Vietnam

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Part 1: Overview of Vietnam

A. Country Background

Vietnam Facts	
Geographical size	332,698 sq km
Population	90.5 million
Ethnic breakdown	Main ethnic groups: Kinh (85.7%) Tay (1.9%) Tai (1.7%) Muong (1.5%)
Official language	Vietnamese
Literacy rate	94%
Life expectancy	75
GDP	US$193.6 billion[1]
Government	A one-party socialist republic led by the Communist Party of Vietnam (CPV) which espouses Marxism–Leninism and Ho Chi Minh thought.
Political and social situation	Despite economic growth and progress on social indicators, Vietnam's record on political and civil rights remains dismal with the ruling CPV maintaining a monopoly on political power and allowing no challenge to its leadership. However, recent additions to the Constitution may lead to more civil rights and liberties re-emerging on the law-making agenda.[2]

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1 The World Bank, available at http://data.worldbank.org/country/vietnam, accessed on 18 October 2016.

2 'Vietnam: events of 2015' Human Rights Watch, available at https://www.hrw.org/world-report/2016/country-chapters/vietnam, accessed on 18 October 2016.

System of governance

According to the 2013 Constitution, the National Assembly is the highest organ of State power with responsibility for law-making and the Constitution itself. A 500-member unicameral parliament, it also elects the President to a five-year term and has the procedural duty of appointing or proposing the appointment or dismissal of the Vice President, Prime Minister, deputy prime ministers, the Chief Judge of the Supreme People's Court (SPC) and the President of the Supreme People's Procuracy (SPP). The executive arm of the National Assembly and the highest administrative body in the land, the government is headed by the Prime Minister and consists of deputy prime ministers, ministers and other members. The SPC is the highest court of appeal while the SPP, with its local and military subdivisions, acts as a watchdog for the State by monitoring government agencies and acting as prosecutor before the People's Courts.[3] Local government consists of People's Councils and People's Committees at the provincial and municipality levels which are further divided into sub-levels.

Political and social situation

Since reunification in 1975, CPV-led Vietnam has revised its constitution a number of times (in 1980, 1992, 2001 and 2013). Although the last revision basically only reinforced the existing political structure as dominated by the CPV, public debates over possible amendments were held in 2011-2013 – however, ultimately, no far-reaching reforms were considered.[4] On the other hand, the mere fact these debates took place, added to some encouraging sections of the final document, do seem to offer signs of a potential interest in human rights which could lead to a firmer foundation for an expanding civil society. As such, the 2013 Constitution made major changes to the law-making agenda in the National Assembly and as regards the legislative preparative work done by the government and relevant ministries. Besides the priority given to the adjusted legal mandates of State bodies (i.e. the National Assembly, government, local government, court and procuracy systems, and the election management agency), various legal projects covering civil rights and liberties have also re-emerged on the law-making agenda. These include draft laws on access to information, association, demonstrations, referendums, and proposed amendments of the Civil and Criminal Codes. The drafting and discussion of these laws will present a valuable opportunity for civil society engagement and advocacy which could result in increased civil liberties and an expansion of political space.

3 'Vietnam' Encyclopaedia Britannica, available at https://www.britannica.com/place/Vietnam/Government-and-society#ref509906, accessed on 18 October 2016.

4 Malesky, E, 'Vietnam in 2013: single-party politics in the internet age' Asian Survey, 2014, Vol 54(1), pp 30-38, available at https://sites.duke.edu/malesky/files/2014/07/Vietnam-in-2013.pdf, accessed on 15 November 2016.

However, the slow and difficult process of drafting human rights laws is indicative of a lack of consistency and clear thinking in the CPV on how to move forward as regards society's demands for more political space. Indeed, the government has even asked the National Assembly to postpone the discussion and adoption of most of these laws. While there seems to be an apparent lack of preparedness to find legal solutions to the exercise of citizens' rights, potential for new initiatives has been included in the law-making agenda. In the meantime, interest groups can make use of these opportunities to advance their agendas until said draft laws are passed.

Meanwhile, the regulatory environment continues to be characterized by a widening gap between written rules/laws and their implementation. Key reasons for this long-standing problem can be found in the competing interests of parts of the bureaucracy and the discretionary power held by individual officials and factions within the CPV and the State. The number of legal documents promulgated by authorities has increased over time, but many remain just written words. In fact, it would probably be impossible for most State agencies to implement many of them given their limited manpower and financial capacity. Therefore, implementation has mostly focused on those parts viewed as beneficial to particular State bodies, individual officials, and factions. Such problems continue to make the regulatory environment opaque and awards too much discretion to officials and their business allies, creating too many opportunities for arbitrary decisions and rent-seeking activities.

