Countering corruption is a perennial concern of the international community. However, there are still many gaps in the effort to prevent corruption that make achieving positive results difficult. According to Towards Transparency (TT), there was a slight improvement in Vietnam’s corruption perceptions index (CPI) score for two consecutive years (2016 and 2017), and this is indicative of a positive development in anti-corruption efforts in recent years. Many people think that this improvement is the result of the Communist Party of Vietnam’s (CPV) effort to preserve its ruling position by “cleaning” the CPV as well as by enhancing the trust of people in the leading role of the CPV. Further, some argue that the CPV’s anti-corruption efforts are an imitation of China’s anti-corruption campaign to crack down on both “tigers and flies.”

We recognize that the CPV plays a significant role in leading the Vietnamese state and that the courts usually respond to guidance from the CPV, but that practice is declining in frequency and may not be a consequence of “democratic centralism and the Socialist law principles,” as
Penelope Nicholson has argued. This paper aims to analyze and explain the legal dimensions of the fight against corruption that recognizes the role of the court system as one of three branches delegated powers by the 2013 Constitution and the challenges to improving its role in a new context of global integration through free trade agreements (FTAs). Based on that context and perspective, we try to identify the role of the court system under the new legal framework, especially under the new anti-corruption law passed in November 2018, which has not been analyzed in previous publications on the Vietnamese legal system in general and the court system in particular. While we acknowledge that the work of such scholars as Brian J. M. Quinn, Nicholson, John Gillespie, and Mark Sidel have all contributed greatly to our understanding of the various factors that limit the independence of courts in Vietnam, we will attempt to revisit some of the traditional issues of the court system in light of recent changes. For example, whereas Quinn reported in 2002 that “the rapid development of new laws and government regulations and the still bureaucratic nature of governance often leave judges in the dark as to the current status of the law and regulations,” those same conditions may no longer apply today. Additionally, the issue of low salaries affecting the functioning of the court system is no longer convincing, given that the salary allowance for judges and court clerks is currently categorized at the highest rank in the salary scale for all government agencies.

However, to begin our discussion it is necessary to summarize some recent changes in the structure of the court system. According to the 2013 Constitution, the people’s courts are recognized as judicial bodies of the Socialist Republic of Vietnam that exercise judicial power (article 102). This is the first time that the power of the court system has been firmly asserted by the highest legal document. That is the basis for improvement of the legal system on the organization and law implementation of the court system, which reflects the court system’s role in recent years.

In the past, the structure of the court system of Vietnam was as follows:

i. The Supreme People’s Court (SPC), which has the authority to act as a court of cassation, to reopen proceedings, and to guide and supervise the trials and the laws applied by the whole court system;
ii. Provincial People’s Courts, which have the authority to conduct first-instance trials and appellate trials, and can act as a court of cassation and reopen proceedings;

iii. District People’s Courts, which have the authority to conduct first-instance trials;

iv. Military Courts, which have the authority to adjudicate cases in which the defendants are members of the military in active service and other people who serve in the army or engage in military activities;\(^9\)

v. other courts as determined by law, including special courts set up by the National Assembly in exceptional circumstances.

However, based on the 2013 Constitution\(^{10}\) and the CPV’s Resolution no. 49-NQ/TW on the Strategy on Judicial Reform toward 2020,\(^{11}\) the court system was reorganized according to the new Law on Organization of People’s Court (LOPC), which was adopted by Vietnam’s National Assembly on November 24, 2014, and which became effective as of June 1, 2015. Under the new LOPC (article 3), the structure of the people’s courts was divided into four adjudicating levels: The Supreme People’s Court; superior people’s courts; courts of provinces and centrally run cities (at the provincial level); and courts of rural districts, urban districts, cities, towns, and the equivalent (at the district level). Importantly, the introduction of superior people’s courts into the structure of the court system has led to reforms in the duties and powers of other people’s courts in Vietnam.

Under the new LOPC, the new superior people’s courts have the following two powers: (i) to conduct appellate trials of cases in which the first-instance judgments—or decisions of people’s courts of provinces or centrally run cities within their territorial jurisdiction—that have not yet taken legal effect are appealed or protested against in accordance with the procedural law; (ii) to conduct trials according to cassation or the reopening procedure of cases in which judgments or decisions of people’s courts at the provincial and district levels that have taken legal effect are protested against in accordance with the procedural law. The second power was partly shifted from the provincial court level in an effort to improve transparency and integrity.
To implement the new LOPC, the National Assembly Standing Committee (NASC) issued Resolution no. 81/2014/QH13 on the implementation of LOPC on November 24, 2014, which provided further clarification for adopting the new adjudicating levels. In a meeting on May 14, 2015, the NASC decided to establish three superior people’s courts (in Hà Nội, Đà Nẵng, and Hồ Chí Minh City) based on the previous appellate courts of the SPC. This was aimed at ensuring the adaptation of the structural organization, facilities, and personnel of the new superior people’s courts established under the new LOPC.

The 2013 Constitution provided an undeniable improvement to judicial power and helped to increase trust for improving the capacity of the court system in the implementation of its duties “to safeguard justice, human rights, citizens’ rights, the socialist regime, the interests of the State, and the rights and legitimate interests of organizations and individuals” (art. 102), including the fight against corruption. However, we argue that the court system is still challenged by inherent obstacles as well as by new anti-corruption requirements from FTAs that are very important for the economic development of Vietnam.

