants being paid late. That said, a lot of employees get additional income through other activities.

References:

- 1) Former civil servant.
- 2) Interview with international policy adviser.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Many charges of corruption are dismissed by courts on the grounds there is not enough evidence. In some cases, civil servants typically can return to their position with relative ease. This varies, depending on whether an official's position was public and/or high-ranking. Anyone who was convicted typically would not publicize this sort of information.

References:

- 1) Interview with former civil servant.
- 2) Interview with international policy adviser.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

22

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes

No

Comments:

Section 4 of the law describes disclosure requirements. The following officials must disclose assets and income:

- 1) Officials holding the rank of deputy head of section of people's committees of rural districts, urban districts, provincial capitals or towns or higher and equivalent rank in agencies, organizations and units.
- 2) A number of officials and public employees in communes, wards and district townships and persons managing state budgets and properties or directly involved in handling affairs of agencies, organizations, units and individuals.
- 3) Candidates for the National Assembly and people's councils.

Spouses and minor children have to be included in the declaration.

References:

Law on Anti-Corruption 2005 (<http://www.oecd.org/dataoecd/37/50/46817414.pdf>).

Decree No 37/2007/ND-CP on asset and income transparency

<http://kenfoxlaw.com/resources/legal-documents/governmental-decrees/2678-vbpl.html>.

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | **No**

Comments:

While the law prohibits abusing powers and using civil service information for “self-seeking purposes” (Article 18), there is no specific provision in the law governing conflicts of interest .

References:

Law on Cadres and Civil Servants (22/2008/QH12).

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | **No**

Comments:

Article 47 of the 2005 Anti-Corruption Law states that public servants should not be involved in “ setting up, participating in the setting up of, or participating in the management and administration of private enterprises, limited liability companies, joint-stock companies, partnership companies, cooperatives, private hospitals, private school and/or private scientific research establishments, except as otherwise provided for by law.”

The law also states that “public employees working in branches and professions related to state secrets cannot work for enterprises or organizations for five years following their retirement or dismissal” (Gainsborough, 2006: 23).

The civil service in Vietnam is for life, meaning that very few people ever leave government.

References:

1) Government of Vietnam, Law no.55/2005/QH11, also known as the “2005 Anti-Corruption Law”.

2) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.

Yes: A YES score is earned if there are regulations restricting civil servants’ ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

Article 40 of the Anti-Corruption Law states that:

“Agencies, organizations and units must not use state budget and properties to present gifts, except otherwise provided for by law.

2. Public servants must not receive money, properties or other material interests of agencies, organizations, units and/or individuals involved in affairs which they settle or which fall under their respective management.

3. It is strictly forbidden to take advantage of the giving and receipt of gifts to bribe or perform other acts for self-seeking interests.

4. The government shall specify the giving and receipt of gifts and submission of gifts by public servants.”

References:

Law no.55/2005/QH11, also known as the Anti-Corruption Law.

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

Comments:

There is no such concept in Vietnam. The latest law on asset disclosure, Decree 68 of 2011, states that assets must be declared to internal agency personnel who can review it for 30 days.

References:

Decree No. 68/2011/ND-CP of August 08, 2011, amending and supplementing a number of articles of the Government's Decree No. 37/2007/ND-CP of March 9, 2007, on property and income transparency.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

Comments:

In practice there is no restriction on civil servants taking up jobs in the private sector upon leaving public office. In addition, many of them conduct on-the-side activities while in government, such as undertaking a consultancy for a project they are closely associated with or know about so they can help benefit a “client.”

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

Comments:

There is no prohibition on receiving gifts, and this is one of the most common features of petty corruption.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

Gainsborough, M, 2006, National Integrity Systems, Transparency International Country Study Report

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or

private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Although a score of 0 is assigned, a better answer would be not applicable. Not only is there no requirement to recuse, many civil servants conduct on-the-side activities so they can help benefit a “client.”

References:

1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.

2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Since the introduction of the 2005 Anti-Corruption Law and the 2007 Law on Asset and Income Transparency (37/2007/ND-CP), some departments demand that their employees file an asset disclosure form with some basic information. However, no follow-up exists, and this information is mainly filed internally.

References:

1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.

2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:

The decree, which contains information regarding asset disclosure, does not make any mention of public access to disclosure statements.

References:

Decree No. 68/2011/ND-CP of Aug. 8, 2011, amending and supplementing a number of articles of the Government's Decree No. 37/2007/ND-CP of March 9, 2007, on property and income transparency.

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

This information is not available to citizens.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.
- 3) Interview with International Policy Advisor

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable would be the best response, since records are simply unavailable.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.
- 3) Interview with International Policy Advisor

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

Comments:

Not applicable would be the best response because this information is unavailable.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.
- 3) Interview with International Policy Advisor

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

It is mandatory for civil servants who witness a case of corruption to denounce this to competent authorities, and those authorities must ensure that measures are taken to protect the integrity of the denouncer if there are signs of intimidation, revenge or retaliation. The authorities also must keep secret names, addresses and other vital information (Articles 5, 38 and 65).

Article 42 of Decree 53 states that “In cases where heads of state agencies of various levels or branches receive information that the denouncers have been intimidated, retaliated or revenged, they must direct or coordinate with relevant functional bodies in clarifying such information, taking measures to protect the denouncers, prevent and propose competent authorities to handle according to provisions of law the persons who have committed acts of intimidating, retaliating, revenging the denouncers.”

References:

Law no.55/2005/QH11, Anti-Corruption Law.

Decree No. 53/2005/ND-CP of April 19, 2005, detailing and guiding the implementation of the Law on Complaints and Denunciations and the Law Amending and supplementing a number of articles of the law on complaints and denunciations. http://www.dncustoms.gov.vn/web_english/english/nghe_dinh/53_2005_ND-CP%2019_04_2005.htm

No: 58/2005/QH11, Law amending and supplementing a number of articles of the Law on complaints and denunciations.

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Nguyen Van Thanh, a retired officer of the Tan Ky District People’s Procuracy who is known for having exposed cases of corruption, has received intimidation and threats. Paradoxically, some whistle-blowers have been decorated by the government after losing their jobs for exposing wrongdoing in government.

While the law states that whistle-blowers should be protected, there is no such thing as an anonymous complaint.

References:

1) Báo Thanh Niên English, Bomb explodes in whistle-blower’s house,

<http://en.baomoi.com/Info/Bomb-explodes-in-whistleblowers-house/3/184965.epi>.

2) Kap Thanh Long, March 19,2009, Whistleblowers need protection, says anti-corruption crusader, Look at Vietnam

<http://www.lookatvietnam.com/2009/03/whistleblowers-need-protection-says-anti-corruption-crusader.html>.

3) Meeting with Embassy of Sweden, October 2011

4) Interview with International Policy Advisor

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes

No

Comments:

Article 42 of the decree states that protection should be ensured when there is evidence that a denouncer is being intimidated or is at risk; Article 1 describes who is able to lodge a complaint:

1. Complainants must be persons having their legitimate rights and interests directly affected by the administrative decisions or administrative acts they complain about.
2. Complainants must be persons having full acting capacity to invoke legal provisions; in cases where complaints are lodged via their representatives, the latter must comply with the provisions of Article 2 of this decree.
3. Complainants must make and send their written complaints to the right competent agencies within the statute of limitations and time limits prescribed by the Law on Complaints and Denunciations.
4. Complaints have not yet been given final decisions.
5. Complaints have not yet been enrolled for settlement by courts.

Only if a worker from the private sector fulfills the above conditions is he/she able to complain.

