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Vietnam's Labor Rights Regime: An Assessment

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Mark Manyin (Coordinator), Thomas Lum, Lois McHugh
Foreign Affairs, Defense, and Trade Division

Phuong-Khanh Nguyen, Wendy Zeldin
Law Library of Congress

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Vietnam's Labor Rights Regime: An Assessment

Summary

In 2001, Congress is expected to consider the U.S.-Vietnam bilateral trade agreement (BTA). Under the agreement, which was signed in July 2000 and requires Congressional approval, the United States pledged to extend conditional normal trade relations status to Vietnam, thereby significantly lowering tariffs on imports from Vietnam, in return for Hanoi's agreement to enact a wide range of market-oriented reforms. Congressional discussion over the BTA is expected to highlight Vietnam's labor rights situation, a topic that has become a contentious part of the trade debate in recent years. The BTA itself does not specifically address workers' rights.

The evolution of Vietnam's labor rights regime has been heavily conditioned by the tension between maintaining political stability and promoting economic development – two goals that often conflict. On the one hand, Vietnamese workers are not free to form their own independent unions. All unions must belong to the Vietnam General Confederation of Labor (VGCL), an organ of the Communist Party. Analysts have observed that the absence of a true right of association in Vietnam has impeded the improvement of labor rights in other areas. Collective bargaining agreements remain the exception rather than the rule. Vietnam's *doi moi* (renovation) economic reforms, launched in 1986, have been followed by surging urban unemployment and a rise in child labor, forced prostitution, and the trafficking of women and children. Workers in all sectors of the economy are often exposed to dangerous, unhealthy, and in some cases impoverished “sweatshop” conditions. Rapid economic expansion, corruption, and shortages of funds, training, and personnel have made it extremely difficult for government authorities to enforce Vietnam's labor laws.

On the other hand, since the launch of the *doi moi* reforms, worker rights have made substantial progress. Vietnam rejoined the International Labor Organization (ILO) in 1992 and since then the government, unions, and local groups have intensified their cooperation with the ILO and other international groups. A comprehensive and detailed Labor Code was passed in 1994. Among other advances, it recognized workers' right to strike. There is evidence that over the past decade the VGCL and its member-unions have become more assertive – particularly on matters relating to wages, health, and safety – a development tolerated by the government. By many measures – the coverage of labor laws, the tolerance of wildcat strikes, the slowly increasing clout of grass-roots unions, the relative openness of debate over labor issues – there is evidence that the Vietnamese labor rights regime is more flexible and responsive than its Chinese counterpart.

This report details Vietnam's law and policy in six areas of labor rights: the right of association/collective bargaining; forced labor; child labor; health and safety; wages, hours and welfare benefits; and discrimination. This report also provides international context by contrasting the Vietnamese and Chinese labor rights regimes. Comprehensive information about Vietnam's labor conditions are scarce. As more information is obtained, this report will be updated.

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Contributors to this Report

Mark Manyin prepared the selections on Vietnam's political and economic situations, including the non-legal portions of the sections on Vietnamese labor law, as well as the introduction and conclusion. Phuong-Khanh Nguyen, of the Law Library of Congress, drafted the selections covering Vietnamese law. Tom Lum provided the information on China's political-economy, and Wendy Zeldin (of the Law Library of Congress) the analysis of China's legal regime. Lois McHugh contributed the material on Vietnam and the International Labor Organization (ILO). Wayne Morrison, CRS Specialist in International Trade, provided extensive comments on the draft.

Vietnam's Labor Rights Regime: An Assessment

Congressional Interest in Vietnam's Labor Rights Regime

The U.S.-Vietnam Bilateral Trade Agreement

This report provides information on and analysis of Vietnam's labor rights conditions, a topic that is expected to be raised during Congressional debate over the United States-Vietnam bilateral trade agreement (BTA). Under the agreement, which was signed on July 13, 2000 and requires congressional approval, the United States will restore temporary most-favored nation (MFN, also known as normal trade relations [NTR]) status to Vietnam, a step that would significantly reduce U.S. tariffs on most imports from Vietnam. The World Bank has estimated that Vietnam's exports to the U.S. would rise to \$1.3 billion – more than double 1999 levels – in the first year of MFN status, as U.S. tariff rates on Vietnamese exports would fall from their non-MFN average of 40% to less than 3%. In return, Hanoi agreed to undertake a wide range of market-liberalization measures, including extending MFN treatment to U.S. exports, reducing tariffs on goods, easing barriers to U.S. services (such as banking and telecommunications), committing to protect certain intellectual property rights, and providing additional inducements and protections for inward foreign direct investment.¹

Vietnam at a Glance

Population: 78.7 million, roughly equal to Germany's
Age Structure: 60% of population younger than 25
Literacy Rate: 94%
Ethnicity: 85%-90% Vietnamese
Comparative Size: slightly larger than New Mexico
GDP: \$143.1 billion (1999) purchasing power parity
GDP Per Capita: \$1,850 (1999) purchasing power parity
Population Below Poverty Line: 37% (1998)
Exports: \$11.5 billion (1999)
Imports: \$11.6 billion (1999)
Arable Land: 17%

Source: CIA, *The World Factbook*, 2000

Bush Administration officials have expressed support for the BTA, and President Bush is expected to submit it to Congress this session, perhaps as early as the spring

¹ For more on the U.S.-Vietnam BTA, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark Manyin, and CRS Report RS20717, *Vietnam Trade Agreement: Approval and Implementing Procedure*, Vladimir N. Pregelj.

of 2001. Once the President transmits the agreement, it is subject to special expedited procedures, under which amendments are not permitted and under which Congress must vote on the measure within 75 session-days. Should Congress approve the agreement, the President would then be able to extend conditional MFN treatment to Vietnam through a waiver under the so-called “Jackson-Vanik” provisions of U.S. trade law.² Such MFN status would be conditional because it would require annual Presidential extensions of the waiver, which Congress could disapprove.

Labor Rights and Trade Agreements

Congressional debate over the BTA is expected to highlight, among other items, Vietnam’s labor rights situation.³ The BTA does not specifically address workers’ rights. In the late 1990s, many non-governmental organizations (NGOs) launched high profile campaigns charging that American clothing and footwear multinationals owned or subcontracted with factories in the developing world – including Vietnam – that tolerate poor health and safety conditions, do not allow the freedom to form or join independent unions, employ children, and/or pay insufficient wages. In particular, the campaigns singled out the Vietnamese plants linked to the Nike Corporation, which in recent years has emerged as one of Vietnam’s top exporters.

These labor rights campaigns, which continue today, have intensified the long-running debate in Congress and elsewhere over whether promotion of workers’ rights in other countries should be linked to trade policy.⁴ Those in favor of making this linkage argue that the failure of companies in developing countries to adhere to worker rights standards not only deprives workers of their basic human rights, but that it also places some American industries at a competitive disadvantage in trade, suppresses wages in the United States, and shifts employment opportunities to developing countries. Furthermore, many labor advocates contend that international trade agreements can encourage countries to relax their domestic labor laws in order to help their firms become more competitive. During the 1999 World Trade Organization ministerial meeting in Seattle, which was disrupted by large-scale protests over issues such as worker rights, President Clinton pledged to place a higher priority on linking labor rights and trade. A free trade agreement the U.S. signed with

² The Jackson-Vanik amendment is contained in the Trade Act of 1974, Title IV, section 402. Note that members of the Bush Administration have discussed including the BTA in an omnibus trade bill, rather than use the specific, expedited resolution. If this step is taken, the BTA would not be subject to the no-amendment rule or the 75-day deadline.

³ In a sign that some Members of Congress intend to raise the worker rights issue in the debate over the BTA, House Minority Leader Richard Gephardt stated during a January 2001 trip to Vietnam that “I hope that as we work on this agreement in Congress, we can also advance workers rights...”. *Reconciliation, Security, and Economic Progress in Asia* (As Prepared for Delivery), January 17, 2001 speech before the American Chamber of Commerce, Ho Chi Minh City, Vietnam

⁴ See CRS Report 96-661E, *Worker Rights Provisions and Trade Policy*, by Mary Jane Bolle, July 30, 1996.

Jordan in 2000, for instance, commits the two parties not to weaken their existing labor standards.⁵

Opponents of making the linkage argue that free trade helps to empower workers and promote the rule of law – thereby promoting worker rights – and that mandating international adherence to labor standards with the threat of trade sanctions for violating those standards is a form of protectionism that can dampen worldwide economic growth for all nations. Furthermore, opponents contend that trade agreements are not the proper place to address labor standards.

Purpose, Scope, and Organization of this Report

This report examines the totality of Vietnam's labor rights regime, from the right of association to wage-related issues. It is divided into six main sections. The first provides a general background of Vietnam's recent political, economic, and legal history. The second provides an overview of Vietnam's labor rights regime, including a description of the present international regime for protecting labor rights, Vietnam's relationship with the International Labor Organization (ILO) and the U.S. Labor Department, and Vietnam's Labor Code. The following two sections provide a detailed look at Vietnam's law and policy in six areas of labor rights: the right of association/collective bargaining; forced labor, including trafficking in women; child labor, including trafficking in children; health and safety; wages, hours and welfare benefits; and discrimination. The penultimate portion of the report provides some international context by contrasting the Vietnamese and Chinese labor rights regimes. Finally, the report concludes with a discussion of the impact the labor rights debate could have on Congressional consideration of the U.S.-Vietnam BTA.

A note about sources: Comprehensive analysis and detailed information about labor rights in Vietnam are difficult to obtain, particularly when operating under tight time constraints. News reports about labor activism are scarce, and the Vietnamese government has only recently begun to compile comprehensive information about labor conditions across the country. As the ILO has noted, one of the major problems in Vietnam is a lack of statistical and systematically collected information on labor relations. Correspondingly, the English information that exists is scarce, tends to be anecdotal, and tends to focus on conditions at factories owned by or linked to Western multinationals. In contrast to larger countries like China and India, Vietnam has slipped under the radar screen as far as country-wide studies of worker rights are concerned; the most comprehensive, up-to-date reports that are available are in the State Department's annual human rights report on Vietnam. Even these documents, however, rely heavily on anecdotal evidence and incomplete information that often are compiled by the Vietnamese government. This report will be updated as more information is obtained.

⁵ See CRS Report RL30652, *The U.S.-Jordan Free Trade Agreement*, by Joshua Ruebner.

Background: Vietnam's Development since 1975

Ever since communist North Vietnamese forces defeated U.S.-backed South Vietnam in 1975, reunified Vietnam has been struggling with how to maintain a balance between two often contradictory goals – maintaining ideological purity and promoting economic development. For the first decade after reunification, the emphasis was on the former. By the mid-1980s, disastrous economic conditions led the country to adopt a more pragmatic line, enshrined in the *doi moi* (renovation) economic reforms of 1986. Under *doi moi*, the government gave farmers greater control over what they produce, abandoned central state planning, cut subsidies to state enterprises, reformed the price system, and opened the country to foreign direct investment.

Economic Developments. For the first decade after the *doi moi* reforms were launched, Vietnam became one of the world's fastest-growing countries, averaging around 8% annual GDP growth from 1990 to 1997. Agricultural production doubled, transforming Vietnam from a net food importer into the world's second-largest exporter of rice and third-largest producer of coffee. The move away from a command economy also helped reduce poverty levels from 58% of the population in 1992 to 37% in 1997.⁶ A substantial portion of the country's growth was driven by foreign investment, primarily from Southeast Asian sources, most of which the government channeled into the country's state-owned sector.

The economy has staggered since 1997, however, as real GDP growth fell to 5.8% in 1998, and 4.8% in 1999, though it did rebound to 6.7% in 2000. Foreign direct investment plummeted to \$600 million in 1999, the lowest level since 1992. Observers have cited Vietnam's failure to tackle its remaining structural economic problems — including unprofitable state-owned enterprises, a weak banking sector, massive red tape, and bureaucratic corruption — as major causes of the country's economic slowdown in recent years. The Asian economic crisis that erupted in 1997 only exacerbated these systemic deficiencies. Unemployment has risen, with some sources claiming that it has more than doubled (to over 2 million) since 1997. Demographics are compounding the economic difficulties; over half of the population is under the age of 25, and over 1 million young people are entering the work force every year.⁷ With the Party's legitimacy increasingly derived from providing economic growth rather than ideology, Vietnam's leaders are under enormous pressure to find work for these new entrants.

Rapid growth has transformed Vietnam's economy, which has come to be loosely divided into three sectors: the state-owned, the foreign-invested, and the privately owned, which make up roughly 50%, 30%, and 20% of industrial output,

⁶ *Vietnam Development Report 2000: Attacking Poverty* (Draft), Joint Report of the Vietnam Government-Donor-NGO Working Group, November 15, 1999, p. ii.

