

## **Critique on Anti-Corruption Law and its definition of corruption**

*Tran Thi Lanh – Advisory Council of Social Affair  
Central Committee of Fartherland Front of Vietnam*

### **Introduction:**

Recently Vietnamese leaders and international organizations' representatives, who have good relationship with Vietnam have been expensively trying their efforts for anti-corruption solutions for the country.

Keeping administration clean and transparent is much more difficult than difficulty of attaining power!.

The author want to express bitter view towards the prominent corruption acts, which are spreading to many aspects of life in several forms.

Through this article, the author want to pay attention to the role of political implication of promulgated laws, which contribute to more healthy transparent society and better respect and image of public administration. On the other hand, outspoken constructive criticism should be considered as a citizen's responsibility of the author whenever talking about the degradation of respectation and validity of legal document due to their unreality and shortage of democracy.

The author would start with Article 3 of Law on Anti-corruption and decisions, circulars relating to non-governmental aids, which are considered to be necessarily well-managed and risk-avoded in the domain of civil diplomacy.

### **Part I - Confusion between laws, decrees, decisions and circulars create opportunity for corruption - Article 3 of Anti-corruption Law: Acts of corruption**

Section 1, 2, 3, 4, 5, 6, 7,8, 9, 10, and 11 of Article 3 – describe corruption acts, which merely relates to loss of money, assets and apart of damage to the transparency of public administration;

Section 12 of Article 3 – focus point only begins with acts in judicial violation, which impacts institutional sound judgment;

*Question: How about corruption acts in legislative branch? Recently several provisions are not uniquely follows principle of “state belongs to the people” in transparent way, therefore allow some authorities to abuse and drive power into corruption, bad impacts to validity of legal document and people's trust. Is those bad legislative acts added to the list of corruption acts? How to improve legal system for better prevention and sanction against those acts?*

### ***This specific case may help to manifest:***

Circular 109/2007/TT-BTC provides in its Section 1 of Part I “This Circular guides state management mechanism of non-state aids (...) negotiation, signing and admittance follow provisions of Regulations on management and use of foreign non-governmental aids, which is attached to Decision N<sup>o</sup> 64/2001/QĐ – TTg of the Prime Minister.

Section 2 part I. of Circular 109/2001/TT-BTC wrote: foreign non-governmental aids, which are non-governmental income, are those referred in Section 1, Part I of this Circular (...) admitted by authorized agency for the non-governmental organizations (provided in Section 2 Article 6 of Regulations on management and use of foreign non-governmental aids, which is attached to Decision N<sup>o</sup> 64/2001/QD – TTg of the Prime Minister).

The mentioned Section 2 Article 6 wrote: Ministers, the heads of ministerial level, provincial people's committee chairpersons, the heads of the central bodies of people's organizations (or authorities competent to decide the establishment of organizations without central bodies) shall ratify projects capitalized at under USD 500,000 and non-projects valued at under USD 200,000 (regardless cars, motorbikes and projects relating to laws, institutions, public security, national defense and religion). Article 8 of Chapter III of the Regulation attaching to Decision 64/2001/QD-TTg provides: The Government shall exercise the unified State management of all NGO aid sources, from the aid mobilization to aid negotiation and signing with the aid-providing party; from monitoring and supervision of the implementation process to the assessment of the results and efficiency of the use of NGO aids.

If procedures follow strictly Decision 64/2001/QD-TTg, the government will on behalf of people covers all activities from the aid mobilization to aid negotiation and signing, then monitoring and supervision.

*Question: Where is strategy for decentralized self-control and self-responsibility? Article 8 of the Regulations of Decision 64/2001/QD-TTg contravenes Decree 115/2005/ND-CP dated September 5<sup>th</sup> 2005. This Article 8 also denies all encouragement provided in Decree 53/2006/ND-CP and contravenes provisions of Law on Science and Technology dated June 19<sup>th</sup> 2000 and Decree 80/2007/ND – CP dated May 19<sup>th</sup> 2007.*

Circular No 32/2005/TT-BTC of the Ministry of Finance dated April 26th, 2005 was considered by associations, scholars and media as an advanced step to adapt to integration process. Section 3-Part A of the Circular provides: **“non-repaid aids to associations is income of associations”**.

However newer Circular 109/2007/TT-BTC (as replacement of Circular 32/2005/TT-BTC) tends to go backward for centralization by its provision in Section 1 and 2 of Part I.