The Role of the Court System of Vietnam in the Fight against Corruption

As indicated in the introduction, the improvement of judicial power in Vietnam has a larger task to safeguard justice, human rights, and citizens’ rights—at least in theory. That is the result of a long process to determine the actual role of the court system in the fight against crimes in general and anti-corruption in particular.

As is commonly known, the communist party and the state of Vietnam have long paid attention to corruption and taken anti-corruption measures, as can be seen in several documents such as the Resolution of the Eighth Plenum of the Fifth Party Central Committee (1985); the Decision 240-HĐBT of the Council of Ministers (1990) about anti-corruption; and especially the Guiding Document no. 169-TATC of the Supreme Court (1990) about how “the court system serves the fight against corruption,” which requires that “all levels of the court system have to cooperate with home affairs agencies to determinedly prosecute, timely try, and strictly
punish” people who “have committed crimes relating to corruption.” This document also requires that trials of crimes relating to corruption be assigned to experienced judges in order to prevent any negative interference from other persons or agencies. In cases where there is any negative interference, the court has to report to the SPC as soon as possible to receive guidance.

Further, the role of the court system in fighting corruption was mentioned in several CVP resolutions, such as Resolution 08 of the Politburo in 2002, which determined that “judicial work must effectively prevent and promptly handle criminal offenses, especially crimes of national security infringements, corruption, and organized crimes.” Resolution no. 49-NQ/TW issued on June 2, 2005, by the Politburo on the judicial reform strategy to 2020 also emphasizes the establishment of a strong, democratic court system to protect justice. In this, several aims were set out, including: “Organizing judicial bodies and judicial supplementary institutions in term of a rational, scientific and modern structure, working conditions and facilities; In that, determining the court is central and the trial is the core....” Based on this, Resolution 49 introduced the task of “clearly defining the functions, tasks, authority, and completing organizations and operations of judicial bodies” that “focus on the organization and operation of the people’s courts; organizing the court system according to jurisdiction, regardless of administrative units.” Finally, Resolution 04 of the Tenth Party Central Committee in 2006 emphasized the task of “improving the quality of the inspection, audit, investigation, prosecution, and adjudication of corruption.”

These policy guidelines have been partially incorporated into the 2013 Constitution and the Law on Organization of the People’s Courts of 2014, which issued some important changes in terms of the organizational structure and the authority of the court system. In addition, Resolution 63/2013/QH13 of the National Assembly on enhancing measures to prevent and fight crimes also requires “improving the quality of investigators, procurators [who have authority to exercise the right to prosecution], judges, inspectors, auditors; step by step completing the specialized agencies that meet the requirements of preventing and combatting crimes of economy, position, and corruption.”

These are the theoretical foundations that define the role of the judicial system and judicial activity, providing a favorable basis for the courts to
contribute to anti-corruption efforts. Further, on the basis of consecutive and consistent guidance, as mentioned previously, the institutionalization of the role of courts in anti-corruption efforts has been actively promoted. A number of legal documents have been issued, such as the Ordinance against Corruption 1998; the Criminal Code 1999 (2009, 2015); and the 2005 Anti-Corruption Law (revised in 2007 and 2012 and still being revised and supplemented). In order to contribute to the effective implementation of these legal documents, Joint Circular no. 2462/2007/TTLT-TTCP-VKSN-DTC-TANDTC-KTNN-BQP-BCA regulating the exchange, management, and use of information and data on anti-corruption was issued on 2007 to build, manage, and effectively use the General Data System on Anti-Corruption among the Government Inspectorate, the Supreme People’s Procuracy, SPC, State Audit, Ministry of National Defence, and Ministry of Public Security. Subsequently, in May 2009, the government issued a resolution on the National Anti-Corruption Strategy to 2020.

As for the specific duties and authority of the court system in countering corruption, according to the Anti-Corruption Law of 2005 (revised 2007, 2012), the “Inspectorate, State Audit, Investigating Bodies, Procuracies and Courts shall, within the scope of their respective duties and powers, have the following responsibilities: to coordinate together and coordinate with the other concerned agencies and organizations in detecting corruption, handling corrupted persons, and taking responsibility for their conclusions and decisions during the process of inspection, audit, investigation, prosecution, and adjudication of corruption cases.”

Further, all the judicial authorities have the responsibility to issue “measures that prevent acts of abuse of power or harassment of their cadres, civil servants, and public employees in anti-corruption activities” and “the Supreme People’s Court is responsible for adjudicating and guiding the work of adjudicating crimes of corruption.”

According to Joint Circular no. 2462, “The Supreme People’s Court provides the General Data System on the number of cases, the number of persons convicted by the people’s court of first instance on the offense of corruption, and information on corrupt money and property corruptly proclaimed to the state budget by the first-instance people’s courts.”

Every three months, the Party Committee of the SPC reports to the Central
Steering Committee on Anti-Corruption in writing about the implementation of the steering committee’s conclusions and related issues.

Based on these legal documents, we can see that in general, the policies of the CPV and the laws of the state of Vietnam have documented the important role of the judicial system in fighting corruption in the following two realms: (i) anti-corruption within the organization and operation of the court system and (ii) anti-corruption through the judicial work of corruption crime. In both areas the work of judging corruption is the core aspect of anti-corruption activities in the system of people’s courts.