References:

Decree No. 53/2005/ND-CP of April 19, 2005 detailing and guiding the implementation of the Law on Complaints and Denunciations and the Law Amending and supplementing a number of articles of the law on complaints and denunciations. http://www.dncustoms.gov.vn/web_english/english/nghe_dinh/53_2005_ND-CP%20_19_04_2005.htm

No: 58/2005/QH11, Law amending and supplementing a number of articles of the Law on complaints and denunciations.

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100

75

50

25

0

Comments:

Le Van Tach, an employee of Toyota, was "suspended" for bringing to the attention of his superiors technical problems with some of the company's cars. The company denies his suspension was related to this, however.

References:

- 1) Hong Phuc, June 14, 2011, Toyota Vietnam suspends 'whistleblower' engineer, The Saigon Times <http://english.thesaigontimes.vn/Home/business/corporate/17477/> .
- 2) Interview with embassy of Sweden, October 2011.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes

No

Comments:

In law, there is no requirement that the Government Inspectorate (GI) provide citizens with a hot-line or e-mail address. However, any citizen (including civil servants) can report corruption to the GI. Each ministry has a GI in its office. Article 21 of the Law on Inspection says the GI's tasks and powers include: "To perform the task of settling complaints and denunciations according to law provisions on complaints and denunciations."

References:

- 1) Law No. 22/2004/QH11 'on Inspection' <http://kenfoxlaw.com/resources/legal-documents/laws-and-codes/12511-luat.html>.
- 2) Law, No. 09/1998/QH10 of Dec. 2, 1998, on Complaints and Denunciations.
- 3) Decree No. 53/2005/ND-CP of April 19, 2005, detailing and guiding the implementation of the Law on Complaints and Denunciations and the Law Amending and supplementing a number of articles of the law on complaints and denunciations. http://www.dncustoms.gov.vn/web_english/english/ngghi_dinh/53_2005_ND-CP%2019_04_2005.htm

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Although not mandated by law, the Government Inspectorate (GI) has hot-lines in each ministry office that is tasked with receiving complaints (e.g. the Ministry of Public Security and the Ministry of Justice). Civil servants can call, but no real anonymity is guaranteed. Eventually, cases can be investigated by the party inspectorate, which also has a full-time staff.

Apart from the GI, there also is the party's inspectorate, as well as ministry inspectorates to which citizens can and do complain.

References:

- 1) Interview with international adviser.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Government Inspectorate, which is tasked with taking complaints, is akin to a Ministry and receives funding from the state.

References:

- 1) Interview with international policy adviser.

- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Allegations of corruption reported by civil servants are treated by the relevant authorities on an ad-hoc basis and can take some time. High profile cases, such as the financial scandal involving the shipbuilding company Vinashin, can be investigated relatively quickly.

References:

- 1) Interview with international policy adviser.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

The Government Inspectorate has its own annual inspection docket. In addition, some cases may be referred to the GI by the prime minister and other people who lodge complaints.

References:

- 1) Interview with international policy adviser.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

46 4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

The Law on Tendering prohibits some conflicts of interest. Article 12 prohibits "An arrangement by a person so that his or her natural parent, parent-in-law, spouse, natural child, adopted child, son or daughter-in-law or sibling participates in tender packages for which such person is the party calling for tenders, a member of the expert tendering group or expert group evaluating the results of selection of contractor or the person approving the results of selection of contractor."

Conflicts of interest by public procurement officials would go against the Law on Thrift and Waste Combat and the Law on Cadres and Civil Servants.

It is worth emphasizing, however, that “conflict of interest” is not defined or explicitly named as such.

References:

1) The Law on Tendering (61/2005/QH11) (<http://www.havip.com.vn/images/download/Law%20on%20Tendering.pdf>).

2) Law on Thrift and Waste Combat (48/2005/QH11) (http://world.moleg.go.kr/download.do?file_id=4229).

3) Law on Cadres and Civil Servants (22/2008/QH12).

4) Decree 85/2009/ND-CP dated Oct. 15, 2009, on the instructions for implementation of the Law on Procurement and the selection of contractors in accordance with Construction Law. (http://www.xaydung.gov.vn/site/moc/cms?cmd=4&portionId=88&articleId=37956&portalSiteId=6&language=en_US).

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | **No**

Comments:

The Law on Tendering states that expert evaluators of tenders must have the relevant training (Art.9). In other articles (68, 69), the law states that relevant ministries should organize training for the senior procurement staff.

Nevertheless, the indicator was scored no as there is no indication that this training is ‘regular’ or ‘mandatory’ in law. Rather, it is obtained on the job.

References:

The Law on Tendering (61/2005/QH11) (<http://www.havip.com.vn/images/download/Law%20on%20Tendering.pdf>).

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

As expressed by Mr. Tran, the legislation is not comprehensive enough. For example, there is no legislation clearly outlawing information-sharing with family members, and in fact, the Civil Service Ordinance covers only first-tier relationships, not the larger network of relatives and friends, where conflict of interest is likely to occur. Moreover, there is no regulation mandating a government official to state his/her potential conflict of interests when a particular good/service is being procured. Overall, conflicts of interest are quite pervasive in public procurement.

Conflicts of interest can involve collusion between bidders, including seeking to exclude other potential competitors, and between bidders and the bidding entities (such as ministries). This leads to very few state companies competing for public works programs, most prominently in the areas of construction, land, and infrastructure. The few companies in contention usually are those in which local officials or party cadres have a stake and, thus, would benefit from winning the contract.

References:

- 1) Interview with procurement expert, international organization
- 2) Tran Huu Huynh, general director of legal department, Vietnam Chamber of Commerce and Industry (VCCI)

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | **No**

Comments:

The only laws that monitor assets, incomes and spending would be the Anti-Corruption law, which requires disclosures by senior civil servants, and Decree 37. However, as the indicator refers to public procurement officials in general, it is scored "no." Only senior procurement officials would be required to disclose their assets and incomes under the Anti-Corruption Law. In addition, such disclosure cannot be considered a lifestyle check, as suggested by this indicator.

References:

- 1) The Law on Tendering (61/2005/QH11) (<http://www.havip.com.vn/images/download/Law%20on%20Tendering.pdf>).
- 2) Law on Thrift and Waste Combat (48/2005/QH11) (http://world.moleg.go.kr/download.do?file_id=4229).
- 3) Law on Cadres and Civil Servants (22/2008/QH12).
- 4) Law on Anti-Corruption 2005 (<http://www.oecd.org/dataoecd/37/50/46817414.pdf>).

5) Decree 37/2007 on Asset and Income Transparency
<http://www.customs.gov.vn/English/Lists/Documents/ViewDetails.aspx?List=889a92fd%2De7a0%2D4c8e%2Db800%2D80ff1158ebaf&ID=1057>.

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

Article 40 of Decree 85 indirectly establishes a threshold for competitive bidding by describing the projects that are eligible for direct appointment. These include: “packages of consulting service with value less than 3 billion VND, packages of goods with value less than 2 billion VND, works or general construction contractor (except for general engineering) with value less than 5 billion VND; (and) packages of assets to maintain the regular operations with value less than 100 million VND.”

References:

85/2009/ND-CP, Decree Guiding implementation of the Law on Procurement and selection of construction bidder in accordance with the Law on Construction.

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

Article 40 of Decree 85 regulates sole-sourcing. Sole-sourcing can be used only for “packages of consulting service with value less than 3 billion VND, packages of goods with value less than 2 billion VND, works or general construction contractor (except for general engineering) with value less than 5 billion VND; (and) packages of assets to maintain the regular operations with value less than 100 million VND.”

References:

No: 85/2009/ND-CP, Decree Guiding implementation of the Law on Procurement and selection of construction bidder in accordance with the Law on Construction.

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes

No

Comments:

Article 74 of the Law on Tendering states that complaints can be made in provision with the Law on Complaints and Denunciations.

