

# **Asia Pacific Labour Law Review**

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## **Workers' Rights for the New Century**

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## **Asia Monitor Resource Centre Ltd.**

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# Vietnam's Labour Policies Reform

Ngan Collins and Ying Zhu

Vietnam began taking its first steps toward economic reform (Doi Moi) in 1986, marked by the Sixth National Congress of the Vietnamese Communist Party in November of that year. The main aim of Doi Moi was to transform the economy from a centrally planned system to a market-oriented system with a multi-sectoral economic structure. However, market-oriented reform has led to an emergence of new interest groups, changes in industrial sectors (see Figure 1), the inflow of foreign capital, and the diversity of ownership of enterprises (see Figure 2), which have accentuated conflicts of interest and require a more relevant industrial relations system to cope with these challenges (Zhu and Fahey, 1999).

Although economic reform in Vietnam began in 1986, reform in labour relations policies was not truly implemented until the mid-1990s through the Labour Code. Reform of the legal framework for labour policy followed a process of 'trial and error'. Guidance from central government passed through many stages and the central government's objectives were gradually lost.

Until 1994, labour policies did not suit the requirements of a market economy. Labour policy reforms were introduced ad hoc in many different fields such as employment contracts and union laws. The lack of legal guidance



in labour policy appropriate to the market economy was a motivation for passing the Labour Code on 23 June 1994. This was the first time that the relationship between employees and employers and their rights and obligations had been officially recognised under government law (Le Dang Doanh, 1996).

The Labour Code was the foundation for policy renovation in labour relations during the late 1990s. It provided many general labour relations regulations, such as training, labour contracts, collective working condition agreements, holidays, hiring and firing, unions, wages, health and safety, female workers, and workers' compensation. However, until recently the code has still mainly been practiced in state-owned enterprises (SOE) rather than in the private sector. Numerous other laws and regulations concerning labour relations have been enforced during the years since the code was passed. These include the Bankruptcy Law (1993), 'Equitisation' Law (1993), Corporation Law (1993) and the Law on State-Owned Enterprises (1995).

However, it is important to recognise that employment relations reform, like the overall reform process in Vietnam, has not been smooth. Each aspect has been reformed in its own way, with its own difficulties and time frame. There is also significant overlap and interaction between the different aspects. Therefore, for clarity's sake this paper provides a general overview of changes to employment relations from the period before Doi Moi until the present day and then deal with changes to individual aspects.

### Background

The dominant pre-reform employers were SOEs. The SOE system follows the principle of the so-called 'socialist democratic centralism'. The SOE leadership always included four components: party leadership, management, union representatives, and youth representatives. The party leadership had the dominant role. According to party principles, the party secretary in an enterprise was usually also its director or vice-director.

Workers were called the 'Masters of the enterprise' (*Nhan dan People* newspaper, 1990:1). All the important decisions in the enterprise concerning production plans or bonuses were debated and decided in the work-

ers' congress. The role of the director was to accept on behalf of the workers the task assigned to the enterprise by the party. The management and workers had the same aims of 'unifying to achieve together the target set by the state'. If there were any internal disagreements in SOEs then it was common for the dispute to be presented at a meeting to be discussed and a unanimous decision was usually reached by the end of the meeting.

The history of unions in Vietnam has been in line with the Vietnam communist party activities. In 1929 the first trade union organisation was established in Vietnam named the Northern Confederation Red Union (Tong Cong Hoi Do Bac ky), leading to the birth of Vietnam Labour Party (Dang Lao Dong Vietnam), the prelude to the Vietnam Communist Party in the following year (*Ngoi Lao Dong* Workers newspaper, 2002c). Soon after achieving victory in the revolution of August 1945, the first conference of labour cadres was held in Hanoi in October 1945, followed by the establishment of the Vietnamese Confederation of Labour (Viet nam Tong Lien Doan Lao Dong) in 1946 (Fall, 1956). This organisation operated as a tool of Vietnamese government to practice its policies in the area of production and labour control (Fall, 1956). Throughout two national revolutions, first against French and then the Americans, the Vietnamese government was the main actor in safeguarding the working people (Nurlund, 1993).

During the central planning period unions were regarded as a weapon to assist the party achieve its political goals. They had four basic functions:

- protecting the interests of workers in their working environment. This included such activities as supervising the allocation of welfare benefits, visiting the sick, and arranging parties for children;
- participating in managing the assets and property assigned by the government to the SOE;
- encouraging and motivating workers to raise productivity;
- educating its members in socialist ideology and awareness by such measures as organising artistic and sporting competitions (Law on Trade Unions, 1990).

The role of unions was administrative rather than representative (Zhu and Fahey, 1999). Hence, reforms to labour policy had to be accompanied by changes to the unions in the post-reform era.