B. International Human Rights Commitments and Obligations

Vietnam has been a party to most important international human rights treaties. As a member of the United Nations since 1977, it has agreed to adhere to international obligations under the UN Charter and the 1948 Universal Declaration of Human Rights. Furthermore, it has also accepted legal obligations to respect, protect and fulfil human rights and fundamental freedoms under the major international human rights treaties as outlined in the table below.

Table 1: Ratification Status of International Instruments – Vietnam[5]

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (CCPR)		24 Sep 1982 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29 Jul 1980	17 Feb 1982
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)		9 Jun 1982 (a)
International Covenant on Economic, Social and Cultural Rights (CESCR)		24 Sep 1982 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)		
Convention on the Rights of the Child (CRC)	26 Jan 1990	28 Feb 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	20 Dec 2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	8 Sep 2000	20 Dec 2001
Convention on the Rights of Persons with Disabilities (CRPD)	22 Oct 2007	5 Feb 2015

However, Vietnam also made a number of reservations to the above treaties upon its accession. Regarding the CERD, reservations were made to Arts 17(1) and 18(1), relating to limitations on accession by a number of specific states, and Art 22 on the

5 United Nations Human Rights, Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 18 October 2016.

use of the International Court of Justice for dispute settlement. Vietnam also made reservations to: Art 48(1) of the CCPR; Art 26(1) of the CESCR; Art 8(2), Arts 20 and 30(1) of the CAT; and Art 29(1) on the use of arbitration and the International Court of Justice in the CEDAW.

As regards the effect of Vietnam's commitments under international treaties in general, the 2005 Law on the Conclusion and Implementation of International Treaties stipulates the overriding effect of international obligations over national laws where conflict arises. A number of domestic laws also make specific and direct reference to international treaties and their effects, e.g. the Civil Code (Art 827), the Commercial Code (Art 4(1)), the Maritime Code (Art 23) and the Law on Environment Protection (Arts 24 and 25). Similarly, Art 827(2) of the Civil Code provides that international agreements should prevail over local laws.

However, Vietnam's State practice in this regard has not been clear and consistent. Concerning the issue of incorporation and transformation of concluded international agreements, the law does not "clearly specify whether a treaty that has been ratified is self-executing or requires the enactment of legislation to incorporate the treaty obligations into Vietnamese domestic law."[6] Vietnamese law enforcement and State practice suggests that treaty provisions contrary to pre-existing laws will need to be 'transformed' into domestic law, and will not be effective until the relevant laws have been amended or repealed. However, treaty provisions not yet included in existing laws will be automatically incorporated into domestic law when the treaty comes into effect.

Along with Vietnam's deepening integration into the world economy, the government has increased its engagement with international human rights mechanisms. Remarkably, in 2009, Vietnam subjected itself to the Human Rights Council's Universal Periodic Review (UPR), a peer-review process whereby a country undergoes a review of its human rights situation by other countries. Following this, Vietnam accepted as many as 93 out of a total of 123 recommendations made by other countries. Similarly, it accepted 182 out of 227 recommendations after the second UPR process in 2014. Of particular note was the first-time participation of NGOs in the process. In June 2013, after careful preparation and consultation, more than 60 local NGOs submitted a 'shadow report' under the UPR to the UN Human Rights Council.[7]

The government has made great efforts to codify international human rights norms and standards into national laws as demonstrated by Chapter II of the newly revised 2013 Constitution. Progress can also be seen in the increasing acceptance of international

6 Bryant, T, Jessup, B, 'Fragmented pragmatism: the conclusion and adoption of international treaties in Vietnam' in J Gillespie and P Nicolson (eds), Asian Socialism and Legal Change, 2011, Canberra: ANU E Press, at p 299.

7 Bui, T, 'Vietnam's civil society' East Asia Forum, 5 September 2013, available at http://www.eastasiaforum.org/2013/09/05/vietnams-civil-society-undergoing-vital-changes/, accessed on 18 October 2016.

norms as revealed by the number of revised and new laws incorporating such standards including the Penal Code, the Criminal Procedures Code, the Civil Code, the Civil Procedures Code, the Labour Law, the Law on the Protection and Care of Children, and the Land Law.

Moreover, the legal drafting process has involved more public and proactive consultation than ever before, particularly with non-State stakeholders, e.g. sex workers and drug users were offered a chance to meet with the drafting committee to discuss administrative sanctions. Likewise, during the Land Law amendment process, the Economic Committee of the National Assembly organized a workshop with Vietnamese NGOs to hear the voices of farmers. The 2013 revised Land Law placed tighter restrictions on compulsory land acquisition by the State and proposed more accountable ways to agree on compensation. It also increased the period of farmers' land use rights to 50 years. And during revisions to the Law on Marriage and Family, the drafting committee conducted surveys and workshops with lesbian, gay, bisexual and transgender groups to consider, e.g. the rights and issues of same-sex couples.