Problems Facing the Court System of Vietnam

Although Vietnam has quite good policies and a legal framework, the practice of anti-corruption by the court system still lacks capacity and remains heavily dependent on the political will of the ruling party. The court system still faces many traditional and new problems, including a lack of resources and independence, as well as weak governance. Besides that, the court system is also struggling to meet new anti-corruption requirements in FTAs, such as hearing corruption cases that involve foreign factors or balancing obligations under FTAs and other international instruments like human rights treaties. We will cover these three sets of challenges next.

Lack of Resources and Independence

Legal provisions are in place to ensure that sufficient resources are allocated to the court system and the SPC is involved in the allocation of resources to that sector. However, the court system relies heavily on the National Assembly (NA) and the government in deciding its personnel and budget allocations.

Judges receive salary increases in accordance with a salary grade applied to all state officials. The current legal framework does not provide for income reduction of judges, nor specifically for the adjustment of salaries against inflation. Base salaries for state officials are calculated by multiplying the minimum salary with a factor corresponding to their position, title, and seniority grade. However, adjustments can be made by the government to the minimum wage to account for inflation, which automatically
increases salaries in the court system. This usually occurs every three years and is rarely subject to the subjective influence of the superior staff.

The law does not secure a fixed proportion of the state budget for the court system. The court system follows the general budget system applied to all state agencies. In the past, its total payroll was decided by the NA’s Standing Committee upon the request of the chief justice of the SPC. However, according to the new Law on Organization of the People’s Court, the annual budget for operation of the court system is submitted to the NA by the government, after consultation with the SPC (Table 1). Only in the case of conflict between the government and the SPC can the SPC’s chief justice propose the budget for the court system.

After its final annual budget is approved, the SPC develops a detailed budget allocation for its subordinate courts and units for verification by the Ministry of Finance before it can be implemented. In practice, budget

### Table 1: Annual operational budget of the court system

<table>
<thead>
<tr>
<th>Year</th>
<th>Regular expenditure</th>
<th>Capital expenditure</th>
<th>Total operational budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>2,360 billion VND (around 118 million USD)</td>
<td>490 billion VND (around 24.5 million USD)</td>
<td>2,850 billion VND (around 142.5 million USD)</td>
</tr>
<tr>
<td>2013</td>
<td>2,311 billion VND (around 115 million USD)</td>
<td>444 billion VND (around 22 million USD)</td>
<td>2,755 billion VND (around 138 million USD)</td>
</tr>
<tr>
<td>2012</td>
<td>1,656 billion VND (around 82 million USD)</td>
<td>490 billion VND (around 24.5 million USD)</td>
<td>2,146 billion VND (around 107 million USD)</td>
</tr>
<tr>
<td>2011</td>
<td>1,469 billion VND (around 73 million USD)</td>
<td>400 billion VND (around 20 million USD)</td>
<td>1,869 billion VND (around 93 million USD)</td>
</tr>
</tbody>
</table>

Note: Similar to other state agencies in Vietnam, the budget for the operation of the court system comprises regular expenditures for salary, allowances, and general operations; and capital expenditures for the construction of offices and facilities.

Allocation to the court system has consistently increased during recent years. Salaries for court officials are categorized at the highest level in the salary scale, and various initiatives are being developed and implemented to improve the courts’ infrastructure and use of information technology. However, that is due to the general situation of economic development and partly to the impact of inflation.

Because the proportion of capital expenditure is not high enough, limitations remain in the courts’ infrastructure. The people’s courts in the country’s two largest cities of Hà Nội and Hồ Chí Minh City have to share their offices with the SPC. Furthermore, due to the current economic downturn, sixteen construction projects for the courts have been delayed. File management systems have been adopted for managing criminal, civil, and family law cases, and for court personnel, but these systems are not being systematically applied and are generally only used by the SPC and a number of provincial people’s courts. They have not yet reached the courts at the district level. However, a number of initiatives are underway to promote the use of information technology at the local level and to improve infrastructure and staff development.

Judges and court clerks are currently categorized as type A (the highest type) in the salary scale for cadres and civil servants across all state agencies. On top of their base salary, judges and court clerks receive a responsibility allowance, with the rate varying among court levels. For example, judges receive an allowance of 10,000 VND ($0.50) for each day spent at trial. The current base salary (not including additional allowances) of a newly appointed district judge is 2,691,000 VND ($134.50) per month, and the base salary of a newly appointed provincial judge is 5,060,000 VND ($253) per month. A number of judges have indicated that these salary levels are insufficient even to afford basic living expenses. Furthermore, the official income of court officials is considerably lower than the income of lawyers working in big cities.