### **Contemporary legal framework**

The legal and regulatory framework is one of the weakest areas of reform in Vietnam (Zhu and Fahey, 1999). The process of establishing a legal framework has gone through three stages: lack of legislation, temporary regulations, and union and labour legislation (such as the Trade Union Law and Labour Code).

### **Trade unions**

The replacement of the old union charter, established in 1978, with the new charter in 1989 was the first step in labour policy reform (Nguyen van Huy and Tran van Nghia, 1996). It also showed the tentative nature of labour policy reforms. Change to union policies were the least important component of employment relations reforms so they were trialled first in order to gain experience for later, more important changes.

Until recently, Vietnamese unions have mainly been involved in the state sector and some in foreign enterprises but unions have not been very strong in other business sectors, including domestic business.

The new charter, which expanded the role of unions, became more responsible for protecting the legal rights of employees. Since 1989, the reforms of unions have been divided into two different models of (Nguyen van Huy and Tran van Nghia, 1996).

The first model is applied to unions located within SOEs, operating under the control of local government. Unions in these SOEs work under the leadership of the management board. The union president is appointed by the management board and ratified by higher government authorities. Union fees are deducted from SOE profits, decided upon by the management board. All unions in this type of SOE are led directly by a union committee where the SOE operates and its policies are guided by the people's committees.

The second model is applied to unions in SOEs, which are controlled by the central ministries. The unions in these SOEs must work according to the plans and guidelines adopted by central government. Their funds are provided by the government but they have the autonomy to use them without going through the SOE's management board.

According to general regulations governing union expenses, SOEs must deduct one percent of total profits to pay to the unions. Members pay two percent of total

wages, of which 50 percent is sent to the union at a higher administrative level and 50 percent is used for the SOE's activities.

The Labour Code has also formalised the role of unions in Vietnam. The code declares that if any employer has more than 10 employees s/he must register a 'labour regulation' with the Provincial Labour Office and must contact local trade union executives about its activities (Labour Code of Vietnam 2001).

The Code also stipulates the conciliation and arbitration processes for disputes between employers and employees and permits workers to strike. If a stoppage arises as a result of the employer's conduct, workers shall be paid wages in full (Labour Code of Vietnam 2001: Article 62).

The role of unions in Vietnam has gradually shifted. They are now more clearly identified as working in the interests of workers and playing a part in settling workplace agreements. Unions have established themselves independently from government activities and approval, and are permitted to join international trade union organisations. In particular, the union representative's salary is now partly funded by union fees.

### **Employee recruitment**

Before Doi Moi all SOE employees, except casual workers, were recruited through government labour bureaux. When any enterprise needed labour they notified the labour bureaux, which distributed the human resources. For highly skilled positions the bureaux recruited in vocational schools, colleges and universities. Tertiary graduates were automatically transferred to these bureaux to find employment. Low skilled workers were recruited locally.

SOEs did not have the authority to dismiss employees. Workers who broke the rules were warned in front of the collective and submitted a letter of self-criticism to the management board.

As part of the policy of giving SOEs responsibility for their own actions, Decision No. 217/HDBT, passed in 1987, permitted SOEs to take charge of their own recruitment and dismissals. However, the policy was not properly written into law until the Labour Code in 1994. According to the Labour Code (part 2, articles 192 and 193), the director has the power to dismiss employees who break the enterprise regulations, violate the govern-



Marketplace (Credit: Eugene Kuo)

ment's labour principles, do not carry out work as they pledged on the labour contract, or act in a way which damages the enterprise's or government's assets. This is a new step in relations between the director and employee and indicates the director's increased power over the employees. Despite this, conciliation is still the preferred method for all disputes and it is rare for employees to be dismissed.

Nowadays, SOEs and other business sectors have several main avenues for recruitment. First, they give selection priority to workers' families. Second, they look for available local labour. Finally, if enterprises need a large number of skilled employees they approach employment agencies or vocational schools. Prospective employees are now able to seek work freely throughout Vietnam and are no longer obliged to go through labour bureaux.

### **Labour contract**

Until 1987 all full-time workers in SOEs enjoyed 'work for life' (*bien che*). Once employees had been placed under the 'work for life' system they continued to work until retirement.

During the Doi Moi period, permanent employment contracts in SOEs were no longer preferred and all economic sectors had to be more flexible to cope with market pressure. The government put forward a policy to transfer SOE lifetime employees to contract employees, which constituted a fundamental change in the government's approach to SOEs.

From 1987 all new workers hired by SOEs had to sign an employment contract according to a model drawn up by the government. After three years of implementing this first step without difficulty the government passed an ordinance specifying that employment contracts would even apply to casual workers.