⁷ David O. Dapice, *Vietnam's Economy: Responses to the Asian Crisis*, (Cambridge, MA: Harvard Institute for International Development), September 1999, p.33.

respectively.⁸ For much of the 1990s, Vietnam's foreign-invested enterprises (FIEs) were among the country's most dynamic.⁹ Since the 1997 Asian financial crisis, the private sector has also made impressive gains, to the point where privately owned firms employ nearly a quarter of the workforce. Most of the giant state-owned enterprises (SOEs), meanwhile, are functionally bankrupt, and require significant government subsidies and assistance to continue operating. In 1990, 2.5 million people were employed by state firms. In 2001, this figure is down to 1.6 million.¹⁰

Despite its significant economic gains, Vietnam remains an overwhelmingly poor country; about one-third of Vietnamese children under 5 years of age suffer malnutrition. Per capita gross domestic product (GDP) is estimated at \$370, equivalent to \$1,850 when measured on a purchasing power parity basis.¹¹

Political Developments. Vietnam's experiments with political reform have lagged behind its economic changes. A new constitution promulgated in 1992, for instance, reaffirmed the central role of the Communist Party in politics and society. Although personal freedoms have increased dramatically, Hanoi still does not tolerate signs of organized political dissent. In subtle ways, however, the decision to prioritize economic development above ideological orthodoxy has led the Party to slowly loosen its former stranglehold on political power. Recognizing that Party cadres often were ill-suited to administering its own policy directives, for instance, the Party created a more powerful and professionalized executive branch in the 1992 constitution. The new constitution also gave more influence to the legislative branch, the National Assembly, because the Party realized it needed to make the organs of government more responsive at the grass-roots level.

Rapid economic growth, increased integration with the global economy, and weak domestic institutions have caused a rise in corruption and a decline in the Vietnamese Communist Party's (VCP) authority, alarming many Party hard-liners. As a result, Vietnamese policy-making in recent years has been virtually paralyzed, as reformist and conservative elements within the Party have battled to a stalemate over how to deal with the major economic and demographic forces transforming the country. The former group calls for a steady roll-out of new reforms and increased integration into the global economy. The latter fears that economic reform will lead to the loss of government control over the economic means of production and financial and monetary levers; they also fear the possible infiltration of heterodox outside ideas. Vietnam's consensus-based decision-making style, combined with the

⁸ Economist Intelligence Unit, *Vietnam Country Report*, July 2000

⁹ *Vietnam Development Report 2000*, p. 58.

¹⁰ *Far Eastern Economic Review*, March 22, 2001. See also Dapice, *Vietnam's Economy*, p. 15-16.

¹¹ United Nations Children's Fund (UNICEF) Press Release, February 17, 2001. GDP figures from the World Bank, *World Development Indicators*, 1999, and CIA, *World Factbook 2000*. Purchasing power parity (PPP) adjusts for different price levels across countries. Prices are generally lower in Vietnam than in the United States; a dollar generally will purchase more of the same goods in Vietnam than it would in the U.S. Thus, the PPP measure of GDP reflects the differing purchasing power between the two countries.

absence of any paramount leader, has meant that these divisions have produced only piecemeal economic reforms, though implementing the BTA may force more significant changes. Many observers believe the upcoming 9th Party Congress – to be held in the spring of 2001 – is unlikely to break the gridlock in the near future.

Vietnam's Legal Regime. After launching the *doi moi* economic reforms, Vietnamese leaders gradually established a new legal regime, both to implement the reforms and to attract foreign investors.¹² The 1992 constitution gave the National Assembly the authority to pass and amend all laws, which are supplemented by decrees issued by Vietnam's executive ministries and agencies. Since 1987, Vietnam has produced hundreds of laws and decrees dealing with a wide range of subject areas, including labor law. Many of those laws have been poorly drafted; they have already been amended several times because of their incompleteness or lack of enforcement provisions. The weakness sometimes found in Vietnamese laws may be explained by the fact that since the country's legal regime was neglected during the decades of war, Vietnam has a shortage of trained legislators, lawyers, and legal experts. Also, because Vietnam embarked on a market-oriented economy relatively recently, it lacks expertise in many areas related to the new system, such as management, economics, banking, finance, taxation, and labor. As a result, some laws were drafted by people without experience either in law or in the relevant specialized subject area. This situation, however, has been improving in recent years.

Overview of Vietnam's Labor Rights Regime

Vietnam and International Labor Standards

The International Labor Rights "Regime". The International Labor Organization (ILO) is the United Nations specialized agency with the mandate to monitor labor standards and protect workers' rights. Since its inception in 1919, the ILO has adopted 183 multilateral labor standards as conventions, or treaties, which are binding on countries that ratify them. Eight of these conventions – which deal with freedom of association, the right to collective bargaining, prohibition of forced labor, discrimination in employment, and certain conditions of child labor – are considered "core" labor standards.¹³ In 1998, the ILO members adopted the Declaration on Fundamental Principles and Rights at Work. Through this resolution, they agreed that these eight conventions contain principles which all the ILO member governments should adhere to, whether or not they have ratified them. They also agreed that all members would be regularly examined for compliance with the core

¹² For background, see among others, the World Bank, *Vietnam: An Economic Report*, Sept. 26, 1994; U.S. Department of State, *Country Report on Human Rights Practices for 1999*, at <http://www.state.gov>; Natalie G. Lichtenstein, *A Survey of Viet Nam's Legal Framework in Transition* (Washington, D.C., The World Bank, Apr. 1994).

¹³ For brief descriptions of the ILO's core standards, see the ILO's information leaflet, "International Labour Standards," at <http://132.236.108.39:8050/public/english/bureau/inf/leaflet/page5.htm>, accessed February 27, 2001.

conventions or standards. Since the 1970's, some U.S. legislation that provides trade benefits to various countries – such as the General System of Preferences – has required compliance with internationally recognized labor standards by U.S. trading partners, except where U.S. national interests require a waiver. The eight core ILO labor standards are the standards generally accepted by Congress for U.S. trade legislation.

Though the ILO has no enforcement powers, it has a highly regarded supervisory system to investigate and evaluate compliance with the conventions and a technical assistance program to help countries bring their legislation and practices into compliance.

Since the creation of the World Trade Organization (WTO) the United States (including many in Congress) and some of the industrialized countries have pressed for the inclusion of labor standards in multilateral trade agreements and/or the WTO. Many developing countries have opposed these efforts.

Vietnam and the ILO. Vietnam has been a member of the International Labor Organization (ILO) off and on since 1955, rejoining most recently in 1992. Therefore, efforts to bring Vietnam into compliance with ILO conventions and planning for technical assistance programs in Vietnam did not get underway until the early 1990's. Since 1992, Vietnam has ratified 15 conventions, including three of the ILO's eight core human rights conventions: No. 100, equal pay for men and women for work of equal value (ratified by Vietnam in 1997); No. 111, prohibiting discrimination in employment (1997); and No. 182, prohibiting the worst forms of child labor (2000). Currently, the Vietnamese are working on a plan to gradually ratify the remaining core ILO conventions and hope to ratify both forced labor conventions and the minimum age convention.

Table 1. ILO Conventions Ratified by Vietnam

Core ILO Conventions	Date Ratified by Vietnam
No. 100, Equal Remuneration Convention (1951)	7/10/97
No. 111, Discrimination (Employment and Occupation) (1958)	7/10/97
No. 182, Worst Forms of Child Labor Convention (1999)	12/19/00
Other ILO Conventions	Date Ratified by Vietnam
No. 5, Minimum Age (Industry) Convention, (1919)	3/10/94
No. 6, Night Work of Young Persons (Industry) (1919)	3/10/94
No. 14, Weekly Rest (Industry) Convention (1921)	3/10/94
No. 27, Marking of Weight (Packages Transported by Vessels) (1929)	3/10/94
No. 45, Underground Work (Women) (1935)	3/10/94
No. 80, Final Articles Revision (1946)	3/10/94
No. 81, Labor Inspection (1947)	3/10/94
No. 116, Final Articles Revision (1961)	3/10/94
No. 120, Hygiene (Commerce and Offices) (1964)	3/10/94
No. 123, Minimum Age (Underground Work) (1965)	2/20/95
No. 124, Medical Examination of Young Persons (Underground Work) (1965)	3/10/94
No. 155, Occupational Safety and Health (1981)	3/10/94

In the early years, ILO programs in Vietnam focused on employment strategy, human resources development, enterprise development, industrial relations, social protection, occupational safety and health, and labor law. As of the year 2000, the ILO's program in Vietnam is being shaped (as it is in all countries) to address the four new ILO strategic objectives: 1) promoting fundamental principles and rights at work; 2) creating greater opportunities for women and men to secure decent employment and incomes; 3) enhancing the coverage and effectiveness of social protection; and 4) strengthening the organizations which support labor and business interests and social dialogue. The number and size of ILO programs in Vietnam has grown progressively since 1992. During the 1999/2000 time period, there were 24 ongoing projects, six of which the ILO defines as promoting fundamental principles and rights at work.¹⁴ In January 2001, the ILO moved its Vietnam in-country office from Bangkok to Hanoi.

¹⁴ These projects include two that deal with eliminating child labor, a United Nations Development Programme (UNDP)-funded program that will identify practical measures to improve working conditions, social security, and promote the employment of women; a Finnish-funded study to provide gender training needs of government and gender analysis of working conditions for men and women in largely female workplaces; a school-to-work transition program that aims to help women find decent employment; and a project geared toward improving the capacity of public institutions at the local level to extend social security and credit availability to women in the informal sector. Currently, neither of the latter two projects are funded.

U.S.-Vietnam Cooperation on Labor Rights

For several years, the United States and Vietnam have maintained a dialogue on labor issues. This process culminated during President Clinton's trip to Vietnam in November 2000, when the U.S. Department of Labor and the Vietnamese Ministry of Labor signed a memorandum of understanding (MOU) in which they agreed to establish a program of cooperation and dialogue on labor-related issues. As part of this cooperation, the U.S. pledged \$3 million in technical assistance to help Vietnam in the following areas: skills training and employment services; unemployment insurance and pension systems; employment of the disabled; labor law and industrial relations; child labor; and HIV/AIDS workplace-based prevention. Funding for the program may need to be increased; following a March 2001 visit to Hanoi by a Department of Labor delegation, it became evident that the cost of implementing the November MOU could exceed \$3 million and that the ministry appeared to have the capacity to absorb additional resources. In September 2000, the United States Trade and Development Agency approved a \$500,000 grant for conducting a feasibility study for automating Vietnam's Social Security Agency. The AFL-CIO has sent three delegations to Vietnam and a fourth is planned for April 2001.

Vietnam's Labor Code

The backbone of Vietnam's labor rights regime is the 1994 Labor Code, which was the country's first systematic codification of labor standards, definition of labor relations, and enunciation of the mutual rights and obligations of workers and employers bound by labor contracts. Drafted with input from the ILO, the Code appears to be loosely modeled on French labor law in terms of its comprehensiveness. Its 198 articles and 17 chapters cover labor contracts, collective labor agreements, working hours and holidays, safety and sanitation, protection of special groups of workers (such as women, children, older employees, workers with disabilities, foreign workers), social insurance, and the settlement of labor disputes. The Code also included provisions on the state's responsibility to create training and work programs. Before the Code was promulgated, Vietnam had issued many separate legal documents covering different aspects of labor law. The Labor Code invalidated only those regulations that were inconsistent with the code. Thus, some older laws, such as the 1990 Law on Trade Unions, are still in effect.¹⁵

The Labor Code applies to all types of businesses and industrial enterprises, foreign and international organizations, and individuals who employ workers.¹⁶ Provisions of this law also apply to foreign and Vietnamese workers who work in Vietnam and to Vietnamese citizens who work overseas. Trade apprentices and domestic servants also are covered by the Code. However, the Code does not extend to Vietnamese or foreign workers governed by provisions of an international treaty

¹⁵ The English translations of most of the laws cited in this article are found in the publication *Foreign Investment Law of Vietnam* (Official English Version), compiled by the Ministry of Planning and Investment and Philips Fox, (Melbourne: Phillis Fox Solicitors, 2000), (hereafter *Foreign Investment Law of Vietnam*).