References:

- 1) The Law on Tendering (61/2005/QH11) (<http://www.havip.com.vn/images/download/Law%20on%20Tendering.pdf>).
- 2) Law on Complaints and Denunciations (09/1998/QH10) (http://iprenforcement.most.gov.vn/upload/.../TTB_1279643229.doc).

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes

No

Comments:

Article 74 of the Law on Tendering states that complaints can be made in provision with the Law on Complaints and Denunciations. Article 63 of the Decree states that "Organizations and individuals sanctioned for violations of the bidding law may initiate lawsuits at a court."

References:

- 1) The Law on Tendering (61/2005/QH11) (<http://www.havip.com.vn/images/download/Law%20on%20Tendering.pdf>).
- 2) Law on Complaints and Denunciations (09/1998/QH10) (http://iprenforcement.most.gov.vn/upload/.../TTB_1279643229.doc).
- 3) Decree 85/2009/ND-CP
http://www.xaydung.gov.vn/site/moc/cms?cmd=4&portionId=88&articleId=37956&portalSiteId=6&language=en_US

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes

No

Comments:

There are specific conditions under which a company may be prevented from bidding again in the future. Article 75 of the Bidding Law says a company can be prevented from future bidding if it is found breaching prohibited activities defined under Article 12 of the law. Moreover, any breach of the law is listed in the Tendering Newsletter, but it is unclear whether this amounts to a blacklisting.

Article 63 of Decree 85 states that "Organizations or individuals that commit acts in violation of the bidding law shall, depending on the severity of their violations, be sanctioned in one of the following forms: caution, fine or ban from participation in bidding activities under Clause 1, Article 75 of the Bidding Law, Clause 21, Article 2 of the Amending Law."

References:

1) Law No. 61-2005-QH11 on Tendering,

2) Decree 85/2009/ND-CP, GUIDING THE BIDDING LAW AND THE SELECTION OF CONSTRUCTION CONTRACTORS UNDER THE CONSTRUCTION LAW

http://www.xaydung.gov.vn/site/moc/cms?cmd=4&portionId=88&articleId=37956&portalSiteId=6&language=en_US.

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100

75

50

25

0

Comments:

It is unlikely that regulations prohibiting guilty companies from bidding again are enforced in practice. However, it is not easy to find information about which companies have violated procurement regulations. Although any breach of the law is listed in the Tendering Newsletter, it is unclear whether this amounts to a blacklisting.

References:

1) Interview with procurement specialist, international organization.

2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Article 66 calls on the government to make such provisions, though they are very loosely formulated. Government authorities are responsible for “promulgating, disseminating, guiding and organizing implementation of legal instruments, and policies on tendering.”

References:

Law on Tendering (61-2005-QH11).

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

Law No. 38 amending the 2005 Law on Tendering states that “Bidding results shall be announced right after obtaining investors’ decisions approving bidding results” (Article 41).

References:

Law on Tendering (61-2005-QH11).

Law No. 38/2009/QH12, Law Amending and Supplementing a Number of Articles of the Laws Concerning Capital Construction Investment

http://www.moc.gov.vn/site/moc/cms?cmd=4&portionId=88&articleId=35370&portalSiteId=6&language=en_US.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Regulations, laws and latest decisions are usually available online from the Public Procurement Agency or the Ministry of Planning and Investment, or in the official Gazette. As explained by Mr. Tran, Vietnam is now part of the World Trade Organization, which mandates principles of transparency.

References:

- 1) Interview with procurement specialist, international organization.
- 2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Available information is generally free, both through Web site and in the Gazette. The latter may need to be bought at a small price (approx \$2 U.S.).

References:

- 1) Interview with procurement specialist, international organization.
- 2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The difficulty here is what "major" means. In general, above a certain value, all procurements are advertised, on Web sites or through the Tendering Newsletter.

References:

- 1) Interview with procurement specialist, international organization.
- 2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Not all information on the result of public procurement bids is published. If it is, this would be in the Procurement Newsletter or on Web sites.

References:

- 1) Interview with procurement specialist, international organization.
- 2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

Article 6 of Decree 59 outlines the conditions for purchasing shares, which is open to any domestic organization or international organization under specific conditions. Article 26 of Decree 187, however, highlights the importance of “strategic domestic investors.”

References:

- 1) Decree 59/2011/ND-CP on transformation of enterprises with 100% state capital into joint-stock companies.
- 2) Decree 187/2004/ND-CP on Transformation of State-Owned Companies into Joint-Stock Companies (http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7459).

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | **No**

Comments:

There is no such provision under Decree 59. Article 71 of the law only states that the securities company shall be obliged to “set up the systems of internal control, risk management and monitoring and prevention of conflicts of interest within the company or in transactions with relevant persons.” Also, investment funds must also set up a charter that deals with any conflict of interest (Article 86).

References:

- 1) Decree 59/2011/ND-CP of July 18, 2011, on transformation of enterprises with 100% state capital into joint-stock companies <http://asemconnectvietnam.gov.vn/lawdetail.aspx?lawid=1979>
- 2) Decree 109/2007/ND-CP, on conversion of enterprises with 100% state owned capital into shareholding companies.
- 3) Law No. 70/2006/QH11, Securities Law

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

As said in the previous indicator, there are no conflict-of- interest regulations.

The party lists 19 points stating what party members should not do. Some codes of conduct have also been adopted, including by the Ministry of Planning and Investment. However, even these codes are seldom enforced, or only on an ad-hoc basis.

References:

- 1) Interview with Matthieu Salomon, anti-corruption expert.
- 2) Interview with Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

90

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

The general rules for the competitive privatization process are listed in the decree and based on the enterprise and securities laws. These are available to the public. Yet, how they are applied is another matter.

References:

1) Decree 187/2004/ND-CP on Transformation of State-Owned Companies into Joint-Stock Companies (http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7459).

2) Decree No. 60-2005-QH11, Law on Enterprises .

Law No. 70/2006/QH11, Securities Law.

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatizations in Vietnam are better understood in terms of “equitization.” These are advertised in stock markets, on company Web sites (where applicable) or in newspapers (for example, Hanoi Noi Moi at the national level, or Tuoi Tre at the provincial level). Advertisement, however, is not systematically undertaken. In practice, advertisement lasts around 3 days.

References:

1) Interview with Swedish Embassy.

2) Interview with Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

Chapter VIII of the Securities Law mandates that this information should be made public, including in mass media.

References:

1) Law No. 70/2006/QH11, Securities Law.

2) Circular 51/2006/TT-BTC Guiding a Number of Contents of the Regulation on Auction of State Companies and Decision No. 330/2005/QĐ-TTg Promulgating Regulation on Auction of State Companies.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It should not be difficult for citizens to access privatization regulations or any other type of regulation. These are generally advertised on the relevant authorities' Web sites and in official gazettes and are stocked in provincial, district and national offices, where formal requests may be made.

References:

1) Interview with Matthieu Salomon, anti-corruption expert.

2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This shouldn't cost anything.

References:

- 1) Interview with Matthieu Salomon, anti-corruption expert.
- 2) Tran Huu Huynh, general director of Legal Department, Vietnam Chamber of Commerce and Industry.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

In addition to investigating cases of corruption, the Government Inspectorate also receives denunciations and complaints from citizens.

References:

1) Law No. 22/2004/QH11 'on Inspection'

<http://kenfoxlaw.com/resources/legal-documents/laws-and-codes/12511-luat.html>.

2) Law on Complaints and Denunciations of 1998 (amended and supplemented in 2004 and 2005 — 58/2005/QH11).

Decree No. No. 136/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on complaints and denunciations and the Laws amending and supplementing a number of articles of the Law on complaints and denunciations.