*Question: How to understand correctly validity and order of legal system in this specific case? Is that phenomenon that, 'lower level tend to usurp higher one', which is similar to the saying: “When the cat is away, the mice will play”?!*

Provision of Section 2, Part I Circular 109/2007/TT-BTC is not consistent with its own provision at Section 1-Part IV: *“In principle, financial resources, assets from direct non-repaid aids to non-governmental organizations shall become those organizations' ownership”*.

*Question: What is the conflict between Section 1-Part IV of Circular 109/2007/TT-BTC and its own Section 1 and 2 - Part I; Section 2 Article 6 and Article 8 of Decision 64/2001/QD-TTg?!*

Circular 109/2007/TT-BTC requires certification of aids whenever one claim tax exemption (Part II of the Circular). This provision becomes unnecessarily inappropriate, which conflicts to provisions for encouraging promotion of non-state sector and science technology organizations. The followings are notable related provisions:

Section 2 - Article 7 of Decree 53/2006 dated May 25<sup>th</sup> 2006 on the policy for encouragement of non-state service providers: *“Non-state entities shall be given preferential treatment in term of value added tax, import, export tax according to Law on Value added tax, Law on Import-export tax and valid provisions”*.

Section 2 - Article 42 of Law N<sup>o</sup> 21/2000/QH10 on Science and Technology of June 19<sup>th</sup> 2000: *“Machinery equipment, spare parts, supplies and transport means, which cannot be produced in the country; technologies which cannot be created in the country: documents, books and newspapers imported for direct use in scientific research and technological development shall not be subject to import tax and value added tax”*. Article 46 - Section 1 of this mentioned law: *“The State shall expand exchanges and international cooperation on science and technology; create conditions for Vietnamese organizations and individuals to enter into scientific and technological cooperation with foreign organizations and/or individuals as well as international organizations: make full use of the aids from foreign countries and international organizations”*.

Law N<sup>o</sup> 80/2006/QH11 on Technology Transfer dated November 29<sup>th</sup> 2006 provides by Section 3 - Article 44: *“Specialized use machinery, equipment and transportation facilities in the category not yet able to be produced domestically which service performance of a technology transfer contract shall not be subject to value added tax”*.

The mentioned provisions of Laws, Decrees (which obtain higher valid than Circular 109/2007) shall be limited, even not valid in reality just because of superfluous complex procedure of “certification of aids”. This procedure have created great opportunities for financial, taxation agencies and the customs to freely maltreat organizations, individuals who receive foreign aids.

**Question:** *How does recent Anti-corrruption Law regulates the mentioned legislative act?*

Certification of aids contravenes recent efforts of simplification of administrative procedures, as provided in Prime Minister’s Directive N<sup>o</sup> 10/2006/CT-TTg of March 23<sup>rd</sup> 2006 on the reduction of administrative document in administrative activities; Prime Minister’s Directive N<sup>o</sup> 32/2006/CT-TTg on urgent measures to correct administrative disciplines in term of settling citizens’ and enterprises’ affairs; the Government’s Resolution N<sup>o</sup> 53/2007/NQ-CP dated November 7<sup>th</sup> 2007 to promulgate the Government action program to implement Resolution of the 5<sup>th</sup> Conference of the 10<sup>th</sup> term of Central Communist Party on the intensification of administrative innovation, strengthening of management validity and effect of state apparatus.

### ***Criticizing on Article 2 of Anti-corrruption Law***

Section 6 - Article 2 provides: Agencies, organizations, units, including state agencies, political organizations, socio-political organizations, army units, state enterprises and other agencies, organizations, units, which obtain and use governmental budget and assets.

*Linking the mentioned Section 6-Article 2 of Anti-corrruption Law and Section1-Part V of Circular 109/2007/TT, which provides that “In principle, financial resources, assets from direct non-repaid aids to non-governmental organizations shall become those organizations’ ownership”, Anti-corrruption law shall not regulate corruption acts relating to aids for non-governmental organizations. That means legislative agencies exclude those organizations out of the law, then how to treat those mentioned acts if corruption happen?*

Therefore, I would suggest to supplement this as one of corruption act: **“Abuse power to promulgate legal provision, which are not consistent, creating gaps for annoying maltreatment against citizens, organizations, damaging institutinal ethics and transparency”**. This was recommended to Article 4 of the Draft law on Anti-corruption, but it was excluded after the approval of the National Assembly. As a member of Central Committee of Fartherland Front, I recommended that in written and presentation form, but it was not respectfully considered.