¹⁶ Labor Code, article 3, *Foreign Investment Law of Vietnam*, p. IV-122; see also *BLD's Compilation*, p. 9.

where Vietnam is a signatory or participant, state civil servants and officials, the police and the armed forces, and members of political and social institutions.¹⁷

Since the National Assembly approved the Labor Code in June 1994, many more laws and sub-laws have been issued to amend, supplement or explain the practical implementation of the Code. Most have been issued by the **Ministry of Labor, War Invalids and Social Affairs** (hereinafter Ministry of Labor or Labor Ministry), which is the Ministry responsible for implementing the Labor Code and other related legal documents.¹⁸

The Labor Code was passed after a heated debate within the union movement, the Communist Party, and the government. The dispute spilled into public view to such an extent that a copy of the draft of the Code was published in Vietnamese magazines. When the Code was finalized, the unions had scored a number of victories, including the explicit guarantee of workers' right to strike; the requirement that trade unions be established in all enterprises, not just those that are state-owned; the unionization of foreign-invested enterprises; and the inclusion of provisions establishing minimum wages, maximum working hours, maternity leave, and overtime pay.¹⁹

Enforcement

Implementation and enforcement of Vietnam's labor laws are major problems. Vietnamese monitoring agencies face a shortage of qualified staff, training mechanisms, and funds. As a result, most Vietnamese workers and employers are unaware of the provisions of the Labor Code. For this reason, international sponsors – including the ILO and the U.S. government – have funded many programs to enhance Vietnam's monitoring and enforcement capacities. Implementation has been further hampered by a large major backlog in drafting decrees and by-laws to support the Code.²⁰ Additionally, there have been allegations that since the 1997 Asian financial crisis, Vietnamese authorities have relaxed their labor law enforcement in the textile and apparel sector – where wage cheating and occupational and safety violations allegedly continue – in response to pressure from multinational textile companies and their governments.²¹

¹⁷ Labor Code, articles 2-4, *Foreign Investment Law of Vietnam*, p. IV-122-23.

¹⁸ *Hệ Thống Văn Bản Quy Phạm Pháp Luật Hiện Hành Về Lao Động - Bảo Hiểm Xã Hội* (Compilation of the Current Laws and Regulations on Labor and Social Insurance), Bộ Lao Động-Thương Binh và Xã Hội (Ministry of Labor, War Invalids, and Social Affairs [compiler]), (Hanoi: Nhà Xuất Bản Thông Kê, 1998).

¹⁹ Anita Chan and Irene Nørlund, "Vietnamese and Chinese Labour Regimes: On the Road to Divergence," in *Transforming Asian Socialism: China and Vietnam Compared*, edited by Anita Chan, Benedict J. Tria Kerkvliet and Jonathan Unger, (Canberra: Allen & Unwin, 1999), p. 218-19.

²⁰ ILO Briefing Note, "Declaration Related ILO Activities in Viet Nam," 2000.

²¹ See, for instance, Vietnam Labor Watch, *The State of Labor Relations in the Textile and Shoe Industry in Vietnam* (Unpublished Draft), January 5, 2001.

Violations of labor laws and regulations are described in Article 192 of the Labor Code. Depending on the seriousness of the violation, penalties could include a warning, a fine, and other punitive measures, such as loss of licences, compulsory payment of compensation, compulsory closing of business operations, or criminal prosecution in accordance with the Criminal Code of Vietnam²² The Code also states that any person who obstructs, bribes, or harms an authorized inspector or labor officer while he or she is carrying his duty shall be punished by administrative disciplinary measure or prosecuted for criminal liability. Enterprise owners are legally responsible for implementing any decision made by a state authority and can be penalized for a breach of any labor contract or collective agreement.²³

General Issues Covered by Vietnam's Labor Code

Unions (The Right of Association)

The ILO Core Standard. ILO convention 87, dealing with the right of association, has been ratified by 137 countries, though not by Vietnam (nor by the United States). The convention establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities.²⁴ Vietnam has not ratified the ILO Convention on Freedom of Association and Protection of the Right to Organize. However, as an ILO member it is expected to adopt and enforce ILO right of association and collective bargaining standards.

Vietnamese Law and Practice. There is no true right of association in Vietnam. As with mass political and religious organizations, Vietnamese labor unions are allowed to exist only if they are under Communist Party control. All unions must belong to the **Vietnam General Confederation of Labor (VGCL)**, which is an organ of the Party. Since the early 1990s, however, the VGCL and local unions have become more assertive, a development tolerated – and in some cases encouraged – by the government. There are reports, for instance, of many unions exerting more influence over workplace conditions, mainly on matters relating to wages, health, and safety – all of which are non-political issues that do not threaten the Party's control.²⁵ The spread of collective bargaining practices is in the beginning stages, and the government readily acknowledges that greater enforcement and speedier procedures are needed. The number and intensity of strikes, which are permitted under the law, is on the rise. Although the majority of these walkouts have been spontaneous outbursts and have not followed the bargaining process spelled out in the Labor Code, in most cases the government retroactively has supported the labor walkouts. Despite this progress, VGCL officials acknowledge that, in the words of one official, “the

²² Labor Code, article 192, *Foreign Investment Law of Vietnam*, p. IV-185.

²³ Labor Code, article 193-94, *Foreign Investment Law of Vietnam*, p. IV-185.

²⁴ ILO information leaflet, “International Labour Standards.”

²⁵ State Department, *Vietnam Country Report on Human Rights*, 2000.

operations of grass-roots trade unions have proved very weak in negotiating between employers and employees.”²⁶ Some analysts have pointed out that the absence of the true right of association in Vietnam has prevented speedier improvements in other areas of worker rights such as in health and safety issues.

Article 7 (2) of the Labor Code reconfirms workers’ constitutional right to organize and join unions or to participate in union activities, as long as these activities are legal and are carried out in accordance with provisions of the 1990 Law on Trade Unions (LTU).²⁷ This right extends to employees of all commercial and industrial enterprises, as well as to employees of state agencies and social organizations.²⁸ According to the official sources, 95 percent of public sector workers, 90 percent of workers in state-owned enterprises, and nearly 70 percent of private sector workers are unionized. About 500,000 union members work in the private sector, including foreign-based enterprises. The vast majority of the work force lives in rural areas, is engaged in small-scale farming, and is not unionized.²⁹

Under the Trade Union Law and other Vietnamese statutes, unions are considered to be organs of the state and responsible to the leadership of the Communist Party.³⁰ All unions must be recognized by the local office of the VGCL, which functions as the country’s umbrella labor organization. By making them extensions of the VCP, Vietnamese law effectively deputizes labor unions, assigning them the often contradictory responsibilities of representing the interests of both the workers and the state.³¹ But being a state entity also gives the VGCL and its affiliate unions a seat at the table when the government or the party – at the local, provincial, and national levels – deliberate on any matters that may affect workers’ rights directly or indirectly. For instance, the VGCL has the right to propose draft laws and regulations to the National Assembly or the state agencies on any matters that may directly affect the regulation of labor.³²

Article 153 of the Labor Code *requires* provincial trade union organizations to establish unions within six months at virtually all enterprises with more than ten employees.³³ Vietnamese law also prohibits employers from applying any form of

²⁶ *Vietnam Investment Review*, November 27, 2000

²⁷ Law on Trade Unions of 1990, *Foreign Investment Law of Vietnam*, p. IV-1-IV-4.

²⁸ Law on Trade Unions of 1990, article 1(2), *Foreign Investment Law of Vietnam*, p. IV-1.

²⁹ State Department, *Vietnam Human Rights Report*, 2000.

³⁰ Law on Trade Unions of 1990, article 1(1), *Foreign Investment Law of Vietnam*, p. IV-1.

³¹ Chan and N•rlund, “Vietnamese and Chinese Labour Regimes,” p. 204.

³² Law on Trade Unions, article 5(1), *Foreign Investment Law of Vietnam*, p. IV-3.

³³ Labor Code, article 153(1), *Foreign Investment Law of Vietnam*, p. IV-171. According to this article, after six months, any new enterprise which operates without a trade union organization has to accept a provisional trade union organized by an authorized local trade union federation. The same Article further states that activities of these provisional trade unions shall be determined by the government and the VGCL (article 153(2)).

(continued...)

pressure or measures to interfere with the organization and activities of trade unions.³⁴ In a significant break from past practice, the Code allows the formation of industrial and professional unions that unite workers across enterprises. In another departure, these unions are allowed to join and accept donations from international unions of the same trade. As of 1996, 24 occupational unions had been formed, with over 400,000 members.³⁵ Although they officially operate under the VGCL's oversight, they have considerably more independence than enterprise unions, which perhaps explains the reports that professional and industrial unions have stronger grass-roots and international ties than the traditional enterprise-based unions. Additionally, enterprise unions are permitted to join any international union of the same trade.³⁶

Hundreds of unaffiliated 'labor associations' have been organized in occupations such as taxi and motorcycle drivers, cooks, and market porters. Data is sparse about these associations, most of which appear to have sprouted in Ho Chi Minh City. According to reports, the VGCL provides moral support for these groups, but offers no financial assistance.³⁷

Collective Bargaining

The ILO Core Standard. ILO convention 98, which covers collective bargaining, prohibits discriminating against employees for belonging to a union and requires governments to set up a system for voluntary collective bargaining to reach collective agreements between employers and employees. Vietnam reportedly is considering ratifying this standard.

Vietnamese Law and Practice.

Strikes. Vietnam's Labor Code allows organized workers the right to strike under certain conditions.³⁸ Strikes are prohibited at public sector enterprises and at enterprises deemed vital to national security, such as those in the electrical, oil, gas, banking, and transportation industries.³⁹ Vietnamese law requires that before they strike, unions must seek a settlement under the dispute settlement procedures spelled

³³ (...continued)

Note that according to one study, the *requirement* that enterprises form unions violates ILO norms. See Overseas Private Investment Corporation (OPIC), *Report on Internationally Recognized Worker Rights in Vietnam*, (Washington, DC, 1998).

³⁴ Labor Code, article 154(3), *Foreign Investment Law of Vietnam*, p. IV-172.

³⁵ Chan and N•rlund, "Vietnamese and Chinese Labour Regimes," p. 224.

³⁶ Chan and N•rlund, "Vietnamese and Chinese Labour Regimes," p. 216, 218, 224.

³⁷ State Department, *Vietnam Human Rights Report*, 2000; Chan and N•rlund, "Vietnamese and Chinese Labour Regimes," p. 223-24.

³⁸ Labor Code, article 7(4), *Foreign Investment Law of Vietnam*, p. IV-122.

³⁹ *Nghi Định số 51/CP ngày 29/8/1996 của Chính phủ về việc giải quyết yêu cầu của tập thể lao động tại doanh nghiệp không được đình công* [Decision 51/CP of Aug. 29, 1996 Concerning Resolution of Labor Disputes for Workers Who Work in No-strike Enterprises], *BLD's Compilation*, p. 1632 and 1634.

out in the Labor Code and expanded in a 1996 decree.⁴⁰ The Code requires that management and labor first attempt to resolve their dispute through the individual enterprise's Labor Reconciliation Council or the local conciliator of the district labor office in the case of enterprises that do not have a labor reconciliation council. If this step proves unsuccessful, unions can take the matter to the provincial Labor Arbitration Council. If the Council's decision is unsatisfactory to the union or if the province does not have an arbitration council – a problem in some provinces – the union can appeal to the People's Court or decide to strike.⁴¹ The 1996 decree prohibits retribution against strikers, and according to the State Department, there have been no credible reports of such retribution in recent years.⁴²

According to Vietnamese and U.S. government sources, strikes have been on the rise in recent years, with approximately 450 reported walkouts between 1993 and the end of 2000. The State Department, using official Vietnamese figures, reports that over 70 strikes were recorded in 2000.⁴³ Some observers have pointed to the increase in strikes as signs that unions' clout is increasing. Others, however, attribute the increase more to increased business activity than to a growing labor assertiveness.⁴⁴ The VGCL and the government have acknowledged that strikes are growing in intensity, though they tend to avoid mentioning strikes at SOEs, instead focusing on strikes at foreign-invested factories, which according to the State Department have accounted for well over half the reported strikes.⁴⁵ Since thousands of workers in inefficient state-owned enterprises would likely be terminated in a fully market-oriented economy, these workers may have less incentive to strike.

Most of the strikes appear to occur in the country's southern provinces, concern wage-related issues such as recovering unpaid back wages, and appear to be symbolic, lasting only 1 or 2 days. According to the State Department, most strikes were spontaneous outbursts that were launched independently of the VGCL and did not follow the prescribed dispute settlement/arbitration process, and therefore were technically illegal. The majority of these strikes, however, appear to have been tolerated, or even unofficially supported, by local and provincial offices of VGCL and the government. In some instances, the Vietnamese government has prosecuted employers for abuses leading to strikes.⁴⁶

⁴⁰ *Pháp lệnh ngày 11/4/1996 của Ủy ban Thường vụ Quốc hội về thủ tục giải quyết các tranh chấp lao động* (Decree-Law Regulating Procedures in Labor Disputes, issued by the Permanent Committee of the National Assembly), *BLD's Compilation*, p. 1598.