2005 Anti-Corruption Law

Government Inspectorate of Vietnam

(<http://www.thanhtra.gov.vn/>).

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

27

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

Article 14 states that “the Government Inspectorate is an agency of the government, answerable to the government for performing the state management of the work of inspection, settlement of complaints and denunciations and prevention and combat of corruption nationwide; and performs activities of inspection, settlement of complaints and denunciations and prevention and combat of corruption under law.” The article also stipulates that the inspector general is a Cabinet member.

References:

Law on Inspection, No. 56/2010/QH12

<http://asemconnectvietnam.gov.vn/lawdetail.aspx?lawid=1901>.

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Government Inspectorate is under the authority of the prime minister. The inspector general is a Cabinet member, and the agency is akin to a ministry. For major cases, it may receive direct instructions from the Politburo.

References:

1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.

2) Interview with former civil servant.

3) Interview with Vietnamese expert in law.

4) VietnamNetBridge, 2006, Gov't Inspectorate to report Vietnam Airlines case to PM

<http://english.vietnamnet.vn/politics/2006/10/624424/>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head can be removed at the will of the political leadership.

References:

1) Interview with Vietnamese expert in law.

2) Interview with international policy adviser.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

According to official figures for October 2007, the Global Inspectorate has around 400 staff, including 62 inspectors, 200 experts, 22 principal experts, 91 principal inspectors, five senior experts and 20 senior inspectors. Of the staff, 38.25 percent graduated with an economic major, 30 percent majored in law and the rest, 31.75 percent, graduated with other majors, such as technical or social sciences.

References:

1) Government Inspectorate, May 2009, Strengthening the Comprehensive Capacity of the Government Inspectorate to 2014, POSCIS Component Project Document.

2) Interview with international policy adviser.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The Government Inspectorate is an executive agency. The inspector general, who holds the rank of Cabinet minister, is appointed by the prime minister. He is a party member.

References:

1) Gainsborough, 2006, NIS.

2) Government Inspectorate of Vietnam, Profile, Inspector General, accessed September 2011, http://www.thanhtra.gov.vn/en/Introduction/Lists/DanhSachCoCauToChuc/View_Detail.aspx?ItemID=9.

3) Interview with International Policy Advisor

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

As an agency that has ministry status, the Government Inspectorate receives regular funding.

References:

1) Interview with former Vietnamese civil servant.

2) Interview with international policy adviser.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | **25** | 0

Comments:

Although the Government Inspectorate (GI) reports to the National Assembly's Standing Committee every 18 months, the information is mainly descriptive and lacking in substance. The National Assembly has recently reprimanded the Government Inspectorate for the lack of information and analysis provided. The GI also publishes short reports regularly on its Web site. The reports regard ongoing activities and investigations.

References:

- 1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report,
- 2) Interview with international policy adviser.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The work of the Government Inspectorate ("Inspection Plan") must be approved by the prime minister. This document then helps determine a program containing the work plan for the Inspectorate at ministerial, industrial and provincial levels. The agency

conducts inspections of different ministries and/or state bodies, either as part of its planned operations or following a request by the prime minister. In 2007, the Government Inspectorate conducted 27 inspection cases, of which only two were incomplete. Eighteen cases were concluded and reported to the prime minister.

References:

1) Government Inspectorate, May 2009, Strengthening the Comprehensive Capacity of the Government Inspectorate to 2014, POSCIS Component Project Document.

2) Interview with former Vietnamese civil servant.

3) Interview with international policy adviser.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

The Government Inspectorate does not have the right to prosecute any cases. Rather, it refers them to the People's Procuracy. However, when undertaking an investigation, the GI can recommend imposing administrative sanctions.

References:

1) Government Inspectorate, May 2009, Strengthening the Comprehensive Capacity of the Government Inspectorate to 2014, POSCIS Component Project Document.

2) Business Anti Corruption, Vietnam Country Profile, accessed September 2011:

<http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/vietnam/initiatives/public-anti-corruption-initiatives/>

3) Interview with international policy adviser.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

The government uses the findings of the Government Inspectorate in an opportunistic manner, choosing to act on the findings where necessary and/or appropriate. This is likely to be the case with investigations requested by the prime minister.

References:

- 1) Interview with former Vietnamese civil servant.
- 2) Interview with international policy adviser.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Investigations vary on a case-by-case basis, but Vietnam's institutional complexity makes it difficult for complaints to be treated swiftly. Dealing with complaints may involve multiple state administrative levels, which complicates decision-making and increases the bureaucratic work involved.

References:

- 1) Hoang Ngoc Giao et al, 2009, The Mechanism to Settle Administrative Complaints in Vietnam Challenges and Solutions, Asia Foundation.
- 2) Government Inspectorate, May 2009, Strengthening the Comprehensive Capacity of the Government Inspectorate to 2014, POSCIS Component Project Document.

3) Interview with former civil servant.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

0

57a. In law, citizens can access reports of the ombudsman(s).

Yes | **No**

Comments:

While there does not seem to be a reporting mechanism attached to the Government Inspectorate, it does however alert the public to investigations through the media. Yet, this cannot be considered reporting in the substantive sense of the term.

References:

1) Law on Complaints and Denunciations (09/1998/QH10).

2) Vietnam Business Forum, Aug. 25, 2011 (http://www.vccinews.com/news_detail.asp?news_id=24026).

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There does not seem to be a reporting mechanism attached to the Government Inspectorate, nor does there seem to be a formal avenue for requesting reports. The public may glean information from press statements made by the Inspectorate.

References:

1) Law on Complaints and Denunciations (09/1998/QH10).

2) Asia Foundation and PLD (2009). The Mechanism to Settle Administrative Complaints in Vietnam. (<http://asiafoundation.org/publications/pdf/577>).

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There does not seem to be a reporting mechanism attached to the Government Inspectorate, nor does there seem to be a formal avenue for requesting reports. The public may glean information from press statements made by the Inspectorate.

References:

1) Law on Complaints and Denunciations (09/1998/QH10).

2) Asia Foundation and PLD (2009). The Mechanism to Settle Administrative Complaints in Vietnam. (<http://asiafoundation.org/publications/pdf/577>).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

The State Audit Organization of Vietnam acts as the auditor general. The most recent law on the agency (2005) links it directly to the National Assembly, thus theoretically making it independent of the executive.

References:

- 1) 2005 Law on State Audit (37/2005/QH11).
- 2) Decree No. 30/2003/ND-CP (2003), Prescribing The Functions, Tasks, Powers And Organizational Structures Of The Agencies Attached To The Government.
- 3) Decree No.70/CP (1994) of the Government on registration of nationality of and rights to civil aircraft.
- 4) Decision No.61/TTg (1995), of the Prime Minister on the issue of the Statute on the organisation and activities of the State Audit.

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

56

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

Comments:

Article 7 of the law states the principle of independence for the State Audit Organization. Article 8 ties it to the National Assembly, thus implying political independence from the executive.

References:

Law on State Audit (37/2005/QH11).

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the audit agency, who must be a party member, is nominated and removed by the National Assembly for a term of five to seven years (the duration of a government). As in the case of other high-ranking officials, the Vietnamese Communist Party (VCP) has a say over this appointment, although in principle, he/she will not be removed without justification.

References:

- 1) Interview with employee from international organization.
- 2) Interview with Vietnamese expert in law.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is a full-time staff across Vietnam (in excess of 1,000 personnel), and according to our interview, it is increasing in size. No

state agency is sufficiently staffed, in part because civil servants are seeking higher salaries in the private sector.

References:

- 1) Vietnamese expert in law.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | **25** | 0

Comments:

Top positions such as the state auditor general (SAG) are not independent from the National Assembly and are, even indirectly, controlled by the party. The SAG then gets to control who gets appointed, and the whole appointment system is not often based on merit.