However, the first steps were taken very slowly to assess whether the SOEs would accept the changes. In practice, most SOEs did not sign contracts with any of their employees. Those SOEs that did ask their workers to sign contracts usually drew up their own and only used them to formalise wages payments. Workers who had been hired before the 1987 regulation came into place continued to work under the 'work for life' system. Labour contracts only applied to new workers and contracts were very vague. Thus, in practice, employment in SOEs continued to be viewed as 'work for life' despite the new laws.

The biggest change to labour contracts occurred in 1994 with the introduction of the Labour Code. Since then all SOE employees have had to sign labour contracts with the exception of the director, treasurer, and union president, who are all appointed by the state and continue to be employed for life. In other sectors all workers are employed on contracts. Further gradual steps have been taken to reform employment contracts and this has constituted a change in the official approach to employment relations.

Labour contracts can now be divided into three types: contracts in which the time period is not specified, usually reserved for cadres and technicians who transferred from the tenure system; a fixed-term contract of one to three years reserved for ordinary employees; and casual contracts or specific work contracts with a duration of less than one year (Kim Anh, Quoc Cuong, et al., 1999). All three types of contract use a single model, which is also used by all private domestic and foreign-owned companies. It includes five sections: worker's background, working conditions, rights and duties of em-

ployees, rights and duties of employers, and general issues. It is signed by employer and employee.

### **Working conditions**

According to the Labour Code all enterprises must draw up what is known as a ‘Collective Working Conditions Agreement’ (Labour Code of Vietnam 2001: Article 44), is an official document and the foundation for all labour relations. The basic conditions on the rights of workers are stated clearly and specifically in this document. These include labour contracts, work security, working hours and holidays, the use of company profits, wages, allowances, and social insurance. Like the labour contract, the Ministry of Labour and Veteran’s Affairs has drawn up a model agreement to be used as a guide for employment relations. Along with the employment contract, it is considered as a document to resolve disputes between employees and employers. However, the conditions of each clause of the agreement vary depending on the circumstances of each company.

The agreement for each enterprise is drawn up by the union leadership and then given to the production groups for their opinions. After that it is passed to a higher administrative level and continues up the administrative levels until the document is perfected. The agreement is officially signed at the Workers’ Congress by the director, representing the employers, and the union president, representing the workers and then sent to the provincial department of Labour and Veteran’s Affairs for ratification. It is valid for three years but is re-evaluated and can be modified after every year (Labour Code of Vietnam 2001: Articles 50 - 51).

### **Occupational health and safety**

As a general matter of principle there is an obligation to provide a safe workplace (Labour Code of Vietnam 2001: Articles 95-108). The state inspects the workplace to see whether it meets safety standards (Labour Code of Vietnam 2001: Articles 185-191). In addition, Decision 145/LDTB XH-QD issued by the Ministry of Labour, War Invalids and Social Welfare states that this organisation is responsible for issuing lists of machinery, equipment, materials, and substances that require particular safety practices (Kim Anh, Quoc Cuong, et al., 1999). It is then incumbent upon the employer to ensure that stipulated safety standards are met and that workers

involved in dangerous jobs are properly clothed and protected (Labour Code of Vietnam 2001: Articles 96, 100, 101). In addition the employer is responsible for maintaining machinery and equipment and providing adequate signage about its use and hazards. Employees have the right to refuse to work if they perceive a serious threat to life or health (Labour Code of Vietnam 2001: Article 99). Article 107 states that if a work-related injury or infection occurs the employer has to pay at least twelve months salary and the medical expenses of the employee. Where the employee suffers a reduction by 81 percent or more of labouring capacity, the employer must pay 30 months salary to the worker, or in the event of death, to the family. These payments are in addition to any amount due from the Social Insurance fund.

### **Conditions for female employees**

The working conditions for female workers were stipulated in 17 articles of the Labour Code. The main issues for female workers such as maternity and menstruation leave, sexual discrimination policy, gender equity, and so on were highlighted: “The state shall, on the basis of equality of the sexes, protect women’s right to work” (Labour Code of Vietnam 2001: Article 109), including establishing policies to encourage employers to create better conditions for women, expanding various forms of training which are favourable to female workers to enable women to gain an additional skills, providing employers with incentives to employ female workers and helping women to find work which is suitable to their biological and physiological characteristics as well as their role as a mother (Labour Code of Vietnam 2001: Articles 109, 110). Article 111 of the code stated that the employer must follow the principle of gender equality in respect to recruitment and salary and wage increases. In addition, female employees shall be entitled to maternity leave prior to and after the birth of their child for a period of four to six months as determined by the Government on the basis of the working conditions and nature of the work (Article 114). Any female worker who is employed in heavy work and is seven months pregnant shall be either transferred to lighter duties or entitled to work one hour less and still receive the same wage (Article 115). Enterprises which employ a high number of female employees must provide child care centres or assist female employees to cover the cost of child care (Article 116).