⁴¹ Labor Code, article 168, *Foreign Investment Law of Vietnam*, p. IV-177.

⁴² *Pháp lệnh ngày 11/4/1996* (Decree-Law Regulating Procedures in Labor Disputes), article 84, p. 1625; State Department, *Vietnam Human Rights Report*, 2000.

⁴³ State Department, *Vietnam Human Rights Report*, 2000.

⁴⁴ Economist Intelligence Unit, *ViewsWire*, April 21, 2000.

⁴⁵ *Vietnam Investment Review*, November 27, 2000; *Xinhua* October 23, 2000; State Department, *Vietnam Human Rights Report*, 2000.

⁴⁶ State Department, *Vietnam Human Rights Report*, 2000.

Collective Labor Agreements. Vietnamese law grants unions the right to bargain collectively on behalf of workers and contains detailed provisions governing collective agreements, which are defined by law as legal documents between an organized group of workers and their employers covering the terms and conditions of employment. In addition to the 11 provisions of Chapter V in the Labor Code, rules and procedures for collective agreements are spelled out in two government decrees, one issued in 1992, the other in 1994.⁴⁷ Such agreements are valid if they are approved by over half of the enterprise's employees. The laws' collective bargaining provisions apply to all enterprises (including foreign businesses and international organizations) except government agencies, social and political organizations, and employees who work for enterprises that belong to the military or public security forces.⁴⁸

Despite the law's provisions, collective bargaining practices appear to have only begun to make inroads in Vietnam. Anecdotal reports indicate that most collective agreements are concluded in the south and in private and foreign-invested enterprises. In a 1998 review of Vietnam's workers rights situation, the U.S. Overseas Private Investment Corporation (OPIC) reported that in general, working conditions were largely set by individual contracts, not by collective negotiations.⁴⁹ Two years later, the VGCL reported that only 15 percent of non-state enterprises had signed labor agreements with their enterprise unions.⁵⁰ The OPIC report also noted that most collective bargaining agreements that were reached merely repeated the Labor Code, and thus did not represent true bargaining outcomes.⁵¹ There are some signs that the situation is improving. The State Department has written that unions increased their clout in some enterprises by successfully obtaining multi-year contracts and by writing into contracts prohibitions on 7-day work weeks. In some cases, the increasingly competitive market for skilled labor is helping this process.⁵²

The Vietnamese government, while stopping short of allowing true freedom of association, has acknowledged that its current collective bargaining process needs improvement. VGCL officials have called the dispute resolution process over-centralized and inflexible, and have proposed revising the Labor Code to make it speedier. Labor Ministry officials have admitted that many enterprises do not set up unions and have not abided by arbitrated settlement.⁵³ A major contributor to the

⁴⁷ The Labor Codes collective bargaining provisions are found in articles 44-54, *Foreign Investment Law of Vietnam*, p. IV-137 to IV-141. The 1992 decree is Decree 18-CP of Dec. 26, 1992 on Collective Labor Agreements, found in *Foreign Investment Law of Vietnam*, p. IV-83. Decree 196-CP of Dec. 31, 1994 on Collective Labor Agreements, found in *Foreign Investment Law of Vietnam*, p. IV-195.

⁴⁸ Decree 18-CP of December 26, 1992, article 1 (2), p. IV-195.

⁴⁹ OPIC, *Report on Internationally Recognized Worker Rights in Vietnam*.

⁵⁰ *Asia Pulse*, November 20, 2000.

⁵¹ OPIC 1998 report.

⁵² State Department, *Vietnam Human Rights Report*, 2000.

⁵³ *VNA*, August 11, 2000.

problem is a lack of statistical and systematically collected information on labor relations issues in general.

Workplace Health and Safety

Vietnamese Law and Practice. Vietnamese law requires all employers – including public sector offices and the military – to provide workers with protective equipment, labor safety guidance, and sanitation facilities in the work place.⁵⁴ The Labor Code also defines the obligations of employers and the rights and duties of workers in dealing with safety and sanitation, for instance on creating safety training programs.⁵⁵ The Code also obligates the government and the VGCL to develop and implement programs on protection, labor safety, and sanitation, and also contains provisions on workers' rights and compensation in case of employment-related accidents and diseases.⁵⁶

In practice, however, enforcement is inadequate, in part due to the labor ministry's inadequate funding and a shortage of trained enforcement personnel. In 1999, the Labor Ministry conducted a survey that revealed lack of enforcement, antiquated machinery contributing to workplace hazards and health effects. Investigators found widespread exposure to hazardous chemicals and other materials in the workplace, and noted that most workplace abuses go unreported.⁵⁷ The same year, the VGCL reported that there were only 300 labor inspectors for the entire country, half the number it required. The State Department has reported that there is growing evidence that some grass-roots unions have been effective in improving working conditions.⁵⁸

Wages, Working Hours, and Welfare Benefits

Minimum Wages. Under the Labor Code, the Ministry of Labor is responsible for the determination and periodical adjustment of minimum wages.⁵⁹ The wage rate varies by region, type of enterprise, and type of work. For instance, a 1999 Decision of the Ministry of Labor announced that the minimum wage for unskilled Vietnamese workers in normal working conditions for a foreign invested enterprise located in urban districts of Hanoi and Hô Chí Minh City (HCMC) was 626,000 Vietnamese *dông* (approximately \$43 at an exchange rate of 14,558 *dong* per dollar) per month, while the minimum monthly wage for the same worker who works in a foreign

⁵⁴ Articles 95-108 (p. I-152 - IV-156 in *Foreign Investment Law of Vietnam*) of the Labor Code cover the matters of safety and sanitation in the workplace.

⁵⁵ Decree 06 of Jan. 20, 1995 on Occupational Safety and Hygiene, *Foreign Investment Law of Vietnam*, p. IV-223.

⁵⁶ Labor Code, article 95, *Foreign Investment Law of Vietnam*, p. IV-152; Labor Code articles 105-108, *Foreign Investment Law of Vietnam*, p. IV-155 - IV-156.

⁵⁷ *Vietnam Investment Review*, May 4, 1999; *Reuters*, September 13, 1999.

⁵⁸ State Department, *Vietnam Human Rights Report*, 2000.

⁵⁹ Labor Code, Article 56, p. IV-141.

enterprise located outside of big cities was to be 556,000 *dông* (about \$38). The minimum wage for workers employed in rural areas was 487,000 *dông* (about \$33).⁶⁰ For other enterprises, the minimum wage was 180,000 *dông* (about \$12) per month, though many SOE employees earn more than this, in the 300,000 - 500,000 *dông* range, according to one source.⁶¹

Measured on a purchasing power parity (PPP) basis, these minimum wages are approximately \$215 per month (\$9.00 per day) for foreign enterprises in Hanoi/HCMC, \$190/month (\$8.00/day) for foreign enterprises located outside of big cities, \$165/month (\$7.00/day) for rural foreign enterprises, and \$60/month (\$2.50/day) for SOEs.⁶² The World Bank definition of extreme poverty is income at or below \$1 per day (PPP basis). Although these wages may be sufficient to avoid dire poverty conditions, the State Department has described them as “inadequate... for a decent standard of living.” The Department has also noted that many families have more than one wage earner, and that many workers receive bonuses or work in more than one job.

A recent ILO study found that most enterprises are abiding by the minimum wage rules, with the exception of smaller private sector enterprises.⁶³ If true, this would mark a significant change from the past, when only foreign-invested enterprises and major SOEs abided by the minimum wage rules.

Working Hours. Vietnam’s labor laws contain highly detailed rules regulating working hours and vacation time. Under the Labor Code and a 1994 decree, regular working hours are not to exceed eight hours per day and 48 hours per week.⁶⁴ Overtime pay is required for additional work hours.⁶⁵ In a bid to reduce unemployment, the government in 1999 reduced the workweek for public sector, Communist Party and SOE employees from 48 to 40 hours, and declared that these workers receive at least one day off per week. The Labor Code also has provisions on break time during the day and the week and on vacation and holidays.⁶⁶ By law, Vietnamese workers who work a full 12 months a year must have eight full days paid leave for five national holidays a year (including three days for the Lunar calendar

⁶⁰ Decision 708/1999/QD/BLD/TBXH, article 1, *Foreign Investment Law of Vietnam*, p. IV-875.

⁶¹ Decree 10/2000/ND/CP of March 2000, on Minimum Wage in Enterprises, *Foreign Investment Law of Vietnam*, p. IV-805; March 21, 2001 e-mail correspondence with Anita Chan.

⁶² The PPP figures are estimated using a conversion factor of 5 (1999 per capita GDP ÷ 1999 per capita GDP PPP = 5) and an assumption of 6 work days per week.

⁶³ State Department, *Vietnam Human Rights Report*, 2000.

⁶⁴ Decree 10 of March 1, 1999, on Working Hours and Rest Breaks, *Foreign Investment Law of Vietnam*, p. IV-825.

⁶⁵ Labor Code, article 61(a), *Foreign Investment Law of Vietnam*, p. I.-143.

⁶⁶ Labor Code, arts. 71-77, *Foreign Investment Law of Vietnam*, p. IV-145 to IV-147.

New Year) and 12 days of annual leave.⁶⁷ In addition to fully paid annual leave, workers may receive a fully paid leave of absence for personal reasons. An employee may, for instance, get three days of leave for his/her own wedding, one day for his/her child's wedding; and three days for the death of a spouse, a child, or a parent.⁶⁸

According to the State Department's Human Rights report, "it is uncertain" how well the Government enforces these provisions.

Welfare Benefits. Vietnam created its Social Security Agency in 1995. Before then, three agencies — the Ministry of Finance, the Ministry of Labor, and the VGCL — jointly administered the country's social security program, including its social insurance funds. Under Vietnamese labor law there are two types of social insurance funds: 1) a mandatory, employer-contribution social insurance program that applies to all organizations employing at least ten workers and covers medical problems, pregnancy, work-related accidents and diseases, retirement, and life insurance; and 2) a voluntary employee-contribution insurance program that is applied in cases where a worker is not protected by a collective agreement, such as in companies with less than 10 employees or in short-term contract work. In these cases, the employer must pay the independent worker an extra 17% over the regular or agreed salary in order for the latter to pay for his own social insurance.⁶⁹ Contributions to social insurance fund are made by: 1) the employers (15% of the total wage fund); 2) the employees (5% of the salary); 3) the government (80%) to insure the implementation of the social insurance system for the workers; and 4) other sources.⁷⁰

In recent years, the VGCL has pushed the government to beef up Vietnam's unemployment insurance program. In 1998, for instance, it called on the government to provide at least \$500 million to support the estimated 600,000 SOE employees who were to lose jobs due to the country's restructuring program.⁷¹ In addition to the fear of unemployment, fewer SOE workers are receiving subsidized housing, which traditionally had been provided by their employer.

Special Issues in Vietnamese Labor Law

Forced Labor

ILO Core Standards. The ILO has two core standards dealing with forced labor. Hanoi has ratified neither, though it has asked the ILO for assistance in ratifying both, and to this end the ILO plans to send an advisory mission to Hanoi in early 2001. Convention 29 requires nearly all forms of forced and compulsory labor

⁶⁷ Labor Code, article 73, 74(a), *Foreign Investment Law of Vietnam*, p. IV-146

⁶⁸ Labor Code, article 78, *Foreign Investment Law of Vietnam*, p. IV-148.

⁶⁹ Labor Code, article 141(1) and 142(2), *Foreign Investment Law of Vietnam*, p. IV-167.

⁷⁰ Labor Code, article 149, *Foreign Investment Law of Vietnam*, p. IV-168.