References:

- 1) Interview with employee from international organization.
- 2) Interview with Vietnamese expert in law.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The State Audit agency is funded through the state budget. Due to its very technical role, the audit agency may receive fewer funds than an operational entity.

References:

- 1) Interview with employee from international organization.
- 2) Interview with Vietnamese expert in law.
- 3) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 4) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The State Audit agency issues quarterly press releases on general information. Reports eventually get published, often up to a year after completion, and are available on a Web site.

References:

- 1) Interview with employee from international organization.
- 2) Interview with Vietnamese expert in law.
- 3) VNS, Oct. 25, 2011, Auditors give blessing to petrol price fund, Vietnam News, <http://vietnamnews.vnagency.com.vn/Economy/216909/Auditors-give-blessing-to-petrol-price-fund.html>.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

Comments:

If evidence on wrongdoing is found, there is an informal clearance from the party and the prime minister to begin a police investigation, and the procuracy office comes in if the case involves serious crime or corruption. This informal clearance process from the party makes it difficult to give this indicator a score higher than 50.

References:

- 1) Interview with employee from international organization.
- 2) Interview with Vietnamese expert in law.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

The audit agency has an annual plan and tries to provide audits in a given year for up to 50 percent of agencies that have access to the government's budget.

References:

- 1) Interview with employee from international organization.

- 2) Interview with Vietnamese expert in law.
- 3) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 4) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Article 27 of the Anti-Corruption Law calls for the publication of state audit reports.

References:

Anti-Corruption Law (55/2005/QH11).

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports usually are published on a Web site, though with some delay. Some reports may also be omitted.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are put online on an ad-hoc basis. When they are available, they are free.

References:

- 1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Decision No. 115/2009/QĐ-TTĐ of Sept. 28, 2009, defines the functions, tasks, powers and organizational structure of the general Department of Taxation under the Ministry of Finance.

References:

1) Decision No. 115/2009/QĐ-TTĐ of Sept. 28, 2009, defining the functions, tasks, powers and organizational structure of the general department of taxation under the ministry of finance.

<http://lawfirm.vn/?a=doc&id=519>

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The General Department of Taxation has a big structure, with offices at the provincial (63) and district (679) levels. Some estimates suggest the department has up to 42,000 employees.

References:

1) Interview with specialist from an international organization.

2) Interview with auditor.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The General Department of Taxation gets its funding from the state. The allocated annual funding should equal 1.9 percent of the estimated annual tax/duty collection (including all kind of taxes and duties) of the department as put forward by the Ministry of Finance in the annual state budget, which is approved by the government and the National Assembly.

References:

- 1) Interview with specialist from an international organization.
- 2) Interview with auditor.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Vietnamese tax laws are enforced uniformly and without any discrimination between state-owned and private enterprises. Nevertheless, some back-door negotiation occurs between tax agents and companies. As such, it is hard to discern a visible pattern, whereby some companies are subject to discriminatory and arbitrary practices.

References:

- 1) Interview with Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 2) Interview with specialist from an international organization.
- 3) Interview with auditor.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

Comments:

There are two separate units, the General Department of Taxation and the General Department of Customs. Both sit underneath the Ministry of Finance. They have a number of subordinate and administrative units. The GDT is responsible for all national taxation, including excise, whilst the GDC levies import/export taxes.

References:

- 1) Decision No 02/2010/QĐ-TTg of 2010 of the Prime Minister defining the functions, tasks, powers and organizational structure of the General Department of Customs under the Ministry of Finance.

Vietnam Customs, <http://www.customs.gov.vn/English/Default.aspx>.

- 2) Decision No. 115/2009/QĐ-TTg of September 28, 2009 defining the functions, tasks, powers and organizational structure of the general department of taxation under the ministry of finance
<http://lawfirm.vn/?a=doc&id=519>.

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

These are two distinct agencies. The General Department of Taxation has a full-time and professional staff, with some lower-level offices. The General Department of Customs has provincial and/or district offices in specific places only (at the border with Vietnam's neighbours and/or at international posts).

References:

1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.

2) Adviser from an international organization.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The excise agency (General Department of Taxation) keeps 2 percent of the taxes for its own operating and capital expenses. The General Department of Customs is funded through the state budget.

References:

1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.

2) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

3) Interview with international policy adviser.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

In general, Vietnamese customs laws are well-enforced. There is room for back-door negotiation, with some claiming that there is more corruption in customs than in the taxation. As for taxes, some illegal charges may also apply in an ad-hoc and opportunistic manner, without any discernible way to see if some group of companies or companies within a given sector evade customs requirements.

References:

1) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.

2) Adviser from international organization.

3) Interview with auditor.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

The oversight of state-owned companies is very complex, involving a number of ministries and people's committees.

There is a National Steering Committee for Enterprise Reform and Development (NSCERD), chaired by the prime minister, which assists the government on issues related to the "rearrangement, reform, development and efficiency improvement" of state-owned enterprises (<http://www.nscerd.org.vn/>).

The State Capital Investment Corporation, set up by Decision 151, is involved with managing and investing state-owned capital in state-owned one-member or more-than-two-member liability companies, equitized enterprises and newly established joint stock firms .

Finally, the State Securities Commission (SCC) implements the government's regulations on securities and the securities market and supervises activities in this sector.

References:

Law of State Enterprises.

Decision No 151/2005/QD-TTg of the Prime Minister establishing the corporation for state capital investment and trading.

Government's Decree No. 75/CP of November 28, 1996, on State Securities Commission.

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

Comments:

State enterprises are overseen directly by ministers and people's committees. Irrespective of what "political interference" means in context, it is worth noting that provinces have a relatively strong involvement in managing state-owned enterprises. Nevertheless, the management of such companies remains within the government apparatus.

References:

- 1) Decree 59/2011/ND-CP of July 18, 2011, on transformation of enterprises with 100% state capital into joint-stock companies.
- 2) Decree 109/2007/ND-CP, On conversion of enterprises with 100% State Owned Capital into Shareholding Companies.
- 3) Interview with Professor of Business Administration

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

The State Capital Investment Corporation has a full-time and professional staff. The National Steering Committee for Enterprise Reform and Development is a small, relatively informal committee, which may have a small secretariat.

References:

Interview with adviser from international organization.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

This question is difficult to address, and the score does not reflect the institutional complexity of Vietnam. The State Capital Investment Corporation (SCIC) "is financially independent, with a charter capital of 5 trillion dong, of which 1 trillion will come from the state budget, and the rest from those state-owned enterprises where the SCIC will be the representative of state capital." As a committee staffed by people with full-time jobs in others agencies, the National Steering Committee for Enterprise Reform and Development (NSCERD) must receive some sort of support from the state budget for the charges it incurs while in operation.

References:

Interview with adviser of international organization.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The mechanisms that oversee the operation of state-owned companies are not independent of the Communist Party or the government. The State Securities Commission may investigate and impose some fines, but this is relatively limited.

References:

1) Interview with professor of business administration.

2) Interview with adviser from international organization.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Overall, oversight conducted by state-owned companies is not independent from top lawyers in the government. Therefore, penalties may be applied opportunistically (e.g. when it helps the lawyers working for the government). The State Securities Commission, however, may apply a few administrative fines in instances of wrongdoing.

References:

- 1) Interview with professor of business administration.
- 2) Interview with adviser from international organization.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

15

69a. In law, citizens can access the financial records of state-owned companies.

Yes | **No**

Comments:

Yes, but there are a lot of strings attached. Article 101 states that a public company has to make periodical publication of information on its annual financial statement "within 10 days from the date of completion of an audited annual financial statement." The law also provides for "extraordinary" conditions under which such publication should not occur (i.e. the company's bank account is blocked; temporary suspension of the company's business operation).