## **Part II. Disclosure and transparency of promulgation of legal document:**

First, it should be noted that, official websites still lacks of necessary legal document for citizens, organizations, who are affected by the document. At 9:00 am of March 13<sup>th</sup> 2008, of the 25 newest legal document appearing on the Governmental website:

[http://www.chinhphu.vn/portal/page?\\_pageid=33.638897&\\_dad=portal&\\_schema=PORTAL](http://www.chinhphu.vn/portal/page?_pageid=33.638897&_dad=portal&_schema=PORTAL), 17 document relating to certificate of merit, campaign medal while 7 document relating to direct management action and only one legal normative document (Decree).

While exist too many unecessary document, such essential legal document for anti-corruption as Decree 47/2007/ND-CP (Guidance for implementation of Anti-corruption law relating to the role, responsibilities of society in anti-corruption) does not exist on the mentioned governmental website, the National Assembly's website: (<http://vietlaw.gov.vn/LAWNET/index.html>), as well as other ministerial ones. This document should have been transparently made public to ensure and demonstrate the government's actual will to fight against corruption.

## **Part III. Dislosure of draft laws and ability of suggestion**

Section 4, Article 26 of Law on amendment and supplement to law on promulgation of legal document N<sup>o</sup> 02/2002/QH11 of December 16<sup>th</sup> 2002 wrote: *“Organize to collect ideas from related agencies, organizations, individuals and the ones who are direct affected of the legal document in a suitable dimension and form according to specific draft legal document”*. This provision does not make dimension, target, needed duration suggestion for draft legal document.

Section 3, Article 27 of Decree 161/2005/ND-CP of December 27<sup>th</sup> 2005 on the guiding for implementation of Law on amendment and supplement to law on promulgation of legal document provides: *“According to characteristics of projects, draft legal document, the Prime minister shall decide on the collection of organizations', individuals' ideas base on suggestion of main organization of drafting legal document”*. This become extremely difficult to apply in reality, especially in case of sensitivity, in which the drafting organization do not want public opinion, the media to analyse and suggest. According to Section 3 of Article 28 of the mentioned Decree 161/2005/ND-CP, duration of 20 days for suggestions for draft legal document is too short to ensure quality of suggestions and sound forums held by related organizations and individuals.

Bearing provision: *“state belongs to the people, by the people, for the people. All power belong to the people”* (Article 2 of Constitution), the law on promulgation of legal document should obviously create maximum opportunities for citizens, organizations to contribute their will, opinions during law making process, on the other hand, they should fully be informed of the drafting situation. Information of drafting legal document should be informed as soon as *Tran thi Lanh – Independent analysis and critique - Advisory Council of Social Affair - Central Committee of 4 Fartherland Front of Vietnam.*

*Critique on Anti-corruption Law for Advisory meeting in Hanoi during March 12<sup>th</sup> 2008 to April 1<sup>st</sup> 2008, coordinated by UNDP.*

possible on at least one of main official websites, and there is a sound system of receiving suggestions accordingly.

Duration of suggestion should be long enough (as my recommendation: at least 60 days from the date of promulgation of draft legal document to idea contribution) to ensure related organizations' and individuals' efforts for actual quality of suggestions.

#### **Part IV. References:**

Law on Science and Technology 21/2000/QH10 of June 19<sup>th</sup> 2000.

Law on Anti-corrruption 55/2005/QH11 of November 29<sup>th</sup> 2005.

Law on Technology Transfer 80/2006/QH11 of November 29<sup>th</sup> 2006.

Decree 115/2005/ND-CP of September 5<sup>th</sup> 2005 provides self-control, self-responsibility of public science and technology organizations.

Decree 53/2006/ND-CP of May 25<sup>th</sup> 2006 on the policy for policy for encouragement of non-state service providers.

Decree 47/2007/ND-CP of March 27<sup>th</sup> 2007 Guidance for implementation of Anti-corrruption law relating to the role, responsibilities of society in anti-corrruption.

Circular 32/2005/TT-BTC of April 26<sup>th</sup> 2005 of Ministry of Finance on Financial management mechanism of the foreign direct aids to associations .

Circular 109/2007/TT-BTC of September 10<sup>th</sup> 2007 of Ministry of Finance on Guiding of Financial management mechanism for foreign non-governmental aids, which do not belong to governmental income.