⁷¹ *Vietnam Investment Review*, February 5, 2001.

be phased out within 5 years after ratification. In the interim, certain rules and conditions are placed on the use of forced labor, which is to be used “for public purposes only and as an exceptional measure.” Convention 105 prohibits the use of any form of forced or compulsory labor as a means of political coercion or education, punishment for the expression of political or ideological views, or for workforce mobilization.⁷²

Vietnamese Law and Practice. Article 5 (2) of the Labor Code stipulates that ill-treatment of workers and all forms of forced labor are prohibited by law.⁷³ Although the Vietnamese government denies the use of prison labor without compensation, the State Department’s 2000 report on Vietnam’s human rights practices notes that prisoners routinely are required to produce food and other goods used in prisons for little or no pay.⁷⁴

In late 1999, the government issued a decree requiring 10 days unpaid community service annually for all men under 45 and all women under 35.⁷⁵ According to foreign press reports, the legislation was used to press Vietnamese “volunteers” to work on the 1700 km Ho Chi Minh Highway, which roughly follows the route of the Ho Chi Minh Trail used during the Vietnam War. Following criticism of this policy, the Ministry of Labor in late September 2000 issued Circular 22, decreeing that all conscripts or volunteers working on the project must be paid at least 15,000 dong/day – roughly equivalent to a dollar a day.⁷⁶ Hanoi has rejected claims that the government conscripted labor at any time on the Ho Chi Minh trail highway project. The State Department points out that Vietnam has a long tradition of communal labor under which persons living along flood-prone levees voluntarily help to build or repair the flood control system.⁷⁷

Trafficking in Women and Children. Trafficking in women and children has become a growing problem in Vietnam. Thousands of women and children reportedly have been forced into prostitution, either in Vietnam itself or in neighboring countries, particularly in China and Cambodia. Often, organized trafficking rings kidnap women, lure them with the promise of high-paying jobs, or addict them to heroin and force them to work as prostitutes to earn money for drugs. The state-run media has publicized the problem, Hanoi is cooperating with international organizations, NGOs, and foreign countries, and the government is encouraging grass-roots organizations, such as the Vietnam Women’s Union and

⁷² ILO Information Leaflet, “International Labour Standards.”

⁷³ Note that Vietnam’s Criminal Code does not include forced labor as a method of punishment. It also does not contain any provisions concerning the crime of forcing someone to work.

⁷⁴ *Vietnam Human Rights Report 2000*. In earlier years, the State Department’s report had observed that there were no reports of uncompensated prison labor.

⁷⁵ The ordinance permits citizens to excuse themselves from this obligation by finding a substitute or paying a fee. See State Department, *Vietnam Human Rights Report, 2000*.

⁷⁶ *Agence France Press*, October 16, 2000.

⁷⁷ State Department, *Vietnam Human Rights Report, 2000*.

Youth Union's programs, to help combat the buying and selling of women and children.

Vietnam's Criminal Code provides penalties for trafficking in women and children. One-time, small-time offenders face prison terms of 1 to 7 years. Harsher imprisonment terms of 5 to 20 years are applied to repeat offenders, cases involving organized trafficking rings, and cases involving the shipment of women and/or children to foreign countries.⁷⁸ The crime of forcing or enticing a woman into prostitution is subject to a term of imprisonment ranging from 6 months to 5 years. If the offense results in grave consequences or if it is a repeat offense, the sentence for the offender will be a term of imprisonment of 3 to 10 years.⁷⁹ Prostitution is also illegal in Vietnam, though it is widely tolerated.

In 2000 and 2001, revelations surfaced of sweatshop working conditions for Vietnamese women at a factory on American Samoa, a U.S. island territory in the South Pacific. Reportedly, the women were unpaid for months and forced to live and work in unhealthy, almost prison-like conditions. The Korean-owned plant, which reportedly made apparel for major American retailers, was closed in January 2000 following a U.S. Labor Department investigation. The 252 Vietnamese employees, primarily women, had been recruited by semi-private Vietnamese firms and reportedly paid thousands of dollars for the chance to work in Samoa. Some rights groups and congressional investigators are looking into whether the factory and the Vietnamese firms kept the workers in debt bondage and/or violated U.S. laws barring trafficking in humans.⁸⁰ Since the early 1980s, Vietnam has exported labor to bring home hard currency. According to one in-depth study of the Samoan case, although Vietnam's "labor export" recruitment companies have official links with various government agencies, in reality they "operate without much audit & supervision from Hanoi."⁸¹ Over 30,000 workers were exported in 2000, generating over \$1 billion that was repatriated to Vietnam. Before the scale of the Samoan incident was revealed, Vietnam had announced its desire to vastly expand its labor export program, in part by exporting workers to the U.S. for the first time.⁸²

Child Labor

ILO Core Standards. The ILO has two core conventions dealing with child labor. The Minimum Age Convention, No. 138, aims at the abolition of child labor, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling. Convention 182, the Worst Forms of Child Labor Convention, prohibits and requires immediate action to eliminate:

⁷⁸ Penal Code of the Socialist Republic of Vietnam, *Selection of Fundamental Laws and Regulations of Vietnam* (Hanoi, Thê Gioi Publishers, 1995), article 115, p. 122.

⁷⁹ Penal Code of the Socialist Republic of Vietnam, article 202, p. 156.

⁸⁰ *San Jose Mercury News*, March 9, 2001; *New York Times*, February 6, 2001.

⁸¹ Vietnam Labor Watch, *Report on the Working Conditions of Vietnamese Workers in American Samoa*, February 6, 2001, available at [<http://www.vlw.org>].

⁸² *San Jose Mercury News*, March 9, 2001; *New York Times*, February 6, 2001.

child slavery and similar practices; the use of children in prostitution, pornography and the drug trade; and work that harms the health, safety or morals of children.⁸³ In December 2000, Vietnam ratified Convention 182 and reportedly is working to ratify Convention 138 in 2001.

Vietnamese Law and Practice. The Labor Code sets Vietnam's minimum employment age at 18.⁸⁴ Children aged 15-18, so-called "junior workers," may be hired so long as they obtain parental permission. Employers must apply a different set of standards in wages, training, and working hours for junior workers, who cannot work more than 7 hours a day and 42 hours a week. The law also does not permit junior workers to perform heavy labor or work in a hazardous environment.⁸⁵ In urban areas, where many children work informally in family businesses, many schools run two sessions to enable children to attend classes.⁸⁶

Enforcement of the law is weak, however, as government monitoring and enforcement resources are stretched. A recent Ministry of Labor survey, which was widely publicized in Vietnam, found that about 40,000 children between the ages of 8 and 14 years of age worked part-time or full-time in violation of the Labor Law. There are reports of thousands of children working in exploitative labor conditions, for instance in gold mines and as domestic servants.⁸⁷ Generally, poverty appears to be the driving force behind the child labor problem; Vietnamese culture stresses educational achievement, so all but the poorest families generally send their children to school. However, there are many reports of impoverished families "contracting" their children out. As mentioned above, child prostitution has become a major problem, as organized trafficking rings ferry children to Cambodia and China. In rural areas, where compulsory education laws often are not enforced effectively, many children work on family farms.⁸⁸ Vietnam is cooperating with ILO child-labor prevention programs, one of which will create a child labor unit in the government, survey the size of the child labor problem, and create a national plan of action.

Discrimination

ILO Core Conventions. In October 1997, Vietnam ratified the two ILO core standards covering discrimination in the workplace. The Equal Remuneration Convention, No. 100, calls for equal pay and benefits for men and women for work of equal value. The Discrimination (Employment and Occupation) Convention, No. 111, calls for a national policy to eliminate discrimination on the grounds of race,

⁸³ ILO Information Leaflet, "International Labour Standards."

⁸⁴ Labor Code, article 6, *Foreign Investment Law of Vietnam*, p. IV-123.

⁸⁵ Labor Code, article 121, *Foreign Investment Law of Vietnam*, p. IV-160.

⁸⁶ State Department, *Vietnam Human Rights Report*, 2000.

⁸⁷ State Department, *Vietnam Human Rights Report*, 2000.

⁸⁸ State Department, *Vietnam Human Rights Report*, 2000

color, sex, religion, political opinion, national extraction or social origin, and to promote equality of opportunity and treatment.⁸⁹

Vietnamese Law and Practice. Following the Constitutional principle of “equality for all citizens,” the Labor Code grants all people the right to work, choose their profession, learn a trade, and improve their skills without discrimination based on sex, ethnic origin, social class, or religious belief.⁹⁰ The Code devotes an entire chapter to the treatment of female workers. By law, employers must observe the principle of equality between gender when they hire, pay, and promote female employees.⁹¹ In fact, the state applies some preferential policies in order to encourage the hiring of female workers by giving tax reductions to enterprises employing many female workers.⁹² The Labor Code also forbids employers to fire or to unilaterally end a labor contract for reasons of marriage, pregnancy, or taking maternity leave. Women make up approximately 52% of Vietnam’s workforce, and about 40% of Vietnamese wage-earners are women.⁹³ Despite these provisions, the ILO has noted that “in reality women still tend to have unequal access to employment and to productive resources such as credit and land and lack voice in decision-making and representation.”⁹⁴ The ILO has two on-going projects to promote greater gender equality in Vietnam.

Vietnam and China’s Labor Rights Regimes: A Comparison

China’s Labor Regime

The 1990s continued a trend in the People’s Republic of China (PRC), begun in the 1980s, of breaking the “iron rice bowl” system of allocated, permanent employment and a variety of free social services, and replacing it with a contractual labor system. A major milestone was the enactment of a comprehensive Labor Law, which unifies in one code the various regulatory schemes governing all forms of businesses, domestic and foreign, State organs, institutions, and public organizations.⁹⁵ As in the case of the Labor Code of Vietnam, the Chinese Labor Law

⁸⁹ ILO Information Leaflet, “International Labour Standards.”

⁹⁰ Labor Code, article 5 (1), p. IV-122.

⁹¹ Labor Code, article 111, *Foreign Investment Law of Vietnam*, p. IV-157.

⁹² Labor Code, article 110 (2), *Foreign Investment Law of Vietnam*, p. IV-157.

⁹³ *Vietnam Development Report 2000: Attacking Poverty* (Draft), Joint Report of the Vietnam Government-Donor-NGO Working Group, November 15, 1999, p. 74.

⁹⁴ ILO Briefing Note, “Declaration Related ILO Activities in Viet Nam,” 2000.

⁹⁵ Adopted on July 5, 1994, effective January 1, 1995, in 107 articles. For the Chinese text, see 5 *Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Gongbao* (Gazette of the Standing Committee of the National People’s Congress, Vol. 5), August. 15, 1994, p. 3-15. For an English translation, see *The Laws of the People’s Republic*

(continued...)

does not displace earlier regulations; those that do not conflict with the Labor Law remain in effect. The government agency in charge of labor affairs in China is the Ministry of Labor and Social Security under the State Council. China is a member of the International Labor Organization and has ratified 20 ILO conventions, including two of the eight core conventions, on equal remuneration and minimum age (on Nov. 2, 1990, and Apr. 28, 1999, respectively).⁹⁶

Market-oriented reforms, foreign investment, and international trade have contributed to high rates of economic growth and significant reductions in poverty.⁹⁷ However, economic reforms have given rise to an urban unemployment rate of an estimated 8 to 13 percent and frequent labor demonstrations in older industrial areas where many state-owned enterprises are going bankrupt. Rural under-employment and an urban-rural income gap of over 2 to 1 has compelled an estimated 120-150 million rural migrants to flock to eastern cities in search of work. This pool of low-wage labor has been vulnerable to exploitation and labor abuses, particularly in Korean, Taiwanese, and Hong Kong-owned factories that produce goods for export or that subcontract to American companies.

The following comparison between the Vietnamese and Chinese labor rights will focus on the right of association, collective bargaining, and the special issues of health and safety, wages and hours, forced labor, and child labor.

China and the ILO. China has been a member of the International Labor Organization since 1919. Until 1971, the China seat was contested by the Republic of China (Taiwan) and the People's Republic of China (founded in 1949). Though the seat was given to the People's Republic of China in 1971, the government did not participate or pay its dues to the ILO until 1983. China has ratified 17 conventions since 1919, including two of the eight core conventions. China ratified three additional conventions and then withdrew from them because they became redundant when No. 138 on minimum age was ratified. The presence of an ILO office in Beijing indicates that cooperation between China and the ILO is growing in all areas, including core standards, occupational safety and health, employment, and social security. Much of this cooperation is requested by the Chinese government. There are four pending freedom of association complaints against China at the ILO, including one concerning Hong Kong.

⁹⁵ (...continued)
of China (1994), Vol. 6, (Beijing: Science Press, 1996), p. 53-72 .

⁹⁶ On February 28, 2001, China ratified the International Covenant on Economic, Social, and Cultural Rights, with the caveat that it had reservations with Item 1(a) of Article Eight, which addresses the right to establish free trade unions. China's Standing Committee stated that implementation of the article must be in line with China's laws, under which only the government-backed ACFTU is recognized as a national workers' body. See *Agence France Presse*, Hong Kong, March 1, 2001, via FBIS, March 1, 2001.

⁹⁷ In the past 20 years of economic reforms, 200 million Chinese have reportedly been lifted out of poverty. See CRS Issue Brief IB98014, *China's Economic Conditions*, by Wayne M. Morrison.