References:

Law No. 70/2006/QH11, Securities Law.

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | **25** | 0

Comments:

State-owned enterprises file reports to competent authorities. These reports do not appear to be available to the wider public with reliability or accuracy. Rather, it seems that they are provided to inner circles of the party/business elite. Reports may be published on occasion. In practice, big and well-known state-owned enterprises such as the shipbuilder Vinashin or Electricity of Vietnam (EVN) do not disclose this information.

References:

1) Interview with professor of business administration.

2) Interview with adviser from international organization.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

Comments:

In addition to the Vietnamese accounting standards, some state-owned companies are audited according to international standards. In the follow-up to the Vinashin scandal, the shipbuilding company was audited by KPMG, the international auditing firm. However, it remains unclear whether this will apply to all state-owned companies.

References:

1) Interview with professor of business administration.

2) Interview with adviser from international organization.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

Comments:

Apart from some listed companies which may disclose some information, it is generally not possible to access this type of information.

References:

1) Interview with professor of business administration.

2) Interview with adviser from international organization.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The score above does not reflect the practice very well. Some state-owned enterprises disclose some information (sometimes on a Web site), though this generally is seldom done.

References:

- 1) Interview with professor of business administration.
- 2) Interview with adviser from international organization.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

56

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Anyone may apply at the Business Registration Department of the provincial or city office of planning. Obtaining a license should take approximately five working days and costs 100,000 VND.

References:

Enterprise Law 60/2005/QH11, 2005.

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | **No**

Comments:

This is not specified in the law, but decisions can be appealed at the office of application (interview with professor of business administration).

References:

Enterprise Law 60/2005/QH11, 2005.

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

The time varies for obtaining registration certificates. On average, without paying bribes and/or without a facilitator, it takes two weeks. This also varies according to whether the individual seeking to register is Vietnamese or foreign. Another interviewee said the process could take up to two years, although such cases are rare.

References:

1) Interview with Maciej Leszek Ryczko, office manager from Polviet.com, business consultancy,

2) Interview with professor of business administration,

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Fees can vary from about \$30 U.S. to \$100 U.S., depending on the business sector. With bribes, the total cost can increase. Another interviewee suggests the process could cost as much as \$500 U.S.

References:

1) Interview with office manager from Polviet.com, business consultancy.

2) Interview with professor of business administration.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

It is difficult to say to what extent there are true standards, or how transparent they are. Article 99 of the Labor Code states that an employee can refuse to perform work or has the right to leave the workplace where there is an “imminent and serious threat to life or health.” Article 124 states that “The employer shall be responsible for the health of the elderly employees and is prohibited from employing them in hard, dangerous work and work exposed to toxic substances adversely affecting their health.” Article 113 regards the health of female employees; and Article 22 covers the health of trainees. Article 119 of the Labor Code deals with junior workers (under 18 years of age) and says that health checks must be undertaken “periodically.”

Article 7 of the law states that “Business activities adversely affecting national defense, security, social order and safety, historical, cultural and ethical traditions, fine customs and traditions of Vietnam and the people’s health or deteriorating natural resources or destroying the environment shall be prohibited.”

Can this, however, be considered transparent? As in many cases in Vietnam, the text of legislation is generally available to the population, either through line ministries, through official publications (gazettes) or through the internet.

References:

- 1) Law No. 60-2005-QH11 on Enterprises.
- 2) Labor Code, Amended and Supplemented in 2002.

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

The Labor Code declares that any “organization or individual concerned with labor and production must comply with the laws and regulations on occupational safety and hygienic and on environment protection” (sic). Moreover, a proper feasibility study needs to be undertaken to ensure health and safety at the workplace and for the surrounding environment when a company builds or renovates a structure or expands (Article 96).

References:

Labor Code, Amended and Supplemented in 2002.

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes

No

Comments:

The Labor Code declares that any “organization or individual concerned with labor and production must comply with the laws and regulations on occupational safety and hygienic and on environment protection” (sic). Moreover, a proper feasibility study needs to be undertaken to ensure health and safety at the workplace and for the surrounding environment when a company builds or renovates a structure or expands (Article 96).

References:

Labor Code, Amended and Supplemented in 2002.

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100

75

50

25

0

Comments:

There is a lack of manpower to enforce public health regulations, and there is a lack of understanding. Moreover, civil servants are usually underpaid, which makes it easy to accept bribes. Thus, inspections serve to extract money from businesses. Public health standards are therefore rarely and properly enforced by business owners, or in fact by inspectors themselves.

References:

- 1) Interview with office manager from Polviet.com, business consultancy.
- 2) Interview with professor of business administration.
- 3) Interview with auditor.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There is a lack of manpower to enforce public health regulations, and there is a lack of understanding. Moreover, civil servants are usually underpaid, which makes it easy to accept bribes. Inspections are often ad hoc and are a way for inspectors to extract money from businesses. Thus, environmental standards are rarely and properly enforced by business owners.

References:

- 1) Interview with office manager from Polviet.com, business consultancy.
- 2) Interview with professor of business administration.
- 3) Interview with auditor.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There is a lack of manpower to enforce public health regulations, and there is a lack of understanding of the enforcement task due to civil servant staffing that lack qualifications. Moreover, civil servants are usually underpaid, which makes it easy to accept

bribes. Thus, inspections are often ad hoc and are a way for inspectors to extract money from businesses. Public safety standards are rarely enforced properly by business owners, although there may be differences in enforcement between factories and end-user retail shops.

References:

- 1) Interview with office manager from Polviet.com, business consultancy.
- 2) Interview with professor of business administration.
- 3) Interview with auditor.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁶⁶Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

Article 3 of the law defines "corrupt acts" as:

1. Embezzling properties.
2. Taking bribes.
3. Abusing positions, powers to appropriate properties.

4. Taking advantage of positions, powers while performing tasks or official duties for self-seeking interests.
5. Abusing powers while performing tasks or official duties for self-seeking interests.
6. Taking advantage of positions, powers to influence other persons for self-seeking interests.
7. Committing forgeries in work for self-seeking interests.
8. Offering bribes, bribe brokerage by persons with positions and/or powers to settle affairs of agencies, organizations, units or localities for self-seeking interests.
9. Taking advantage of positions, powers to illegally use state properties for self-seeking interests.
10. Harassment for self-seeking interests.
11. Failure to perform tasks or official duties for self-seeking interests.
12. Taking advantage of positions, powers to cover up law violators for self-seeking interests; illegally hindering, intervening in the examinations, inspections, auditings, investigations, prosecutions, adjudications or judgment executions for self-seeking interests.

References:

2005 Law on Anti-Corruption.

(<http://www.oecd.org/dataoecd/37/50/46817414.pdf>).

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

Comments:

Article 3 of the law prohibits extortion.

References:

2005 Law on Anti-Corruption.

(<http://www.oecd.org/dataoecd/37/50/46817414.pdf>).

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

Comments:

Article 3 states that offering bribes is a corrupt act.

References:

Anti-corruption Law (Law no.55/2005/QH11).

<http://www.oecd.org/dataoecd/37/50/46817414.pdf>

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

Article 3 of the law states that taking bribes is a corrupt act.

References:

Anti-corruption Law (Law no.55/2005/QH11).

<http://www.oecd.org/dataoecd/37/50/46817414.pdf>

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

Bribing a foreign official is a criminal act.

References:

Anti-corruption Law (Law no.55/2005/QH11).

<http://www.oecd.org/dataoecd/37/50/46817414.pdf>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

Article 3 describes this as criminal.

References:

Anti-corruption Law (Law no.55/2005/QH11).