Low salary levels have been widely cited, including by those in the sector, as one of the main reasons for both corruption and “brain drain” within the court system. Current staffing numbers show that the court system faces significant difficulties in attracting qualified personnel to fill vacant positions. Shortages of judges and court clerks, weak qualifications
of judges, and the failure to attract competent staff are issues that are repeatedly raised at the courts’ annual conferences.\textsuperscript{32} In recognizing the shortage of staff in the court system, the NASC approved a resolution in March 2012 adding 1,713 supplemental positions to the local people’s court system for 2012 and 2013.\textsuperscript{33} Earlier concerns that the judiciary would find it difficult to recruit sufficient staff, because many people with a bachelor of law prefer to work in other agencies, organizations, or enterprises rather than for the court system, appear to be well founded. By September 2013, the courts were still 1,198 judges short of the NASC’s targets.\textsuperscript{34}

A judicial academy, established by the government in 2004, has since 2007 organized professional training for 2,500 judges, prosecutors, and lawyers annually.\textsuperscript{35} In addition, the training school for court staff under the SPC also organizes professional short-term training courses on trial skills for incumbent judges and jurors.\textsuperscript{36} However, the court system itself has noted that “professional training for court staff in the past years has not met the requirements of new situations and has not focused on emerging topics in adjudication.”\textsuperscript{37} Besides the lack of resources, judicial independence is also a challenge in Vietnam due to the allocation of state power in the constitution as well as the mechanism for appointing judges.

Since Đổi Mới [Renovation] (1986), the court system has been vested with increasing power to settle disputes of different kinds, obtaining jurisdiction over civil cases in 1989, economic-crime cases in 1993, labor-related cases in 1994, and administrative cases in 1998.\textsuperscript{38} Independence was further enhanced in 2002, following the transfer of the management of courts at district level from the Ministry of Justice to the SPC.\textsuperscript{39} However, due to various reasons, the courts are not completely independent under the constitution and laws from executive and legislative institutions in their operations and the procedure for reappointment of judges. That situation makes judicial activities vulnerable to the intervention of different actors.

The court system is anchored in the 2013 Constitution. However, instead of explicitly specifying the courts’ independence, the constitution only provides that “during trials, judges and jurors are independent and subject only to the law.”\textsuperscript{40} Furthermore, article 2 of the 2013 Constitution provides for the unified power of the State, which is delegated to state agencies for coordination and control in the exercise of legislative,
executive, and judicial powers. As a result, the judiciary is not independent from the government or the NA, as all three powers are unified under the State, though the 2013 Constitution also provides that the people’s courts are not only an adjudication agency but also an agency exercising judicial power.\textsuperscript{41}

Based on the principle of power centralization, the court system depends heavily on the NA and is also influenced by the state president and people’s council at all levels. The NA has the power to determine the organization and activities of the court system; to abrogate formal written documents issued by the SPC that run counter to the constitution, the law, and resolutions of the NA; and to elect, suspend, and revoke the position of the chief justice, deputy chief justice and judges of the SPC.\textsuperscript{42} The state president appoints, removes and dismisses the deputy chief justice and judges of the SPC.\textsuperscript{43}

Relating to the appointment mechanism, in the past, judges were appointed for five-year terms,\textsuperscript{44} a short term that placed local judges in a dependent position before agencies and individuals responsible for reviewing them for new terms. Consequently, that negatively impacted the independence of judges in hearing many cases with potential connections to corruption. The short terms of judges also negatively influenced the organization and management of the judiciary, costing time and material for the reappointment. However, this situation has changed. According to the new LOPC (article 74), the first term of local judges is five years; in case of reappointment, the next term is ten years. This change may be useful, but it is not sufficient, because there is nothing changed in the second appointment. The benefit of the ten-year term may affect the determination of judges during the five years of the first term, which is short for judges but a long time for any victim of corruption crimes.

On the other hand, despite its increasing independence in the past two decades from other state institutions, particularly the executive, the court system remains heavily dependent on the CPV, the legislature, and the executive bodies in almost all matters related to its organization, personnel, and operations. There are a number of reported incidences of intervention in the adjudication of the courts. In fact, although there are no regulations requiring judges to hold CPV membership, in practice only
CPV members are appointed as judges. The practice of the courts seeking guidance and direction in deciding verdicts from CPV agencies or local authorities is so common that a senior leader has recently requested to avoid the interference of local authorities at all levels in court activities.

An example is the handling of a corruption case in Đồ Sơn, Hải Phòng Province, in 2006. In this case, District CPV Secretary Nguyễn Văn Thuận suggested that the court should consider and ensure consistency with previous and similar cases. Earlier in the investigation and initiation stage, the Hải Phòng People’s Committee sent an official letter to the investigation body and the Supreme People’s Procuracy recommending that the defendants be granted exemption from criminal liability.

The practice of “asking for directions in the adjudication of cases” is common, as many judges are reluctant to decide the verdict independently. Instead, they consult the opinions of the court’s leaders or, in particularly complicated cases, wait for “guidance and direction” from superior courts, CPV agencies, or local authorities. According to a recent survey, two-thirds of judges interviewed took into account the opinions of the superior court or the leaders of the courts when deciding a case, while more than one-quarter of respondents considered the opinions of the local authorities. Nicholson argues that maybe as “a consequence of the democratic centralism and the Socialist law principles that the system is built on, the courts responds [sic] to guidance from VCP, even if it requires breaking the constitutional regulations.” However, the purpose of the democratic centralism principle is to encourage wide discussion. It means that this principle is only applied in trial boards. Even if judges were to closely obey this principle outside of the trial, they would have to offer a solution, or solutions, to higher judges or agencies to get confirmation, directives, or guidance about the offered solution(s), but in fact they do not do this. We have found that this situation is mainly due to the fact that judges do not want to get into any trouble with their judgments, even when “wrong” judgments will not affect their careers. This seems to be a safe experience handed down from previous generations who worked under the strict control of the feudal system rather than the product of the control of the ruling party in wartime. On the other hand, many judges really want to
make or keep good relationships with higher judges, and they may ask for
direction even when they know the answer already.