An important policy change regarding working conditions' regulation came into effect in 2000. The former policy was for all enterprise employees to work 48 hours per week. From 1 January 2000 enterprises have been encouraged to implement the new policy of 40 hours per week with the aim of raising productivity (Sai Gon Giai Phong Liberated Saigon, 2000).

### **Wages**

The previous wage system for SOEs was a modification of the old Soviet Union system. There were seven wage levels for manual workers, six for technical workers, and twenty-five for cadres. Wage increases were fixed for different periods depending on the type of work performed. Manual workers received a pay increase every three years, after going through the formality of a competency test, so people who had worked for a long time usually had a higher rate. Cadres were given salary increases once every two years.

A characteristic of the old wage system was the narrow gap between the different wage levels, which was further reduced by the benefits system (Kim Anh, Quoc Cuong, et al., 1999), providing little incentive for employees to increase productivity.

By the mid 1980s wage levels in SOEs were far too low and further eroded by high inflation in the late 1980s and early 1990s. The government was forced to apply a system of wages compensation in order to maintain real wage levels. The amount of government compensation rose continuously until it reached 125 percent of wages in the period immediately preceding wage reform (Kim Anh, Quoc Cuong, et al., 1999). Apart from the inadequate wage levels, the old way of calculating wages was too complicated and out-of-date for the new market environment and a new wage system was required.

Through Decision 197/CP the government made improvements to the wages system. The decision included the minimum wage, the wage scale, composition and payment, and bonus systems. The new wages system was based on the central government's strategy of abolishing wage subsidies for SOEs and creating a system in which wages reflected the actual value of work contributed by the employee.

### **Welfare**

Like the system of subsidies, the welfare benefits of SOEs were very high until the early 1990s. Most SOEs had an accommodation scheme for their employees as well as providing free childcare, kindergarten, sports facilities, and library services. SOE employees were also subsidised for electricity expenses, birth and funeral expenses, and received a retirement pension. Families of three or more children received a payment for the birth of their third child and study expenses for all their children. Health care was free for everyone.

As for bonuses, SOEs usually organised for their employees to go on holiday at the end of the year and paid for the whole family to go with them. They also organised celebrations for festivals and gave Lunar New Year and May Day presents to all employees. It is notable that during this period the SOEs did not have any financial bonuses for the most productive workers or pay an extra month's wage at the end of the year. The best workers were only given a 'certificate of praise' (giay khen).

This welfare and bonus system became a burden to SOEs when they had to take care of their own finances independently from the state. After the changes of Doi Moi SOEs still had to pay these benefits, meaning they had higher costs than other sectors but no longer received any compensation from the state. It became evident that a welfare system more appropriate to the financial ability of the SOEs was necessary.

The number of regulations governing the means of calculating allowances indicated the government's difficulty in dealing with this issue. From 1993 to 1998, 70 decisions were passed on this matter and many of the decisions contradicted or conflicted with each other. The decisions had the overall effect of tightening regulations on allowances and social security and delegating the responsibility for welfare matters to the companies themselves.

A number of new welfare laws were set out more precisely, such as the laws on social security, health insurance, allowances, and bonuses. The social security regulations apply when more than ten persons are employed (Labour Code of Vietnam 2001: Article 141), except when they are employed on a casual basis for a period of less than three months. The social security sys-

tem is funded by an obligatory payment of social security premiums by the employer (15 percent of wages) and the employee (five percent of wages). Social security includes unemployment benefits, sickness benefit, maternity allowance, accident allowance, and payment for retirement and death. Health insurance comprises three percent of the total wage that enterprises have to pay to employees. Workers become eligible for pensions at the age of 60 for men and 55 for women if they have paid social security premiums for at least 15 years. The benefit is equal to 45 percent of the salary earned in the past five years with an additional two percent payable for every additional year worked.

The policy on employee bonuses has also been reformed. Bonuses used to be given in many forms such as periodic bonuses, end of year bonuses, public holiday bonuses, wedding presents, and presents for the birth and birthdays of children. All these expenses were paid for by a bonus fund taken from 65 percent of the SOEs' profit remaining after it had submitted payment to the government. Therefore, if any SOE operated ineffectively the bonuses declined (*Phu nu Women* magazine, 1999).