<http://www.oecd.org/dataoecd/37/50/46817414.pdf>

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:

This question can be read in two ways. First, it can describe the act of treason, which is criminalized in Vietnam and would fall under a variety of legal instruments. Second, it can relate to using information to inform economic activities that a state official may conduct on the side leading to instances of insider trading and similar activities. This can be considered to fall under the 2005 Anti-Corruption Law, and in particular Article 3, which focuses on abuses of administrative power.

References:

Anti-corruption Law (Law no.55/2005/QH11).

<http://www.oecd.org/dataoecd/37/50/46817414.pdf>

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

Comments:

These legal documents outlaw money laundering.

References:

1) Decree No.74/2005/ND-CP on prevention and combat of money laundering.

2) Circular 22/2009/TT-NHNN of the State Bank of Vietnam.

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

Article 3. of the 1999 Penal Code sets forth "Handling principles" that state that the law intends "[t]o severely penalize conspirators, ringleaders, commanders, die-hard opposers, wrong-doers, hooligans, dangerous recidivists, those who have abused their positions and powers to commit crimes and those who have committed crimes with treacherous ploys, in an organized and professional manner, with intention to cause serious consequences.

There is no definition of conspiracy to commit crime or organized crime. Article 8 defines a crime as "an act dangerous to the society prescribed in the Penal Code, committed intentionally or unintentionally by a person having the penal liability capacity, infringing upon the independence, sovereignty, unity and territorial integrity of the Fatherland, infringing upon the political regime, the economic regime, culture, defense, security, social order and safety, the legitimate rights and interests of organizations, infringing upon the life, health, honor, dignity, freedom, property, as well as other legitimate rights and interests of citizens, and infringing upon other socialist legislation."

References:

1999 Penal Code, Article 3

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

There is an institutional multiplicity when it comes to the fight against corruption. Formally, the Government Inspectorate (GI) holds both the role of ombudsman and anti-corruption agency. In addition, there is a Central Steering Committee for Corruption Prevention and Combat which is headed by the prime minister. He is also the chairman of the Office of the Central Steering Committee for Anti-Corruption.

The National Assembly, the National Assembly Standing Committee and people's councils are also in charge of supervising the work of corruption prevention and combat nationwide. Finally, the Ministry of Public Security and the Supreme People's Procuracy all have specialized units to fight corruption.

References:

- 1) Law no.55/2005/QH11, also known as the 2005 Anti-Corruption Law.
- 2) Law No.01/2007/QH12 on the creation of the Central Steering Committee for Corruption Prevention and Combat.
- 3) Decree 65/2008/N-CP on the mandates and responsibilities of The Government Inspectorate (<http://asemconnectvietnam.gov.vn/lawdetail.aspx?lawid=595>).
- 4) The Law on Organization of the People's Procuracy, July 26, 1960.

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

42

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

Article 14 of the law notes that the inspector general serves in the prime minister's Cabinet, suggesting service is tied to a political post. Article 6 notes how all inspection activities, at all levels of government, are organized by political officeholders.

References:

Law on Inspection of 2004 (22/2004/QH11).

(<http://www.kenfoxlaw.com/resources/legal-documents/laws-and-codes/12511-luat.html>).

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There are a number of agencies entrusted with fighting corruption. The Government Inspectorate works as ombudsman and is responsible for receiving citizen complaints and denunciations. The Government Inspectorate, while benefiting from ministerial status, is controlled by the party and prime minister.

The Anti-Corruption Law also established a specialized anti-corruption agency, the Office of the Steering Committee for Anti-Corruption (OSCAC), chaired by the prime minister. It coordinates, examines and supervises the fight against corruption and has some limited powers. OSCAC's independence can be questioned on the ground that it includes members from the Vietnamese Communist Party, the government, the Fatherland Front and the judiciary.

References:

1) Anti-Corruption Profile, Vietnam

<http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a381cd12-2b56-43d1-8d59-e84bfd59022e#info>.

2) Interview with employee from donor organization.

3) Interview with Vietnamese Expert in Law

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the Government Inspectorate can be removed if/where convenient. The head of the Office of the Steering Committee for Anti-Corruption (OSCAC) is the prime minister. The question above, therefore, does not totally reflect this situation.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Nguyen Thi Kim Lien, governance adviser, UK Department for International Development.
- 3) Renwick Irvine, team leader, governance and social development, UK Department for International Development.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Experts working for the Government Inspectorate and other anti-corruption agencies are usually appointed with an appropriate professional background. Yet, this process is still political.

References:

- 1) Interview with international policy adviser.
- 2) Interview with Vietnamese expert in law.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Government Inspectorate has a full-time and professional staff (that is, people with a legal background), including at the district level. The Office of the Steering Committee for Anti-Corruption (OSCAC) is mainly made up of members who are full-time officials in other agencies, though it also has an office of around 60 people. Because of the whole structure of the Vietnamese civil service, some political appointments are made.

One estimate is that the Government Inspectorate has 1,000 staff – 300 of those at the central level.

References:

1) Trust Law, Anti-Corruption profile: Vietnam

<http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a381cd12-2b56-43d1-8d59-e84bfd59022e#info>.

2) Interview with employee from donor organization.

3) Interview with Vietnamese expert in law.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Government Inspectorate receives regular funding from the state budget for staff and administration. The Inspectorate has, in the past, also received funding from Japan's Ministry of Foreign Affairs Official Development Assistance (ODA) program.

References:

- 1) Interview with international policy adviser.
- 2) Interview with Vietnamese expert in law.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

Although the Government Inspectorate reports to the National Assembly's Standing Committee every 18 months, the information is mainly descriptive, not analytical. The National Assembly has also recently reprimanded the Government Inspectorate for the lack of information and analysis provided. GI also publishes on a regular basis on its Web site short reports on its ongoing activities and investigations. Some press conferences also get occasionally organized.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

While the Government Inspectorate is an important institution in the fight against corruption, it can sometimes lack powers due to its political dependence.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The work of the Government Inspectorate (GI) — the “inspection plan”— needs to be approved by the prime minister. However, the Government Inspectorate can also initiate investigations without formal interference. For example, it has its own annual plans aimed at covering various topics, such as real estate and land in 2011. Results are then referred to the government and the prime minister. The opposite can also be true, with the GI getting cases referred by the political leadership.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult for citizens to exercise the right to complain about actions of administrative officials. It is still unclear whether the agency would accept complaints about corruption in the private sector.

References:

- 1) Asia Foundation and PLD (2009). 'The Mechanism to Settle Administrative Complaints in Vietnam'.
- 2) Interview with international policy adviser.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the case. Vietnamese are generally wary of filing a complaint as they are aware of the potential consequences. They might not always complain to the Government Inspectorate but will also use other channels, such as inspectorates in ministries and the National Assembly or even the Party Inspectorate.

References:

- 1) Interview with Mathieu Salomon, anti-corruption expert.
- 2) Interview with international policy adviser.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

60

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

Yes

No

Comments:

Article 11 of the Law On Organization of People's Courts states that first-instance judgments/rulings can be appealed or protested against.

References:

- 1) Law on Organizations of People's Courts (33/2002/QH10).

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to state with accuracy how long this takes. There is a fully functional system of appeal, and appeals usually are resolved in half a month.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

For criminal and administrative cases, court fees are low. This applies to appeals, too. For civil cases, the fee is related to the value of the property involved in the litigation.

In the majority of cases, people pay bribes to court officials in order to bend the case in one's favor.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

Comments:

Judges justify their decisions based on the law (the Criminal Code and Criminal Procedure Code).

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

Comments:

The police and relevant judiciary bodies may enforce criminal and civil cases. Enforcement rate is high for civil cases, including family law, though it will also depend on the initiative of the party who won the case.