In addition to the above factors, the independence of the courts is
further limited by the lack of provisions on professional secrecy and immu-
nity of judges, as well as the absence of an independent agency or profes-
sional organization to help protect the interests and the independence of
the courts.\textsuperscript{51}

\textbf{The Weak Governance of the Court System}

The court system in Vietnam also faces the same problems that other state
agencies do, such as a lack of transparency, accountability, and integrity. The
lack of transparency is expressed in the workings of judge selection councils
and their responsibilities, in that the current legal system does not clearly
regulate the disclosure of information on the appointment, transfer, or
dismissal of judges. In the operations of the court system, the chief justice
of the SPC has to submit annual reports on the activities of the entire court
system to the NA and the NASC, but these reports are not usually public
and rarely express assessments about the role of the court system in the fight
against corruption. Furthermore, openness and transparency of information
and the data system have mainly been driven by the SPC. Only a few local
courts have websites providing information on disputes and court activi-
ties.\textsuperscript{52} This is further illustrated by the fact that only six out of sixty-three
provincial courts’ websites are linked to the SPC’s website.\textsuperscript{53}

Another weakness is accountability. Opportunities for public oversight
over judicial activities are limited by restricted access to court judgments
and the absence of an independent mechanism to resolve complaints made
against court officials. Based on current legal provisions, these issues have
to be resolved by the chief justice of the court. Lack of transparency of data
related to the court’s activities has been identified as a key hurdle to
accountability, as limitations to obtaining even basic statistics make it dif-
ficult for external observers to examine the performance of the courts. Even
within the court system itself, it is unclear how court statistics are being
used as management tools.\textsuperscript{54}

Regarding integrity, the court system has had a code of conduct since
2008 that forbids court staff from hindering and unlawfully intervening in
the handling of corruption cases, and from disclosing confidential information on corrupt acts to the accused. However, the code of conduct is quite general and lacks specific provisions regulating the unique roles and responsibilities of judges. For example, it does not contain any regulation preventing judges from receiving reimbursements and honoraria in connection with privately sponsored trips, gifts, and hospitality. The effectiveness of the existing code of conduct and other behavioral regulations applied to judges also appears to be limited. Chief Justice Trương Hòa Bình of the SPC has recognized the phenomenon of “buying justice” as commonly taking place. In recent years, the media has increasingly reported on incidences where staff members of courts have received or demanded bribes, as well as fraudulent swapping of court documents and exhibits. In the three years from 2010 to 2012, there were a number of judges prosecuted for taking bribes. In 2013, 22 percent of urban citizens who had contact with the judiciary paid a bribe, increasing from 16 percent in 2011. Furthermore, the number of bribes paid to the judiciary was higher than the amount paid to any other sector surveyed, with the average bribe paid to the judiciary costing 4.6 million VND ($230). As a result, a number of studies show that there is a lack of trust in the court system. According to the 2012 Provincial Competitiveness Index report, on average less than 25 percent of enterprises are willing to use the courts to resolve their disputes.

In addition, although judges are required to declare and disclose their assets and income in the location where they usually work, in Vietnam, up to date, asset declarations are not legally required to be made available to the wider public. Asset declarations can be used in deciding their reelection, appointment, demotion, dismissal, and discipline; or in the evaluation and verification of charges of corruption. Although existing integrity provisions for judges and court staff have been applied, they appear to have little effectiveness in practice; incidences of fraud and bribery during trials have been commonly reported.

New Challenges from FTAs Relating to Anti-Corruption

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) incorporates, by reference, the provisions from the Trans-Pacific Partnership (TPP), with the exception of some provisions to be
suspended upon entry into force. It appears to be a new trend of international trade cooperation that integrates anti-corruption issues with trade and investment. Chapter 26 of the CPTPP concerns transparency and anti-corruption measures. In addressing these issues, the court system of Vietnam has to face several challenges, such as the obsolescence of aspects of its legal system, the need to develop the ability to hear corruption cases that involve foreign factors, and the difficulty in balancing obligations under FTAs and other international instruments like human rights treaties.

The first new challenge is the lack of a legal framework relating to the corrupt behavior of subjects. Under the old Anti-Corruption Law, all instances of corrupt behavior were attached to officials who work at any state agency or other organizations using the state’s budget. In other words, it pertains to personnel, agencies, or organizations in the public sector. This means that the court system in Vietnam cannot hear any case relating to corruption in the private sector, nor in public international organizations in the situation that these subjects conduct corrupt actions in Vietnam or under the jurisdiction of the Socialist Republic of Vietnam. In fact, there is growing evidence that the problem of corruption seems to be not just in the public sector. According to a study by the United Nations Development Programme in Vietnam drawn from the experience of East Asian countries, “the standard anti-corruption strategy focuses on solving the problem of liberalization, transparency and improving the salary regime for officials, and strengthening accountability. However, such anti-corruption strategies generally yield very little results in most countries.” What is more, some reports have shown that countries with more corruption can receive more development aid. This means that the link between corruption and state power may need further review, especially in the context of development aid being gradually shifted to the private sector or public international agencies.