### **Unemployment**

The Doi Moi process has been accompanied by a high unemployment rate. This is due partly to the uneven development between urban and rural areas, the new Labour Code allowing managers to fire or hire employees directly and the decision in recent years for SOEs to lay-off many superfluous workers. In addition, the private sector now forms a higher proportion of economic activity, including local firms, foreign joint ventures, and wholly foreign-owned firms. These firms operate according to market principles and many adopt a short-term employment strategy.

Official unemployment data in Vietnam is unclear. According to the 'Status of Labour –Employment in Vietnam' report published by the Ministry of Labour-Invalids and Social Affairs in 2001, the national unemployment rate for urban areas is 6.34 percent (Ministry of Labour-Invalids and Social Affairs, 2001). This figure differs from the Vietnamese National Living Standard Survey conducted in 1992 and 1993. This survey

suggested that 29.2 percent of the working age population was unemployed (Vijverberg, 1998).

The main reason for the huge difference in figures is the way in which unemployment was defined. In many cases the employment figures simply showed whether or not the person had a job but did not consider whether or not they were in full employment. According to 'Vietnam Economy in 1998' (Central Institution for Economic Management (CIEM), 1999) only 82 percent of rural people of working age were employed in 1998 and many of these were underemployed. On average, an agricultural worker is able to work only about 68 percent of the available working time and s/he has no opportunities for productive employment the rest of time. Underemployment in rural areas is about 10 million, while agricultural land per capita is declining as the population increases and agricultural land is transferred into developing infrastructure and industry (CIEM 1999).

## **Effectiveness of new labour policies' implementation**

### **Trade union**

Although there have been many changes in the area of industrial relations since the implementation of the Labour Code, especially in trade union activities, the percentage of private enterprises with trade unions is still quite low compared with SOEs. By 2000 only about 68 percent of foreign enterprises had trade unions compared with virtually 100 percent in SOEs in Ho Chi Minh City (Summary Report of Implementation of Labour Code in Ho Minh City 1995-2000: 19). Trade union activity in the private sector has not been strong in protecting workers' rights. The main reason for this is that union representatives have not had enough experience and knowledge in working in a dynamic business environment and are not strong enough to be able to protect their members. Another reason is that the trade union law is no longer suitable for current working conditions and is in need of reform. Since early 2002 the government has run a campaign in preparation for a new trade union charter, which is expected to be issued by the end of 2002.

### Labour contract

Labour contracts are gradually gaining acceptance in the labour market and are even becoming compulsory in SOEs. Statistics from the Ho Chi Minh Trade Union Federation show that labour contracts have been implemented in 90.7 percent of SOEs, 66.4 percent of local private enterprises, and 96 percent of foreign invested enterprises. There are still some negative aspects to the implementation of the labour contract. There is a predominance of short term contracts in many industries such as garment, footwear, and seafood processing whereas unlimited period contracts still only comprise about 20 percent of total labour contracts have been signed. In many enterprises contracts are only a formality without practical value. Many of them are very simple and lack many important aspects of workers' rights, which has led to employees being disadvantaged. For example, many contracts have been unclear about the specific method for calculating redundancy benefits according to Labour Code article 42.

### Working conditions

A Collective Working Conditions Agreement has long applied in SOEs but has not been as widespread in other economic sectors. In 2000 only 70.5 percent of local private enterprises and 49 percent of foreign enterprises had signed Collective Working Conditions Agreements compare with 98 percent of SOEs. A mere 22 percent of enterprises in industrial zones had signed agreements (Report Summary of Labour Code Implementation in Ho Minh city 1995-2000: 7).

The 40-hour working week and a maximum of 200 hours overtime per year are proving difficult to implement. From 9,070 enterprises in Ho Chi Minh City only 81 signed up for a 40-hour working week and 167 others signed for a 44-hour week (Report Summary of Labour Code Implementation in Ho Chi

Minh City 1995-2000: 2, 3, and 11). In the case of SOEs, this sector is well known for working 'rubbery hours' and working eight hours per day is just a theory. Faced with the pressure of a market environment, enterprise capacity to guarantee delivery times and volumes takes precedence over keeping employees' working hours down to legal levels. Moreover, there is still no law to penalise enterprises that ask their employees to work overtime. Many enterprises concentrate on profit, leading to long working hours and exploitation. In many businesses, especially in the garment and footwear industries, some workers worked 500 to 600 hours of overtime per year without any extra payment (Report Summary of Labour Code Implementation in Ho Chi Minh City 1995-2000). This has been the primary reason for many labour disputes during the past few years.