References:

1) Interview with Vietnamese expert in law.

2) Interview with international policy adviser.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

31

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

Article 130 of the constitution guarantees the independence of the courts. In other words, judges, under the constitution, need to reach their decision independently. The judiciary is not institutionally independent, however.

References:

Constitution of the Socialist Republic 1991 as amended 2001 ([http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf)).

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The judicial system lacks independence from the party. Political interference occurs. But, it is unlikely that authorities intervene in the numerous civil cases, such as divorce and traffic enforcement, that are tried by Vietnam's court system .

References:

- 1) Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report (2010).
- 2) HRW Country Summary Vietnam, January 2010 (http://www.hrw.org/sites/default/files/related_material/vietnam_2.pdf).
- 3) Interview with Vietnamese Expert in Law
- 4) Interview with International Policy Advisor

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | **No**

Comments:

Jurisdiction is based on geographical distribution. The attached reference contains a survey of what judges and lawyers perceive to be the practice of case adjudication.

References:

- 1) No 33/2002/QH10, Law on People's Courts
http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020002_en/lawdocument_view.
- 2) No 34/2002/QH10, Law on People's Procuracies
http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020003_en/lawdocument_view.

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | **No**

Comments:

Judges are appointed by the National Assembly and serve a five-year term. Their reappointment is a political decision that depends on a committee which reviews their performance at the end of each term.

References:

1) No. 33/2002/QH10, Law on People's Courts

http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020002_en/lawdocument_view.

2) No. 34/2002/QH10, Law on People's Procuracies

http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020003_en/lawdocument_view.

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

No cases were reported.

References:

1) Interview with Vietnamese expert in law.

2) Interview with international policy adviser.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

No reports made.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

64

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

This would relate mostly to the ethnic minorities living in Vietnam. One interviewee maintained that no negative discrimination occurs and that there may be positive discrimination in some cases due to ethnic minority status. This is hard to separate from the political context, in which ethnic minorities can be discriminated against.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Access seems to be fairly open to women. However, in practice, whether women receive fair treatment can be questioned. Although not necessarily representative, in September 2011, a man was found guilty of reckless driving after he ran over his wife who had left him after 17 years of marriage.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

Legal aid was first introduced in 1997 with the establishment of the national legal aid agency and was formalized in 2006 with the Law on Legal Aid.

References:

- 1) National Legal Aid Agency Website (http://dihr.org/legalaid/index.php?option=com_content&task=view&id=21&Itemid=32).
- 2) Law on Legal Aid (69/2006/QH11) (<http://www.kenfoxlaw.com/resources/legal-documents/laws-and-codes/12608-luat.html>).

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

While legal aid is available to the poor, there do seem to be issues in regard to sufficient supply and the quality that is provided.

It is unclear whether apolitical legal aid would be provided to persons who have interests contrary to those of the government.

References:

- 1) Vietnam Bar Association Response to Access to Justice Report, Law Council of Australia (2010). (http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=EFFCF7DE-EF7B-A30F-3704-FC8D566AD96F&siteName=lca).
- 2) Sidel, Mark (2008). Law and Society in Vietnam, CUP.
- 3) Interview with Vietnamese expert in law.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Court cases average around 1 million VND (approximately \$48 U.S.) in fees and a further 1 million VND for legal representation, according to one interviewee. As in many cases, there can be additional, extralegal costs, involved with paying court officials such as judges to determine the case in payer's favor.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Court costs are the same as for individuals, averaging around 1 million VND (approximately \$48 U.S.), according to one interviewee. These are typical administrative costs, although there can be significant extralegal costs involving bribes to court officials and judges to receive a favorable decision.

References:

- 1) Interview with Vietnamese expert in law.
- 2) Interview with international policy adviser.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Although there are courts in every district and province, legal professionals tend to set up in urban areas, and bar associations do not exist at lower administrative levels (Law Council of Australia, 2010). Yet, there are some programs that reach out to remote areas, such as through mobile clinics.

References:

1) Vietnam Bar Association Response to Access to Justice Report, Law Council of Australia (2010). (http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=EFFCF7DE-EF7B-A30F-3704-FC8D566AD96F&siteName=lca).

2) Interview with international policy adviser.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments need to be cleared by the party's Central Committee on Organization and Personnel. Promotions are based on rank and/or time served in the forces. Corruption (that is, buying a position) and nepotism also helps further a policeman's career.

References:

1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.

2) Interview with international policy adviser.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Funding for the police comes from the state budget, and the forces are endowed with substantial off-the-book funding. One interviewee points out that this information is a state secret — hence, unknown.

References:

1) Gainsborough, M, 2006, National Integrity Systems, Transparency International, Vietnam Country Study Report.

2) Interview with Vietnamese expert in law.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

As noted earlier, appointments are highly politicized. The police are under the control of the Ministry of Public Security and are responsible for political monitoring. In short, the police are closely intertwined with both the government and the party.

References:

- 1) U.S. State Department, 2010, Vietnam Country Study.
- 2) Interview with Vietnamese expert in law.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

50

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | **No**

Comments:

The 2002 Law on Organization of People's Procuracies (34/2002/QH10) provides powers to the people's procuracies to supervise "investigating activities." Articles 13 and 14 of this law set out these powers. Yet, the articles are vaguely worded and do not suggest that citizens are able to submit complaints. Furthermore, considering this is exercised by the prosecution, with great institutional proximity to the police, it is not possible to speak of an organization that fulfills an independent "ombudsman" role as suggested in the criteria.

References:

2002 Law on Organization of People's Procuracies (34/2002/QH10)

(http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020003_en/lawdocument_view).

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

According to one interviewee, the process is very complicated. While direct applications are made to the relevant police station/office (through the Government Inspectorate), the response is on a case-by-case basis. Resolving complaints can take a long time and can depend upon political connections.

References:

1) Interview with Vietnamese expert in law.

2) Interview with international policy adviser.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The 2002 Law on the Organization of People's Procuracies (34/2002/QH10) provides powers to the people's procuracies to

supervise "investigating activities." Articles 13 and 14 of this law set out these powers. Article 34 of the Ordinance on Organization of Criminal Investigations (23/2004/PL-UBTVQH11) provides the framework for dismissing or transferring investigative officers who have fallen afoul of regulations.

References:

Ordinance on Organization of Criminal Investigations (23/2004/PL-UBTVQH11)

http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7657.

2002 Law on Organization of People's Procuracies (34/2002/QH10)

http://laws.dongnai.gov.vn/2001_to_2010/2002/200204/200204020003_en/lawdocument_view.

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

A case would need to be referred to the police by the Government Inspectorate, the administrative unit/ombudsman that deals with complaints and cases of corruption. GI may then refer the case to Unit 47 of the police force, also known as the economic crimes and anti-corruption unit, as well as to different competent ministries.

References:

1) Interview with international policy adviser.

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes

No

Comments:

The Law on People's Public Security Forces (2005), Article 41, states that: "People's Public Security officers, non-commissioned officers, soldiers, workers and public employees who violate disciplines or law shall, depending on the nature and seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability; if causing damage to health or life of other people, property or lawful interests of agencies, organizations or individuals, they must pay compensations ... according to the provisions of law."

References:

Law on People's Public Security Forces (2005), Article 41.

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100

75

50

25

0

Comments:

Generally, law enforcement officials are not immune from criminal proceedings. For example, in the "Nam Cam" case, several policemen were sentenced to prison because of their involvement in gang activities. However, it is unclear whether this was a particular exception due to the high profile of the case.

References:

1) Interview with Vietnamese expert in law.

2) Nguyen Hung Quang, managing partner, NHQUANG & ASSOCIATES.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