Table 2. ILO Conventions Ratified by China

Core ILO Conventions	Date Ratified by China
No. 100, Equal Remuneration (1951) No. 138, Minimum Age (1973)	11/2/90 4/28/99
Other ILO Conventions	Date Ratified by China
No. 11, Right of Association (Agriculture) (1921)	4/27/34
No. 14, Weekly Rest (Industry) (1921)	5/17/34
No. 16, Medical Examination of Young People (Sea) (1021)	12/2/36
No. 19, Equality of Treatment (Accident Compensation) (1925)	4/27/34
No. 22, Seamen's Articles of Agreement (1926)	12/2/36
No. 23, Repatriation of Seamen (1926)	12/2/36
No. 26, Minimum Wage-Fixing Machinery (1928)	5/5/30
No. 27, Marking of Weight (Packages Transported by Vessels) (1929)	6/24/31
No. 32, Protection against Accidents (Dockers) (Revised) (1932)	11/30/35
No. 45, Underground Work (Women) (1935)	12/2/36
No. 80, Final Articles Revision (1946)	8/4/47
No. 144, Tripartite Consultation (International Labor Standards) (1976)	11/2/90
No. 159, Vocational Rehabilitation and Employment (Disabled Persons)(1983)	2/2/88 1/11/95
No. 170, Chemicals (1990)	12/17/97
No. 122, Employment Policy (1964)	

As with all other countries, ILO technical assistance programs in China focus on four areas: increasing compliance with the 8 core labor standards, providing decent employment for men and women, social protection, and social dialogue. Since 1995, the ILO has sponsored programs to promote ratification and implementation of ILO conventions, particularly the core conventions culminating in the ratification of No. 138 on minimum age and several other conventions. Current activities are focused on ratification of core convention 111 on discrimination and other conventions on labor administration, maritime convention and occupational safety and health. Unlike the rest of the region, China has not yet shown interest in the ILO International Program for the Elimination of Child Labor but is participating in a region wide program on trafficking in women and children.⁹⁸

The Right of Association and Collective Bargaining

In general, Vietnam's unions appear to have considerably more autonomy and influence than their Chinese counterparts. A key reason for this difference is the greater leeway allowed by the Vietnamese government. As one report comparing the two regimes states, "the Vietnamese government has been more willing to grant trade

⁹⁸ International Labor Organization, "Update on ILO in China," Compiled for Washington Branch Office, March 2001.

unions some space to defend workers' interests, whereas the Chinese government has chosen to keep the unions under a tight rein."⁹⁹

As in Vietnam, China's trade unions are essentially organs of the State and are subject to communist party control. Article 35 of the PRC Constitution guarantees freedom of association, but that right is limited given that unions must belong to the Party-affiliated **All China Federation of Trade Unions (ACFTU)**. The Labor Law and the Trade Union Law provide in general for the right to organize and participate in trade unions (article 7, paragraph 1 and article 3, respectively) but, unlike the case in Vietnam, that right is not protected under the Constitution, and independent labor unions are illegal in China.¹⁰⁰ Chinese leaders, who preside over a larger and older industrial sector than the Vietnamese and whose economy is undergoing extensive structural changes, deeply fear the rise of a national labor movement similar to Poland's Solidarity. The Communist Party became especially vigilant after the spring of 1989, when workers in Beijing and other cities formed autonomous labor unions and joined students who were demanding political reform. After the military crackdown in June 1989 (the Tiananmen Square incident), the Party purged the ACFTU chairman and several other union officials for allowing their members to join independent labor activists and students demonstrating for democracy. Many labor activists were arrested and sentenced to prison terms of up to 15 years.¹⁰¹

Unlike Vietnam's Labor Code, neither the Trade Union Law nor the Labor Law of China explicitly requires the establishment of trade unions. The Trade Union Law only states that a trade union may be set up with a minimum of 25 members (article 12, paragraph 1). The ACFTU claims 103 million members, of a total workforce of approximately 740 million, over 500 million of whom are rural workers. Over 90% of the ACFTU's reported members are employed in SOEs. Most workers in China's private sector – which the government says employs about 20 million people – have no union representation, a situation the government is attempting to rectify “as a way of maintaining state control over labor relations.”¹⁰²

⁹⁹ Chan and Nørlund, “Vietnamese and Chinese Labour Regimes,” p. 204.

¹⁰⁰ The Labor Law and the Trade Union Law were adopted on April 3, 1992, and promulgated and effective on the same date. For the Chinese text, see *Zhonghua Renmin Gongheguo Fagui Huibian (1992, 1-12)*, (Beijing: China Legal System Press), 1993, p. 17-26. For an English translation, see *The Laws of the People's Republic of China (1990-1992)*, Vol. 4, (Beijing: Science Press), 1993, p. 361-71. Note that the PRC government has reportedly tolerated some semi-autonomous “village labor unions” formed by rural migrant laborers, as long as their activities are consistent with government policies.

¹⁰¹ See George Black and Robin Munro, *Black Hands of Beijing: Lives of Defiance in China's Democracy Movement*, New York: John Wiley & Sons, 1993.

¹⁰² State Department, *China Country Report on Human Rights Practices*, (hereafter *China Human Rights Report*) 2000, available at [<http://www.state.gov/g/drl/rls/hrrpt/>]. See also “PRC Media Emphasize Need To Set Up Local Unions, Revise Labor Laws,” FBIS Report, May 9, 2000. Local regulations on trade unions in private or foreign enterprises also may stipulate that the unions should be set up within one year after the enterprise begins operations. See, for instance, “Zhejiang Issues Rules To Encourage, Establish Trade Unions in Private Firms,” *Xinhua*, January 1, 2001, via FBIS, January 1, 2001; “Gansu Regulations (continued...)”

Although they share similar socialist roots, the roles of the ACFTU and the VGCL have begun to diverge. Whereas the VGCL has begun to evolve along the Western model of an advocate for workers' rights, for instance, the majority of ACFTU-affiliated unions appear to function primarily as social organizations and as resources for unemployed workers laid off due to SOE restructuring.¹⁰³ Vietnamese industrial unions, which some argue are growing in importance, appear to have considerably more autonomy – in joining international trade union organizations, for instance – than their Chinese counterparts, which are far less important than enterprise unions. Likewise, China's enterprise unions have less autonomy from the Party than in Vietnam; although they are officially encouraged to protect workers' rights and to “supervise management,” enterprise union efforts are often hampered by Communist Party authority in the factory and local union federations, which in turn are under the effective control of the local Party affiliate.¹⁰⁴

Unlike Vietnam, the right to strike in China is in a state of legal limbo: there is no provision in the Chinese Labor Law granting the right to strike, nor is there any constitutional guarantee of that right. Nonetheless, the PRC government has acknowledged that many spontaneous strikes and demonstrations do occur. The number of officially recorded strikes soared to more than 120,000 in 1999 – a 14-fold increase in five years.¹⁰⁵ Some experts have estimated that labor protests – mostly against lost jobs and benefits, withheld wages and pensions, and corrupt management practices – occur almost weekly in “rust belt areas” where many older, uncompetitive, state-owned enterprises dominate the economy. Reported instances of relatively spontaneous and isolated strikes and demonstrations have not indicated that workers were arrested for their activities. However, in many private enterprises and foreign-owned companies using migrant labor, workers who strike reportedly are fired.

Beijing has not tolerated acts involving long-term, autonomous labor organization, combined activities of workers from different enterprises, unapproved labor publications, and other “anti-government” acts.¹⁰⁶ Since the late 1980s, numerous attempts have been made to establish independent unions. The government has persistently arrested or detained most activists involved in these efforts. One exception appears to be the government's treatment of migrant workers, who in 1999 began to form semiautonomous “village labor unions” on the outskirts of some cities to represent their interests in private sector industries. Though they are not part of

¹⁰² (...continued)

on Unions in Foreign Invested Enterprises,” *Gansu Ribao*, June 8, 1996, via FBIS June 8, 1996.

¹⁰³ Chan and N•rlund, “Vietnamese and Chinese Labour Regimes,” p. 204-05; State Department, *China Human Rights Report*, 2000.

¹⁰⁴ *Xinhua News Agency*, December 14, 2000, transcribed by *BBC Monitoring*, December 19, 2000.

¹⁰⁵ Damien McElroy, “China Struggles to Keep Lid on Labor Unrest,” *The Sunday Telegraph*, May 7, 2000.

¹⁰⁶ *The China Labour Bulletin* (Hong Kong, October 2000) currently monitors the condition of 35 imprisoned labor leaders, who it claims represent only a “tiny minority of labor activists and trade unionist in prisons and labor camps in China.”

the ACFTU, these loosely organized groups have been tolerated by local governments. The State Department reports that by some accounts these village unions are effective, relatively independent, and cooperative with city government.¹⁰⁷

In contrast to the Vietnamese Labor Code's detailed provisions on collective bargaining, the Chinese Labor Law contains only three brief articles on this topic.¹⁰⁸ Under the Trade Union Law, workers may enter into collective contracts on remuneration, work hours, rest days and holidays, safety and hygiene, insurance, welfare, and other matters (article 33). In October 2000, the Ministry of Labor and Social Security issued specific measures on collective wage negotiations.¹⁰⁹ Dispute settlement procedures are similar to those of Vietnam – mediation, arbitration, and filing of a lawsuit in a People's Court (Labor Law, articles 77-83) – but as one scholar points out, “collective contracts are relatively meaningless without the right to take collective action.”¹¹⁰ As in Vietnam, most Chinese workers enter into individual contracts with their employers. Chinese laborers' bargaining powers are limited by unemployment pressures, inadequate enforcement of existing laws, and Chinese government policies that forbid the formation of autonomous labor unions.

Health and Safety

China's Labor Law states that employers must implement State standards for occupational health and safety, educate laborers about occupational health and safety, and prevent accidents in the work process and lessen occupational hazards (article 52). Other provisions require employers to meet standards for health and safety facilities, to provide regular health exams for laborers engaged in hazardous work, and to give workers training for specialized operations (articles 53-55). For their part, laborers must abide by rules on safe operations. If compelled to operate under unsafe conditions, they may refuse to do the work, and report or bring charges against the endangering acts (article 56). By law, trade unions are to play a role in monitoring health and safety conditions (articles 23, 24). Chinese labor regulations contain provisions on workers' compensation for work-related accidents and diseases, and a national law on occupational diseases is expected to be enacted by the end of 2001.¹¹¹ However, these regulations are poorly enforced, and the Chinese government has publicized the problem and worked with the ILO to train health and safety officers and to educate local officials.¹¹² According to official statistics, the number of industrial accidents has declined in recent years. In 1999, several U.S.

¹⁰⁷ State Department, *China Human Rights Report*, 2000.

¹⁰⁸ Chan and Nørlund, “Vietnamese and Chinese Labour Regimes,” p. 220.

¹⁰⁹ “Text of Interim Measures for Conducting Collective Wage Negotiations,” *Xinhua*, Nov. 26, 2000, via FBIS, November 26, 2000. The Measures were adopted on Oct. 10, 2000, and promulgated for implementation on Nov. 8, 2000.

¹¹⁰ Hilary K. Josephs, “Labor Law in a ‘Socialist Market Economy’: The Case of China,” 33 *Columbia Journal of Transnational Law*, 1995, p. 571.

¹¹¹ “Draft Stresses Prevention of Occupational Diseases,” *China Daily*, Internet Version, February 23, 2001, via FBIS, February 23, 2001.

¹¹² State Department, *China Human Rights Report*, 2000.

corporations, many of whom subcontract assembly work to Hong Kong, Taiwanese, and South Korean companies, jointly developed a “Code of Conduct” by which to promote international labor standards in these factories. The results have reportedly been mixed.¹¹³

Wages and Hours

The Labor Law provides for a system of guaranteed minimum wages (article 48). Beijing does not set a uniform minimum wage, but lets local governments determine their own minimum wage standards. China’s per capita income is about two to four times that of Vietnam’s (\$800 in nominal terms; \$4,000 in purchasing power parity terms). The State Department reports that these wages are “usually sufficient to provide a decent standard of living for a worker and family.”¹¹⁴ In some larger cities, the minimum wage for factory workers is about \$38 per month, roughly the same as minimum wage levels in Vietnam. However, according to one study, average wages for workers in Beijing, Shanghai, Guangzhou, and Shenzhen range from \$175 to \$300 per month.¹¹⁵ According to another study by a U.S.-China trade group, wages at U.S. factories in China were, on average, more than twice as high as wages for comparable jobs at Chinese state-owned enterprises.¹¹⁶

China’s Labor Law has rules on work hours and vacation time, but they are not as detailed as those in the Vietnamese Labor Code. In 1995, China reduced the standard workweek from 44 hours to 40 hours – excluding overtime – eight fewer hours than Vietnam’s general standard.¹¹⁷ The Labor Law mandates a 24-hour rest period weekly for staff and workers (article 38), apparently a broader provision than that in the Vietnamese Labor Code. As in Vietnam, overtime pay is required for extended work hours, which generally are not to exceed one hour per day and which are to be agreed upon by the employer in consultation with the trade union and laborers (article 41). A system of paid annual vacation time is also practiced in China with specific measures formulated by the State Council (article 45). Holidays are not

¹¹³ Companies that endorsed this Code include Levi Strauss, Mattel, and Reebok. While these companies have reportedly stopped subcontracting to factories that violated the Code, many local officials have often continued to ignore health and safety violations in order to attract foreign investment.