A new Anti-Corruption Law that was passed by the NA on November 20, 2018, which came into force as of July 1, 2019, has added three behaviors of corruption in the private sector. However, these added corrupt behaviors do not meet with section 3, article 12 of the United Nations Convention against Corruption (UNCAC). In fact, lawmakers copied these behaviors from the public sector. The authors believe that these behaviors
do not reflect the nature of corruption in the private sector, nor provisions under section 3, article 12 of the UNCAC. Unfortunately, the new law did not mention any corruption behavior conducted by international public officials. This movement may relate to the “national direction” on warmly welcoming all official development assistance funds, and the Vietnamese state does not want to offend international organizations that are supporting the development of Vietnam. Lastly, the current legal system of Vietnam does not provide any provision to prevent corruption in overseas investments. The case of Petrovietnam investing 1.8 billion dollars in a project in Venezuela is now under investigation, and is an important warning for the next update of the laws. This complete lack of a legal framework will burden the court system in the coming years following the booming of trade deals under FTAs.

A second challenge concerns the ability of judges to accept and hear corruption cases that involve foreign factors, given that international mechanisms for cooperation are still limited. Current international anticorruption mechanisms also limit the ability of countries to cooperate in the criminal field. This can lead to ignoring large segments of noncriminal forms of corruption, and the goal of sharing the database among nations is also difficult to achieve. In addition, the differences in countries’ criminal laws relating to the crimes of corruption and the sanctions against these criminals make cooperation difficult.

This challenge may relate to the above-mentioned lack of a legal framework for dealing with the corruption of international public officials and overseas investments. Even when Vietnam has ratified the UNCAC, and in principle judges can apply the UNCAC directly in a case that lacks domestic regulations, judges often do not directly apply their understanding of the original text of agreements. They often rely on, or request a formal explanation from, central government agencies. For example, if there is any conflict between domestic regulations and provisions of the CPTPP, judges may not make a judgment based on their understanding to solve the conflict. This situation is partly similar to the practice of “asking for directions in the adjudication of cases” but is mainly due to the court system not having the function to explain the content of international treaties to which Vietnam is a party.
Finally, yet one more challenge is the responsibility to balance the obligations of the State under different international treaties. Environmental incidents in four central provinces of Vietnam in 2016 raised concern about the conflict between the State’s obligation to safeguard the interests of investors on the basis of trade agreements and the State’s obligations to ensure human rights such as the right to a clean environment and water resources. In this case it is clear that the court system in Vietnam has not had the necessary involvement, and there may be indications of corruption that has not been clarified both in the public and the private sectors. In our opinion, the court system should be the main actor with the responsibility to make the final decision about any conflict of this type. However, the court system seems to lack the experience and power to meet this need.

**Weaknesses in Corruption Hearings in the Court System**

Courts have traditionally been criticized for dealing only with petty corruption and failing to deliver strong punishment for corruption cases. This changed dramatically starting in late 2013, when the courts handed out many sentences to death or life imprisonment to those involved in a number of high-profile corruption cases. This change is linked closely with the CPV’s efforts to give direction to the adjudication of corruption cases to strengthen the fight against corruption. Nonetheless, the courts continue to be perceived as driven by the desire to protect the State rather than the interest of justice. According to a report, available figures show that during 2009–2012, the courts have tried 150–300 corruption cases annually, involving 300–700 defendants (each year). However, courts have widely been criticized for addressing only petty corruption and failing to hand out severe punishments. This can be reflected in both the relatively low number of officials at the central level being tried (0.3 percent of cases in 2010) compared to the number of officials at the commune and ward levels (30.9 percent), and the relatively light sentences that have been handed out. For example, as shown in Table 2, suspended sentences and sentences of less than three years of imprisonment constitute the substantial majority of sanctions applied to defendants for corruption-related crimes.
That said, the court system in recent years has increasingly adjudicated a number of high-profile corruption cases and delivered severe penalties. Between November 2013 and May 2014, five people received the death penalty for corruption-related charges: Dương Chí Dũng, the former chairman of Vietnam National Shipping Lines (Vinalines; a state-owned shipping company), and Mai Văn Phúc, the former general director; Vũ Việt Hùng, the former director of a branch of Vietnam Development Bank; Vũ Quốc Hào, the former general director of Agribank Financial Leasing Company II; and Đặng Văn Hai, the former chairman of the board of Quang Vinh Co. Ltd.

Many more have received lengthy prison sentences for their crimes. The media also reported that the percentage of defendants receiving suspended sentences for corruption-related crimes during the first six months of 2014 decreased by more than 50 percent.

### TABLE 2: Sanctions applied to corruption crimes between 2009 and 2013

<table>
<thead>
<tr>
<th>Year</th>
<th>Warning</th>
<th>Fine (as principal penalty)</th>
<th>Probation</th>
<th>Suspended sentence</th>
<th>Sentenced to 3 years' jail</th>
<th>Sentenced to 3–7 years' jail</th>
<th>Sentenced to 7–15 years' jail</th>
<th>Sentenced to 15–20 years' jail</th>
<th>Life imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>12</td>
<td>0</td>
<td>1</td>
<td>78</td>
<td>258</td>
<td>137</td>
<td>70</td>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td>2010</td>
<td>5</td>
<td>5</td>
<td>9</td>
<td>27</td>
<td>161</td>
<td>112</td>
<td>62</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>94</td>
<td>136</td>
<td>98</td>
<td>56</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>2012</td>
<td>0</td>
<td>39</td>
<td>0</td>
<td>99</td>
<td>177</td>
<td>136</td>
<td>68</td>
<td>24</td>
<td>2</td>
</tr>
<tr>
<td>2013</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>194</td>
<td>191</td>
<td>131</td>
<td>73</td>
<td>44</td>
<td>4</td>
</tr>
</tbody>
</table>

Note: Corruption crimes include all corruption and other position-related crimes under articles 278 to 291 of the Penal Code.