### Occupational health and safety

Health and Safety is another area in which labour policies have mainly been implemented by SOEs. An increasing number of injuries are occurring at the workplace. According to a Ministry of Health report in 2002, an average of 400 workers died and over 1,000 workers were injured each year during the last 10 years (*Nguoi Lao Dong Workers* newspaper, 2002b). In 2001 alone Vietnam had 3,601 workplace accidents injuring 3,748 workers and killing 395 workers (*Nguoi Lao Dong Workers* newspaper, 2002b). Major recent acci-



Harvesting rice (Credit: Eugene Kuo)

dents have occurred at La Hien Cement Company in December 2001 in which eight workers were killed, a gold mine in Bo Ha in early 2002, which killed three workers and injured three, and the collapse of a construction site at Ben Thanh Beer Company, killing two workers and injuring 10 (*Nguoi Lao Dong Workers* newspaper, 2002b). A significant reason for these accidents is the employers' lack of compliance with government health and safety regulations. According to *Workers* newspaper (13 March 2002), employers were responsible for 42.2 percent of workplace accidents as they did not provide proper equipment and protection for workers, did not follow health and safety regulations, and did not ensure a safe working environment. Moreover, employees have not been trained in health and safety, especially casual or short-term workers. In many cases workers have little legal protection and compensation from employers if they were not SOEs' employees.

### Conditions for female employees

Research conducted by the Vietnamese Trade Union Federation in February 2001 found that 41.7 percent of female workers in Vietnam have not received training in work insurance policy, 73.8 percent of businesses have not reserved any funds for former employees who were retrenched and are now unemployed and 58.3 percent businesses do not undertake an annual assessment of working conditions. Furthermore, 39.3 percent businesses do not have any first aid program or medical support in the work place, 17.9 percent of female workers are working in a chemical environment, and 8.9 percent are working in toxic conditions.

### Wages

Laws concerning the new wages system have been enforced so inconsistently that they could be likened to 'putting the cart before the horse'. Article 24, chapter 5 of Decision 179/CP clearly stated that 'this decision comes into effect from 1 January 1995' yet from early 1993 until the time Decision 179 was passed the government had distributed 12 circulars regarding the execution of the new wages regime and companies had implemented parts of the new system from as early as 1 January 1994.

Another example of inconsistency can be seen in regulation number 239/TTg, dated 23 May 1993, regarding

the expansion of the new wages system which stated that "the re-ordering of wages must necessarily follow the state's regulations" (Kim Anh, Quoc Cuong, et al., 1999). However, it was not until 21 December 1994 that any overall regulation on wages even existed. In all, 76 circulars relating to the enforcement of the wages system were distributed between 1993 and the end of 1998 but they were often inconsistent and even contradicted each other.

The new wage regulations were only applied to enterprises that were operating autonomously. As a result, when the new wages system was implemented it created the problem that workers performing similar functions in different industries were paid at significantly different rates. For example, in the SOE sector drivers used to earn relatively similar amounts regardless of the industry because wages were calculated on a set scale. After the new wages system came into being, a driver in a factory earned six to eight times lower than a driver for the post office or the oil industry. This occurred because factories paid wages according to the new government regulations that did not apply to postal and oil industries. These two industries belonged directly to the council of ministers so their wages were calculated differently. This led to a situation in the mid 1990s of government workers battling each other to apply to be transferred to enterprises where they would be more highly paid, throwing the labour market into chaos, and creating an environment in which bribery was commonplace.

A sharp drop in real wages caused by high inflation during the mid and late 1990s forced the government to introduce a rise in the minimum wage from VND120,000 up to VND144,000 per month in January 1997. However this rise was still not enough to provide for daily living expenses so in January 2000 it rose once again to VND180,000 and VND210,000 in 2001 (*Nguoi Lao Dong Workers* newspaper, 1999).

In mid-1999 the government announced a strategy to improve the wage system in SOEs beginning from 2000. However, the government has also had to consider whether or not budgetary constraints allow it to pay an adequate wage level to SOE workers. Even raising the minimum basic wage to VND210,000, well below the amount needed to pay for daily living expenses, was because the budget allocated to wages rose during a period when revenue earned actually decreased compared to

1994 and 1995 due to a fall in overall revenue. Therefore the reorganisation of wages was essential in the short-term but has constituted a major challenge for the government.

### **Welfare**

In recent years SOEs have decided to lay off many superfluous workers to reduce costs but many faults have been revealed in the policy toward redundancy and unemployment benefits. There are many instances of enterprises attempting to avoid implementing the welfare laws. For example, enterprises which have had to cease production because they have been running at a loss have not declared bankruptcy, choosing rather to lay off employees temporarily on 70 percent pay (*Phu nu Women* magazine, 1999). If they declare bankruptcy then according to the bankruptcy law SOEs would have to guarantee wages, social security, redundancy (one month's wages for each year worked) and other payments to employees as defined in the Collective Working Conditions Agreement (Kim Anh, Quoc Cuong, et al., 1999). After selling all their assets many companies still did not have enough money to pay workers the amounts defined by the government. As a result it was common for workers to resign without notice to await the government's decision in those SOEs that had closed their doors. Many of these workers were forced to wait for years before they received compensation from the company.