¹¹⁴ State Department, *China Human Rights Report*, 2000.

¹¹⁵ Economist Intelligence Unit, October 13, 2000; Business Coalition for U.S.-China Trade; American Chamber of Commerce in Beijing.

¹¹⁶ The Business Coalition for U.S.-China Trade.

¹¹⁷ See “Decision of the State Council on Amending the Provisions of the State Council Concerning Work Hours for Workers and Staff Members,” 7 *Zhonghua Renmin Gongheguo Guowuyuan Gongbao* (Gazette of the State Council of the People’s Republic of China, Volume 7), April 6, 1995, p. 222-223. The full text of the revised Provisions, as well as measures for their implementation, also appear in that issue of the Gazette.

covered under the law, but under separate measures; in spring 2000, the number of paid holidays was increased from 7 to 10 days a year.¹¹⁸

Forced Labor

The Chinese Labor Law stipulates criminal responsibility for persons who compel workers to operate against established rules and under unsafe conditions if major accidents and serious consequences result (article 93). Like the Vietnamese Labor Code, which prohibits ill treatment of workers, the PRC law prohibits employers from using violence, intimidation, or illegal restriction of personal freedom to compel laborers to work. Such acts are punishable by means of detention, a fine, or a warning; if they constitute a crime, criminal responsibility will be pursued (article 96, item 1).

Unlike Vietnam, the PRC uses forced labor as a method of punishment for criminal and for socially disruptive actions. The former is referred to as “reform through labor;” the latter is termed “labor reeducation.” Labor reeducation in particular has been harshly criticized by Western governments, human rights organizations, and the United Nations.¹¹⁹ In 1992 and 1994, the United States and China signed memoranda of understanding on prohibiting export trade in prison labor products, but their implementation remains problematic; there have been many reports documenting the export of products in which some stages of assembly were subcontracted to prisoners, who received no payment.¹²⁰

Generally speaking, Chinese law prescribes harsher punishments than those in Vietnamese law for crimes of trafficking in women and children. The PRC Criminal Law prescribes punishments for stealing babies or infants for the purpose of extorting money or property (not less than 10 years imprisonment plus fine or confiscation of property); for abducting and trafficking in women or children (between 5 and 10 years of imprisonment, plus fine or confiscation of property); and for buying an abducted woman or child (not more than three years, with exceptions).¹²¹ In especially serious cases, the first two types of crimes may incur the death penalty and confiscation of property. The Law of the PRC on the Protection of Rights and Interests of Women

¹¹⁸ “PRC Ministry Says Less Hours, More Pay for Workers,” *Xinhua*, April 3, 2000, via FBIS April 3, 2000.

¹¹⁹ “China To Issue Law To Regulate Reform Through Labor System,” *Hong Kong Agency France Presse*, February 4, 2001, via FBIS, February 4, 2001. The article refers to the planned issuance this year of a law on reeducation through labor.

¹²⁰ Noted in United States Department of State, *Treaties in Force*, U.S. Government Printing Office: Washington, D.C., June 2000, p. 55; regarding implementation, see State Department, *China Human Rights Report*, 2000.

¹²¹ Adopted on July 1, 1979; extensively revised on Mar. 14, 1997, effective Oct. 1, 1997. For Chinese and English texts of the Law, see Legislative Affairs Commission of the Standing Committee of the National People’s Congress of the People’s Republic of China, *Criminal Law of the People’s Republic of China*, (Beijing: China Procuratorial Press, 1997). The Criminal Law was further amended on Dec. 25, 1999; most of these changes focus on financial crime.

also prohibits trafficking in women (article 36, paragraph 1). It further provides that the relevant government organs must take timely measures to rescue the victims, that the women should not be discriminated against if they return to their former place of residence, and that local government organs will settle any problems that may subsequently arise (article 36, paragraph 2).¹²²

Child Labor

The Labor Law prohibits employers from recruiting minors under the age of 16 (article 15, paragraph 1), two years lower than the minimum employment age in Vietnam. Juvenile workers – workers between the ages of 16 and 18 – are prohibited from performing certain types of physical labor. Until recently, the ILO and UNICEF maintained that there was not a significant child labor problem in China, particularly in the formal and export-oriented economic sectors.¹²³ However, the decentralization and privatization of the economy has produced widening income gaps, a breakdown in social welfare services, and greater opportunities for crime and corruption. Stagnating rural incomes, rising fees for school, and family financial crises coupled with deteriorating social welfare systems have compelled some poor, rural parents to send their children to work.¹²⁴

According to the State Department, the Chinese government publicly maintains that the country does not have a significant child labor problem, and unlike Vietnam has not initiated a program to study the national scope of illegal child labor.¹²⁵ Nevertheless, underage labor (13-15 years of age) has been reported in small factories and mines in rural and other remote areas and in the cities where young teenagers work as car washers, garbage collectors, and street vendors. In March 2001, an explosion in an elementary school in rural Jiangxi province killed 37 children who reportedly had been forced by their teachers to manufacture firecrackers. Underage workers have reportedly used fake i.d.'s to work in some foreign-run factories in the coastal provinces.¹²⁶ The ACFTU, the Chinese media, non-governmental organizations, and some Chinese lawyers have researched and publicized the problem

¹²² Among the actions that may incur a sentence of 10 years or more is enticing or forcing a trafficked woman into prostitution or selling her to someone else who would force her into prostitution (article 240, item 4). As in Vietnam, prostitution is prohibited in China; it is punishable by administrative measures, including labor reeducation.

¹²³ State Department, *China Human Rights Report*, 1999.

¹²⁴ One year of school expenses in rural China often surpasses the average family income, so that many children do not continue schooling past age 13. See *Asian Wall Street Journal*, September 6, 2000. See also Kathy Wilhelm, "The Great Divide," *Far Eastern Economic Review*, November 30, 2000. Estimates of the number of child laborers in China range from "the tens of thousands" to several million.

¹²⁵ State Department, *China Human Rights Report*, 2000. See "China Backtracks on School Blast," *Washington Post*, March 16, 2001.

¹²⁶ "McDonald's Gets Minced," *Asian Wall Street Journal*, September 6, 2000.

and provided legal assistance to underage laborers.¹²⁷ There have been isolated incidents of traffickers bribing local authorities and taking children from destitute parents by promising to find them work that will provide large remittances.¹²⁸ It has been speculated that some child prostitutes in Thailand were trafficked from minority areas in southwestern China.

Explaining the Differences between Vietnam and China

What factors account for the apparently stronger labor rights regime – particularly the greater union independence and assertiveness – in Vietnam vis a vis China? The vast differences in physical and population size between the two countries has played a role. With less than a tenth of China's population, Vietnam may be more dependent on the outside world, both politically and economically. If so, Vietnamese leaders therefore are likely to be more sensitive to prevailing international norms regarding labor rights, which may explain why they have aggressively engaged the ILO and the U.S. Department of Labor in recent months.

Despite sharing similar Leninist political structures, relations between labor and the state in Vietnam and China have followed different paths. Some analysts argue that Vietnam's union movement was strengthened by the country's division and its civil war. For over twenty years, Vietnam was divided into a communist north and a capitalist south, giving Vietnam a recent capitalist legacy and labor autonomy that China lacks. Strikes and other militant labor actions, for instance, were a frequent occurrence in the south. In the North, decades of war prevented the Communist Party from imposing the same degree of authoritarian control over the union movement compared with China.¹²⁹ Additionally, for a variety of structural and historical reasons, the Vietnamese Communist Party does not seem to have been as authoritarian as its Chinese counterpart.

Vietnam's experiment with economic reforms was enacted later and has been far less extensive than that in China. Beijing has had to deal with far more social disruption than has Hanoi, perhaps making China's leaders more sensitive to permitting union independence. For instance, Vietnamese leaders also have not confronted a regime-threatening political experience similar to the Tiananmen protest movement in the spring of 1989. In the months before the demonstrations, China's ACFTU at all levels had pushed for more autonomy from the Party. As part of its crackdown against the protests, the government squelched the ACFTU's assertiveness.¹³⁰

However, although Vietnamese unions and laborers possess greater freedoms to advocate for workers and express grievances than their Chinese counterparts, progress in labor rights and conditions in Vietnam remains uncertain. Market-

¹²⁷ Calum and Lijia Macleod, "Never Seen, Never Heard," *South China Morning Post*, July 12, 2000, via FBIS, July 12, 2000.

¹²⁸ In 2000, Chinese authorities executed three persons for trafficking in children.

¹²⁹ Chan and N•rlund, "Vietnamese and Chinese Labour Regimes," p. 204-07.

¹³⁰ Chan and N•rlund, "Vietnamese and Chinese Labour Regimes," p. 214-15.

oriented reforms and foreign investment in Vietnam could lead to a greater emphasis on production, more official corruption, and heightened social unrest as they have in China, which may in turn undermine labor rights. Additionally, for all the differences between Vietnam and China, most rights and freedoms in both countries stem not from the law, but from the discretion of the Party. Despite the differences between the two countries, many labor freedoms and rights in Vietnam are still vulnerable to changes in state policy. Since Vietnam's Labor Code was adopted in 1994, it is still being implemented and interpreted.

Conclusion: Implications for the BTA

The state of Vietnam's worker rights conditions has become part of the debate over whether Congress should approve the Vietnam-U.S. BTA, which does not contain provisions that explicitly deal with labor rights. The linkage between labor rights and the BTA will become even more contentious if the Bush Administration follows up on its proposal to bundle the BTA into a broad-based trade bill that would also include a U.S.-Jordan free trade agreement and new negotiating authority (also known as "fast track" or "trade promotion authority") for the President to negotiate new multilateral trade agreements.¹³¹ Workers' rights – along with environmental conditions – will likely be prominent in the debates over both the Jordan agreement and trade promotion authority.

Many proponents of linking labor rights and trade agreements have argued that Congress should not pass the BTA until Vietnam's labor conditions improve further.¹³² Some labor rights advocates contend that globalization occasionally has weakened Vietnam's labor rights regime in the textile and apparel industries; at times, textile multinationals and industrialized governments have pushed the Vietnamese government – against the wishes of the VGCL – to relax its enforcement of certain provisions of the Labor Code.¹³³

Other labor rights advocates argue that while Congress should pass the Vietnam-U.S. BTA, it should do so only after the signing of a textile and apparel agreement that includes conditions on labor rights along the lines of the provisions of the Cambodia-U.S. textile agreement.¹³⁴ That agreement, which was signed in January 1999, is designed to reward improvements in labor rights with increased access to the U.S. textile and apparel market. The agreement establishes annual quota levels, which can be increased by up to 14% each year if the U.S. determines that worker rights in

¹³¹ "Getting Out in Front on Trade," (Interview with United States Trade Representative Robert B. Zoellick) *Washington Post*, March 13, 2001.

¹³² See, for instance, "U.S. Labor Vows Fight Against Vietnam Trade Pact," *ABCnews.com*, accessed July 17, 2000.

¹³³ Vietnam Labor Watch, "The State of Labor Relations in the Textile and Shoe Industry in Vietnam," (draft executive summary) January 5, 2001. Note that Vietnam Labor Watch supports the U.S.-Vietnam BTA.

¹³⁴ "Rebuilding U.S. Trade Policy," a Speech by Representative Sander M. Levin, Center for Strategic and International Studies, March 6, 2001.

the Cambodian textile sector “substantially comply” with “international recognized core labor standards” and Cambodian labor laws.¹³⁵

Opponents of linking the Vietnam-U.S. BTA to improvements in labor conditions contend that obtaining MFN status will indirectly help improve Vietnamese labor conditions. By promoting economic development, they argue, the BTA will provide Vietnamese workers with more opportunities, increased knowledge, and improved means to promote their rights. Foreign investment, which is likely to increase if the BTA is passed, is also thought by some to raise working conditions generally by bringing in multinational corporations that pay higher wages and have better health and safety conditions than do local enterprises. Finally, supporters of unconditional passage of the BTA argue that the agreement will improve labor rights by promoting the rule of law in Vietnam. For instance, they point out that the BTA requires Vietnam to publicize in advance most business-related laws and regulations, a move that should enhance the transparency of the country’s legal regime.