Furthermore, given the characteristics of the handling of anti-corruption cases in Vietnam, where responsibility for inspecting, investigating, prosecuting, and adjudicating corruption cases is spread across several different agencies and the courts only have the authority to adjudicate cases that are brought to them, low conviction figures cannot be solely attributed to the courts. A key issue in Vietnam is collusion and cover-up before investigation and prosecution, before the case reaches the courts. Therefore, “the courts should not be blamed too much for not effectively preventing corruption in Vietnam.” This appears to be supported by the Government Inspectorate’s statistics, which show that from 2009 to 2010, more than 96 percent of anti-corruption cases proposed for prosecution by law enforcement bodies were tried by the courts, although this number has dropped in recent years.

Nonetheless, the court system in Vietnam essentially protects the State and, to some extent, the legal interests of civil parties (citizens), instead of being a driving force protecting justice. For example, in September 2012 the courts sentenced Hoàng Khương (Nguyễn Văn Khương), a well-known investigative journalist, to four years imprisonment for giving 48 million VND ($750) in bribes to a police officer. Hoàng Khương has maintained that the bribe was brokered as part of an investigation to expose police corruption, which culminated in an article published in Tuổi Trẻ detailing the transaction. In practice, the courts have also continually brought to trial individuals who have aggressively criticized the government for corruption. This has led to strong criticism both within the country and internationally, where the courts have been seen as a double-edged sword. A domestic journalist noted that “the trial of Mr. Hoàng Khương was a backward step that is inconsistent with the idea of judicial reform.”

There have been instances of collaboration between Vietnamese courts with foreign judicial authorities with a stake in the case, such as with Japanese authorities in the case of Pacific Consultants International. However, the extent and effectiveness of international cooperation by judicial agencies in Vietnam are still very limited. This is due to a lack of material and technical conditions, skills and experience with international cooperation, language barriers, and disparities between political and legal regimes.
However, there are some recent corruption cases that have been dealt with by the local courts. One case caused losses of nearly 966 billion VNĐ at an Agribank branch. In that case, defendants Lê Thành Công and Đỗ Trọng Nhân received twenty-five years and eight years, respectively, in prison for the crime of abusing positions and/or powers while performing official duties. In addition, a case of bribery caused serious damage to the Vietnam Waterway Construction Corporation (Vinawaco), and a case that occurred at Vinashinlines. These cases all show positive signs that the court system of Vietnam is becoming more active and effective in hearing corruption crimes. This is reflected in the fact that the cases are dealt with by local courts more urgently and strictly, although most of these cases involved very high-ranking state officials. But it is too early to say that the progress is sustainable, because it is merely motivated by the General Secretary of CPV Nguyễn Phú Trọng pushing the war against corruption in the country, rather than the progress being the result of systematic reforms of the local court system.

Conclusion

The court system of Vietnam is generally playing an important role in the fight against corruption in Vietnam. However, its lack of independence is the major weakness, because it remains heavily dependent on the CPV, the legislature, and executive bodies in almost all matters related to its organization, personnel, and operations. In general, the court system of Vietnam is now in the transition toward creating better conditions for the fight against corruption. However, the transition process is slow and impeded by traditional and modern problems. Thus, the ability to prevent corruption within this system in the coming years will remain weak. In a hopeful light, we need to continue to identify whether the experience of other countries can help to fill the gaps described in this paper.

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**Abstract**

This paper tackles the question of how the current court system of Vietnam can contribute to fighting against corruption in the country. The authors provide an overview of the role of the court system in anti-corruption as well as several traditional problems that weaken its power in curbing corruption. The court system also faces new challenges raised by free trade agreements as a result of development progress. Based on the current situation, the authors argue that although there have been many attempts to reform the court system of Vietnam, the ability to prevent corruption in the
court system in the coming years will remain weak. The situation has been explained by the separation of power in Vietnam and the influence of the Communist Party of Vietnam. The authors agree with these arguments but also provide new reasons such as cultural background, integrity of judges, and incorrect understanding of the core principles. They hope that this paper will help to provide a clearer vision of the role of the Vietnamese court system in general as well as of the anti-corruption fight.

**KEYWORDS:** courts, corruption, free trade, law, challenges

**Notes**


7. 2014 Law on Organization of the People’s Courts, art. 2, no. 33/2002/QH10; and Ordinance no. 04/2002/PL-UBTVQH11, art. 2, of the National Assembly Standing Committee (NASC), dated November 4, 2002, on the organization of military courts. All translations and paraphrases by the authors.