### **Unemployment**

The lack of rural employment has led to a wave of internal migration from rural to urban areas in recent years. Most migrants are young females who work as domestic servants. This labour sector has never been accounted for by any organisation. Male farmers in areas surrounding the major urban centres travel to the city by bicycle for work during the day. There is a so-called 'employee market' (Cho Nguoi) just outside Hanoi. People from nearby villages go there for short-term jobs labour while city people go to find casual and cheap workers who can perform simple tasks without any labour contract. Neither female servants nor male casual workers are protected by labour laws or policies.

In other sectors such as construction and service industries, which employed 12.1 million people in 1998,

many workers were not fully employed. Even in the foreign investment sector, which would appear to make the most efficient use of its labour force, 10 percent of employees recruited have no work (CIEM 1999).

### **Concluding remarks**

The industrial relations system has changed dramatically during economic reform. The labour law and regulations have a strong element of compulsion but in many instances enterprises implement them passively and half-heartedly, taking advantage of loopholes in those regulations.

Another characteristic displayed during the reform process is that the government and enterprises, especially SOEs, are in a constant state of negotiation. Disagreements between administrative levels that occur during the renovation process are always resolved through conciliation. The government is prepared to compromise if the regulations are too far from what is required in reality. An example of this can be found in the setting up of wages compensation or continually raising the minimum wage level over several years. These compromises help to settle disputes but they do not solve the core problem. From the enterprises' point of view, some regulations are inappropriate and sometimes jeopardise their operations. For example, the decision to make SOEs responsible for paying welfare and bonuses reduced competitiveness. Nevertheless, they try to partially implement the regulations to satisfy the government and be allowed to continue business.

Problems exist within different industries with different ownership systems. Many laws and regulations have been formed since the mid-1980s, but implementing them effectively remains the fundamental challenge facing the government, trade unions, and enterprises. Pressures to protect workers' interests have built up both domestically and internationally. Certainly, the policy makers in Vietnam are seeking to strike a balance in designing a legal framework which enables the party-state to retain control while at the same time maintaining industrial harmony between workers and unions on the one hand and SOEs and other employers on the other.

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## Appendix 1

### **Case study 1: ‘There Is Still Nobody Protecting The Rights of Casual Workers’ (*Tuoi tre Youth newspaper 2002*).**

A heavy package fell onto former forklift driver, Nguyen Cao Loc, during work, and damaged his right hand permanently. After taking him to the hospital and giving some money for treatment, the employer disappeared.

Lê Văn Vinh, from Dong Nai province, went to Ho Chi Minh City to find casual work but a permanent injury to his spine sustained in an accident when he was fixing a roof on a construction project means that he has lost the capacity to work.

Nguyen Minh Hung, a freelance builder from Ho Chi Minh City fell from a four metre high scaffold five years ago and is still on special medical care as he has not recovered from his injury.

There are still many casual workers who have not received proper compensation for workplace accidents. According to Mr. Pham Hong Hai, a Ho Chi Minh city government official, even though those workers did not sign a labour contract with the employers, they are still covered by labour policies on safety at the workplace and entitled to full compensation for injuries from employers. However, many employers still dodge their responsibilities. Mr Hai stated that in reality his office had not handled any disputes on this matter because the workers do not know about their rights and the compensation process.

### **Case study 2: ‘Female workers in the rubber industry are still disadvantaged’ (*Lao Dong Workers newspaper 2002, p. 2*)**

There are almost 40,000 female workers in this industry, making up approximately 50 percent of its workforce. Those female workers are still disadvantaged in many area of labour policy.

According to Ms. Lam Thi Minh Hien, Vice Secretary of the Rubber Industry Trade Union, the implementation of labour policies for female workers very much depends on the individual enterprise. For example, about 60 minutes break during working hour for feeding

babies, a deduction of one working hour per day for pregnant workers, allowances for mothers of newborn babies etc. There are 20 companies in the industry, most of which are SOEs, but only four actually comply with these regulations. The companies that have not applied labour policies for female workers explained that the majority of workers in their companies were females working in shifts. Strong pressures on the company’s business and production targets prevented them from putting these policies into practice.

The female workers work from 5 a.m. in the rubber plantations in conditions of high humidity, high carbon dioxide levels, poor light, and insufficient sanitary arrangements for women. Of the 20 companies only Phuoc Hao has toilets for female workers. This situation led to a high percentage of gynaecological disease among these workers. Approximately 30 to 40 percent of female workers in these companies have gynaecological disease and the proportion goes as high as 52 percent in Dau Tieng Rubber Company and 51 percent in Chu Pah Rubber Company.