¹³⁵ January 20, 1999 U.S.-Cambodia Bilateral Textile Agreement, available on the home page of the U.S. embassy in Cambodia, [<http://usembassy.state.gov/posts/cb1/www0001.html>].

Appendix: Vietnamese Labor Laws

The following list includes various labor laws and regulations that are applied in the Socialist Republic of Vietnam. Most of the titles on this list, with a few exceptions, are in English. They are mainly found in the following two publications:

1) *Foreign Investment Laws of Vietnam* (loose-leaf), compiled by the Vietnamese Ministry of Planning and Investment and translated by Phillips Fox, an Australian law firm (hereafter *Foreign Investment Laws of Vietnam*).

2) *Hệ Thống Văn Bản Quy Phạm Pháp Luật Hiện Hành về Lao Động - Bảo Hiểm Xã Hội* [Compilation of the Current Laws and Regulations on Labor and Social Insurance], compiled by the Ministry of Labor, War Invalids, and Social Affairs (1998) (hereafter BLD).

Titles of laws found in the *Foreign Investment Laws of Vietnam* collection are listed as they are translated therein. Titles from the BLD compilation are listed in Vietnamese, with an English translation in brackets.

A. General Laws and Regulations on Labor Relations

- The Labor Code of the Socialist Republic of Vietnam of 1994 (*Foreign Investment Laws of Vietnam*, p. IV-122)
- Decree 233-HDBT of June 22, 1990 on Labor for Enterprises with Foreign Owned Capital (*Foreign Investment Laws of Vietnam*, p. IV-9) [Note: the Labor Code only partially repealed Decree 223-HDBT]
- Decree 72-CP of Oct. 31, 1995 Providing Details and Guidelines for the Implementation of a Number of Articles of the Labor Code with Respect to Employment (*Foreign Investment Laws of Vietnam*, p. IV-351)
- Circular 16-LDTBXH-TT Providing Guidelines for the Implementation of Decree 72-CP of Oct. 31, 1995 with Respect to Recruitment of Labor (*Foreign Investment Laws of Vietnam*, p. IV-515)
- Decree 198-CP of Dec. 31, 1994 regarding the Implementation of a Number of Articles of the Labor Code with Respect to Labor Contracts (*Foreign Investment Laws of Vietnam*, p. IV-213)
- Circular 21/LDTBXH-TT of Oct. 12, 1996 on the Implementation of a Number of Articles of Decree 198-CP on Labor Contracts (*Foreign Investment Laws of Vietnam*, p. IV-551)
- Decree 23-CP of Apr. 18, 1996 on Implementation of a Number of Articles of the Labor Code with Respect to Female Employees (*Foreign Investment Laws of Vietnam*, p. IV-379)

- Circular 03-LDTBXH-TT of Jan. 13, 1997 Providing Guidelines for the Implementation of a Number of Articles of Decree 23-CP Dated April 18, 1996 on Female Employees (*Foreign Investment Laws of Vietnam*, p. IV-587)
- Circular 79-1997-TT-BTC of Nov. 6, 1997 Providing Guidelines for Implementation of Decree 23-CP dated Apr. 18, 1996 on Female Employees (*Foreign Investment Laws of Vietnam*, p. IV-701)

B. Trade Unions and Collective Bargaining Rights

- Law on Trade Unions of July 7, 1990 (*Foreign Investment Laws of Vietnam*, p. IV-1)
- Decree 18-CP of Dec. 26, 1992 on Collective Labor Agreements (*Foreign Investment Laws of Vietnam*, p. IV-83)
- Decree 196-CP of Dec. 31, 1994 on the Implementation of a Number of Articles of the Labor Code with Respect to Collective Labor Agreements (*Foreign Investment Laws of Vietnam*, p. IV-195)
- *Pháp Lệnh ngày 11/4/1996 của Ủy ban Thương vụ Quốc hội về thủ tục giải quyết các tranh chấp lao động* [Decree-Law issued by the Permanent Committee of the National Assembly to regulate procedures in labor disputes] (BLD, p. 1598)
- *Nghi Định số 51/CP ngày 29/8/1996 của Chính phủ về vụ giải quyết yêu cầu của tập thể lao động tại doanh nghiệp không được đình công* [Decision 51/CP of Aug. 29, 1996, concerning resolution of labor disputes for workers who work in no-strike enterprises] (BLD, p. 1632)
- Decision 744-TTg of Oct.8, 1996 on Establishment of Provincial Labor Arbitration Councils (*Foreign Investment Laws of Vietnam*, p. IV-543)
- Circular 02-LDTBXH-TT of Jan.8, 1997 Providing Guidelines for the Implementation of Decision 744-T.G. of 1996 on Establishment of Provincial Labor Arbitration Councils (*Foreign Investment Laws of Vietnam*, p. IV-586/1)
- Decision 1208-QD-UB-NC of Mar. 18, 1997 Issuing Provisional Regulations on the Organization and Operation of Labor Conciliatory Councils of Enterprises [Applied in Hồ Chí Minh City] (*Foreign Investment Laws of Vietnam*, p. IV-616/1)
- Circular 10-LDTBXH-TT of Mar. 25, 1997 Providing Guidelines for the Organization and Operation of Conciliatory Councils of Enterprises and Labor Conciliatory Offices, p. the Level of Districts,

Communes, Cities, and Towns of Provinces and Cities Under the Central Authority (*Foreign Investment Laws of Vietnam*, p. IV-623)

C. Laws on Salary and Wages

- Decree 197-CP of Dec. 31, 1994 on Implementation of a Number of Articles of the Labor Code with Respect to Wages (*Foreign Investment Laws of Vietnam*, p. IV-203)
- Circular 10-LDTBXH-TT of Apr. 19, 1995 Providing Guidelines for the Implementation of Decree 197-CP of 1994 on Wages (*Foreign Investment Laws of Vietnam*, p. IV-326/9)
- Circular 11-LDTBXH-TT of May 3, 1995 on Wages of Vietnamese Employees Working in Enterprises with Foreign Owned Capital and Foreign Organizations in Vietnam (*Foreign Investment Laws of Vietnam*, p. IV-327)
- Official Letter 2028-VPCP-KGVX of May 28, 1998 on Salaries, and Official Letter 1824-LDTBXH-TL of June 5, 1998 on Wages in Enterprises with Foreign Owned Capital (*Foreign Investment Laws of Vietnam*, p. IV-749 and IV-751, respectively)
- Decision 385-LDTBXH-QD of Apr. 1, and amended on Apr. 3, 1996 Regulating Minimum Wages for Vietnamese Employees Working in Enterprises with Foreign Owned Capital, Foreign Offices and Organizations and International Organizations (*Foreign Investment Laws of Vietnam*, p. IV-375)
- Decision 708/1999-QD-LDTBXH of June 15, 1999 on Minimum Wages for Vietnamese Working for Foreign Invested Enterprises (*Foreign Investment Laws of Vietnam*, p. IV-875)
- Guidance 1485-LDTBXH-NN of Jun. 30, 1999 (for Ho Chi Minh City) on the Conversion of Wages of Vietnamese Employees from US Dollars into Vietnamese Dong (*Foreign Investment Laws of Vietnam*, p. IV-879)
- Decree 10-2000-ND-CP of Mar.27, 2000 on Minimum Wage in Enterprises (*Foreign Investment Laws of Vietnam*, p. IV-895)

D. Laws on Work Hours

- Decree 195-CP of Dec. 31, 1994 on the Implementation of a Number of Articles of the Labor Code With Respect to Working Hours and Rest Breaks (*Foreign Investment Laws of Vietnam*, p. IV-187)
- Circular 07-BLDTBXH-TT of Apr. 11, 1995 on Working Hours and Rest Breaks [Providing guidelines for the implementation of a number of articles of the 1994 Labor Code and Decree 195-CP of

1994 on working hours and rest breaks (*Foreign Investment Laws of Vietnam*, p. IV-326/1)

- Circular 16-LDTBXH-TT of Apr. 23, 1997 Providing Guidelines on Reduction of Working Hours for Persons Performing Extremely Heavy, Toxic, and Dangerous Work (*Foreign Investment Laws of Vietnam*, p. IV-637)
- Decree 10-CP of Mar. 1, 1999 on Working Hours and Rest Breaks [Amending Decree 195-ND-CP dated Dec. 31, 1994 on Working Hours and Rest Breaks (*Foreign Investment Laws of Vietnam*, p. IV-825)

E. Laws on Safety and Hygiene

- Decree 06-CP of Jan. 20, 1995 on Occupational Safety and Hygiene (*Foreign Investment Laws of Vietnam*, p. IV-223)
- Circular 22-LDTBXH-TT of Nov. 8, 1996 Providing Guidelines for Declaration, Registration, and Application for Use of Machinery, Equipment, Materials and Substances Subject to Strict Occupational Safety Requirements (*Foreign Investment Laws of Vietnam*, p. IV-559)
- Circular 23-LDTBXH-TT of Nov. 18, 1996 Providing Guidelines for the Implementation of a Regime for Periodical Statistics and Reports on Work-Related Accidents (*Foreign Investment Laws of Vietnam*, p. IV-573)
- Circular 10/1998-TT-BLDTBXH of May 28, 1998 Providing Guidelines for the Implementation of Regulations on Personal Protective Equipment (*Foreign Investment Laws of Vietnam*, p. IV-743)
- Decree 162/1999-ND-CP of Nov. 9, 1999 on the Amendments and Additions to Decree 06-CP of 1995 on Occupational Safety and Hygiene Decree 06 of 1995 (*Foreign Investment Laws of Vietnam*, p. IV-881)

F. Laws on Social Benefits

- Decree 12-CP of Jan. 26, 1995 on Social Insurance (*Foreign Investment Laws of Vietnam*, p. IV-235)
- Circular 06-LDTBXH-TT of Apr. 4, 1995 on Social Insurance Providing Guidelines for the Implementation of Decree 12-CP (*Foreign Investment Laws of Vietnam*, p. IV-301)
- Circular 58-TC-HCSN of July 24, 1955 on Social Insurance [Providing Temporary Guidelines for Collection and Payment of

Social Insurance] (*Foreign Investment Laws of Vietnam*, p. IV-337)

- Decision 606-TTg of Sept. 26, 1995 Issuing Regulations on the Organization and Operation of Vietnam Social Insurance (*Foreign Investment Laws of Vietnam*, p. IV-343 and IV-345)
- Circular 09-LDTBXH-TT of Apr. 26, 1996 Providing Guidelines for the Issuance and Record -Keeping of Social Insurance Books (*Foreign Investment Laws of Vietnam*, p. IV-387)
- Circular 11-LDTBXH of Apr. 7, 1997 Providing Guidelines for the Application of Social Insurance Regimes for Persons Performing Heavy, Toxic, and Dangerous Work or Extremely Heavy, Toxic, and Dangerous Work (*Foreign Investment Laws of Vietnam*, p. IV-631)
- Decree 93-ND-CP of Nov. 12, 1998 on Social Insurance [Amending and Adding to the Decree 12-CP of Jan. 26, 1995 on Social Insurance (*Foreign Investment Laws of Vietnam*, p. IV-811)
- Decree 58-1998-ND-CP of Aug. 13, 1998 on Health Insurance (*Foreign Investment Laws of Vietnam*, p. IV-775)
- Circular 19-LDTBXH-TT of Aug. 2, 1997 Providing Guidelines for the Implementation of Compensation Plan for Employees Suffering Work-Related Accidents (*Foreign Investment Laws of Vietnam*, p. IV-675)

G. Enforcement of Labor Laws

- Decree 38-CP of June 25, 1996 on Administrative Penalties for Labor Offenses (*Foreign Investment Laws of Vietnam*, p. IV-431)
- Circular 01-TT-LDTBXH of Jan. 6, 1997 on Labor Offenses [Providing Guidelines on Procedures for the Application of Penalties, the Collection and the Use of Fines of Labor Offenses; Settlement of Complaints in Relation to Administrative Penalties for Labor Offenses] (*Foreign Investment Laws of Vietnam*, p. IV-577)
- Penal Code of the Socialist Republic of Vietnam, in *Selection of Fundamental Laws and Regulations of Vietnam* 122 (Hanoi, The Gioi Publishers, 1995)