8. “Cassation” means to reverse a judicial decision on a point of law. This power is more restricted than an ordinary appeal, where all aspects of a case (including factual issues) can be considered. Proceedings can be reopened when new circumstances or evidence is discovered that may substantially change the facts upon which the original judgment was based.

9. This includes central military courts, military courts of military regions, and division military courts.

10. Article 102.2 of the 2013 Constitution leaves the structure of the court system more open, providing only that the “People’s Courts include the Supreme People’s Court and other courts prescribed by law.”

11. The CPV’s Resolution no. 49-NQ/TW describes the procedure for the court system to be reorganized into four different levels according to jurisdiction. District People’s Courts will be replaced with Regional People’s Courts (in some cases merging several district people’s courts into one regional court), which will retain their authority to conduct first-instance trials, but their jurisdiction will be expanded to deal with administrative cases as well. Provincial People’s Courts will be merged into Appellate Courts, which will conduct first-instance trials and appellate trials. High Courts will be established from the three existing appellate courts to support the handling of appellate trials, to act as courts of cassation, and to reopen proceedings. See “Chuan bi to chuc Toa an va Viet kiem sat khu voc” [Regional People’s Courts and Procuracies Will Be Established], Báo điện tử Chính phủ [Government ePaper], November 28, 2012, http://baodientu.chinhphu.vn/Hoat-dong-cua-lanh-dao-Dang-Nha-nuoc/Chuan-bi-to-chuc-Toa-an-va-Vien-Kiem-sat-khu-vuc/155512.vgp (accessed June 27, 2017).

12. Resolution no. 08-NQ/TW of the Politburo, part II, section A, point 2, on some key tasks of judicial work, January 2, 2002.


14. Ibid., cl. 1, art. 83.

15. Ibid., cl. 2, art. 79.

16. Joint Circular no. 2462, point 5, section I, part B.

17. Decree no. 204/2004/ND-CP, art. 7, dated December 14, 2004, on salary regime for public officials and armed forces personnel (amended by Decree no. 76/


19. Article 95, 2014 Law on Organization of the People’s Courts.

20. Ibid., art. 96.

21. Section IV.1.5, Circular no. 59/2003/TB-BTC of Ministry of Finance dated June 23, 2003, guiding the implementation of Decree no. 60/2003/ND-CP on guiding the implementation of law on state budget. See also Report no. 05/BC-NT of the Supreme People’s Court (SPC), dated January 18, 2013, summarizing the activities in 2012 and major tasks in 2013 of the court sector.


25. Decision no. 171/2005/QD-TTg, dated July 8, 2005, of the prime minister, on the responsibility allowance to judges, court clerks, and court examiners; Decision no. 72/2007/QD-TTg of the prime minister, dated May 23, 2007, on specialized allowances for judiciary positions and inspectors in the military.

26. Decision no. 41/2012/QD-TTg of the prime minister, dated October 5, 2012, on the allowance for persons participating in the trials and sessions resolving civil matters.

27. Using the multiplier of 2.34 x 1,150,000 VND.

28. Using the multiplier of 4.40 x 1,150,000 VND.


30. Legal consultant fees for small firms range from 500,000 VND ($25) per hour to 700,000 VND ($35) per hour for complex cases handled by well-known law firms. See, for example, “Phi thuê luật sư và nguyên tắc tính phí dịch vụ pháp


37. Report no. 05/BC-TA of the SPC.


40. 2013 Constitution, art. 103.2.

41. Ibid., art. 102.
42. Ibid., art. 70.
43. Ibid., art. 103.
44. Article 7, 2014 Law on Organization of the People’s Courts and art. 24, Ordinance no. 02/2002/PL-UBTVQH11.
48. “Asking for direction in adjudicating cases” is the circumstance when the inferior court consults the superior court on the direction to adjudicate a case if it finds difficulties in the proceedings or evaluation of evidence, etc. In practice in Vietnam, inferior courts, to avoid responsibilities, sometimes abuse this mechanism and sometimes the superior courts direct the inferior courts rather than simply providing guidance to them in adjudicating cases. Abuse of such a mechanism violates the principle of the independence of courts. On this issue, see “Án ‘thính thì,’ nên hay không?” [Asking for Direction in Adjudicating Cases: Should or Should Not?], Tiêu Trực Online [Youth Online], May 19, 2005, http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/89380/An-thinh-thi-nen-hay-khong.html (accessed July 15, 2017).
53. These are the provinces and cities under the central government, such as Nam Định, Thừa Thiên Huế, Hà Tĩnh, Vĩnh Long, Hưng Yên, and Hồ Chí Minh City. An internet search yields only three more websites: the websites of the people’s courts of Hà Nội, Bác Ninh, and Quảng Ninh Provinces.


55. Decision no. 1253/2008/QD-TANDTC, art. 4.2, on the code of conduct of cadres and civil servants in the court sector.


61. Decree no. 78/2013/ND-CP.


65. Report no. 80-BC/BCDTW.


71. Sentences in the latter two cases were handed down by the Hồ Chí Minh City People’s Court on November 13, 2013, for embezzlement, abusing one’s position and power while on duty, and intentionally violating state regulations


74. Alan Doig et al., Hinh sử hóa hành vi tham nhũng, 16.


78. In this case, four former officials of a Japanese consulting firm were arrested in August 2008 for offering bribes worth $820,000 to a Vietnamese official in charge of awarding Japanese overseas development aid contracts.