As for the retirement policy, only eight workers received retirement benefits among 296 female workers who had finished work at Loc Ninh Rubber Company. Those remaining had to accept the redundancy policy for finishing work. The percentage of female workers entitled to retirement benefits is very small in the rubber industry. According to the labour code, the age for retirement for females is 55 and to receive the benefit the worker has to have paid money into a social security fund for at least 20 years. These two criteria are rarely satisfied in practice, because of the hard working conditions due to the constant manual labour outside. Many female workers are not able to continue to work beyond 40 years of age because health, particularly their eyes cannot cope with the requirements of the job. They would move to other jobs but there is nothing available. From 1998 to 2001 only 4.47 percent of female workers who stopped working were entitled to retirement benefits in the rubber industry. The others had no choice but to accept a one-off redundancy payment.

## Appendix 2

### Chronology of significant events, 2000 -2001\*

2000 Economic growth was 6.7 percent compared with 4.8 percent in 1999.

#### 1 January 2000

The new minimum wage of VND180,000 was implemented.

The Enterprise Law was implemented. This law encouraged the birth of 13,000 enterprises in 2000 alone, with a total invested capital of VND10,000 billion, three times more than in 1999.

#### June 2000

The largest flood in 20 years hit all Vietnam. It lasted for three months, caused VND4,800 billion in damage, and killed 700 people.

#### July 2000

The trade agreement between the United States and Vietnam was signed, boosting trade between the two countries. It opened up an important market for Vietnamese exports and allowed foreign direct investment from the USA into Vietnam.

A stock exchange opened in Ho Chi Minh City for the first time in Vietnamese history.

2001 Economic growth was 6.8 percent.

#### 1 January 2001

A new minimum wage of VND210,000 was introduced in accordance with regulation 77/PC issued by the central government on 15 December 2000.

#### 6 to 16 January 2001

The second conference of the Central Party Committee prepared a draft of the itinerary, documents, and personnel for the forthcoming ninth Party Congress.

#### February 2001

The new labour relations policy of 40 working hours per week was implemented.

#### 19 to 23 April 2001

The ninth Party congress passed the strategic National Socio-economic Development Strategic Plan for 2001-2010. The congress also voted for Mr. Nong Duc Manh to replace Mr. Le Kha Phieu as general secretary. Mr. Nong Duc Manh was the president of the Vietnamese national assembly before becoming the general secretary. He is well known as being open-minded, in contrast to Mr. Le Kha Phieu, who was from a military background and took a more conservative approach to economic reform.

#### 9 October 2001

Nam Cam, a gangster in Vietnam, was arrested. This was one of the biggest crimes ever uncovered in Vietnam and was the first crime case to involve many important Vietnamese officials, including at least one Member of Parliament and many high level police officers and media personnel.

#### 10 December 2001

The trade agreement between the USA and Vietnam was implemented.

\* Source: CIEM 1999

### Appendix 3

Strikes in Ho Chi Minh City since Labour Code Implemented

Year	No. of strikes	SOEs		Local Private Enterprises		'Equitised' Enterprises			
		No.	%	No.	%	No.	%	No.	%
1995	25	4	16	11	44	10	40		
1996	38	8	21,05	19	50	11	28,95		
1997	46	8	17,4	22	47,82	16	34,78		
1998	38	6	15,79	18	47,37	14	36,84		
1999	30	3	10	8	26,66	19	63,34		
2000	35	6	17,14	12	34,28	14	40	3	8,57
Total	212	35	16,5	90	42,45	84	39,62	3	1,41

Source: Summary Report of Implementation of Labour Code in Ho Chi Minh city 1995-2000

#### Strike characteristics in Ho Chi Minh city

No strikes were organised by a trade union and were all therefore illegal. Most of the strikes were regarding the employee's financial entitlements. Trade unions played a minor role throughout the strikes.

### Appendix 4

#### Contact details of trade union organisations

##### The Confederation of Vietnamese Trade Unions

General Secretary: Ms Cu Thi Hau

Vice General Secretary: Mr Nguyen An Luong

The Hanoi Branch: 82 Tran Hung Dao Street, Hanoi

Tel: 84 4 942 1181 Fax: 84 4 822 3323

Ho Chi Minh City Branch: 14 Cach Mang Thang Tam St.,

District 1, Ho Chi Minh City

Secretary: Mr Dang Ngoc Tung

Vice Secretary: Mr Nguyen Huy Can

Tel: 84 8 829 0850 Fax: 84 8 824 3787