Despite tremendous efforts to develop legislation and strengthen the judicial system over recent decades, various loopholes in the formal legal rules guaranteeing human rights still exist. Further, considerable discrepancies between legal rules/practices and their enforcement can also be seen. Notably, limited access to justice and the relative weakness of the judicial system pose a large obstacle to the protection of human rights. It is also often noted that some important rules on human and citizens' rights in the Constitution, particularly such civil and political rights as freedom of speech, the press, assembly, and the right to form associations and to demonstrate, have not been institutionalized into laws.

An expert on Vietnam's legal and judicial system has commented that "courts lack powers to review complaints about civil rights abuses such as curbing freedom of association and speech and arbitrary arrest and detention."[8] Vu Cong Giao and Joel Ng[9] specifically list six articles in the Penal Code that in their analysis pose difficulties for the fair and equal enforcement of law due to ambiguous language on crimes relating to national security. These include Art 79 on "activities aimed at overthrowing the people's administration;" Art 80(1)(c) which defines spying as "collecting, supplying information and other materials for use by foreign countries against the Socialist Republic of Vietnam;" Art 86 on "undermining the implementation of socio-economic policies;" Art 87 on "undermining the unity policy;" Art 88 on "conducting propaganda against the Socialist Republic of Vietnam;" and Art 258 on "abusing democratic freedoms to

8 Gillespie, J, 'The juridification of administrative complaints and review in Vietnam' in T Ginsburg and AHY Chen (eds), Administrative Law and Governance in Asia, 2009, London: Routledge, at p 218.

9 Giao, VC, Ng, J, 'Vietnam' in M Mohani, D Cohen and KTY Lee (eds), Rule of Law for Human Rights in the ASEAN Region: A Base-line Study, 2011, Human Rights Resource Centre, University of Indonesia.

infringe upon the interests of the State."[10] Article 88 criminalizes propaganda against the Socialist Republic of Vietnam and Art 258 bans the abuse of democratic freedoms that infringe upon the interests of the State. It reads:

(1). Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interest of the State, the legitimate rights and interests of organizations and/or citizens shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years.
(2). Serious offenses shall be subject to a prison term of between two and seven years.

These articles have been harshly criticised for their ambiguous language and their wide and vague formulation which gives authorities carte blanche to sanction people for a range of activities. Moreover, because they appear to conflate national security with the security of the political regime, the sanctions allowed under these articles have also garnered much criticism.

Human rights is arguably the most contentious issue between Vietnam and the US. While not seen as an impediment to short-term cooperation on various issues and the improved relations between the two countries in general, it appears to "have played a significant role in convincing the Administration to oppose a number of items desired by Hanoi."[11] These include the types of arms US companies can sell to Vietnam and terms and conditions during the Trans-Pacific Partnership (TPP) negotiations.

Part 2: Outstanding Human Rights Issues

In its self-evaluation UPR report of 2009, the Government of Vietnam recognized many challenges and problems to fulfilling its obligations under international human rights commitments and even within its domestic legal framework. These include inconsistencies and conflicts in the legal system itself, poor material conditions, externalities preventing the enjoyment of human rights, and the awareness of its public servants.[12] While human rights is a broad area, this chapter will focus on providing a critical analysis of two current and pertinent issues to Vietnam: the right to association

10 Article 258 reads: (1) Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interest of the State, the legitimate rights and interests of organizations and/or citizens shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years. (2) Serious offenses shall be subject to a prison term of between two and seven years.

11 Manyin, ME, 'US-Vietnam relations in 2014: current issues and implications for US policy' CRS Report, 2014, Washington: Congressional Research Service, at p 16.

12 Government of Vietnam, National Report submitted in accordance with Paragraph 15(A) of the Annex to Human Rights Council, Resolution 5.

and workers' rights, both of which require an integrative approach to make demonstrable progress.

A. Right to Association

Freedom of association is fundamental to the health of civil society in any country. In Vietnam, the Constitution stops at a mere declaration of this freedom without providing any meaningful protection to enforce it. Although the law on the right to form associations was promulgated in 1957, it is still considered to be in force.[13] However, it is almost outdated and fails to regulate the complex situation in Vietnam.[14] Numerous debates on new laws of association and thirteen drafts were produced before the Party-State blocked its adoption in 2006.

Instead, the Party-State now employs a number of executive decrees issued by the government and directives by the Party Secretariat to regulate associations and civil society organizations (CSOs) including the many voluntary groups in Vietnam. The voluntary or not-for-profit sector is broadly defined to include party-related mass organizations, trade unions, business, professional associations, scientific and technological organizations, policy research groups, social service groups, social relief establishments, religious organizations, clans, charities, private and semi-private universities, social and charitable funds, volunteer groups and other institutions. In addition, international NGOs with the appropriate permits to carry out activities in the areas of development and humanitarianism may also be considered part of the voluntary sector. However, the Party-State continues to maintain "strict control and management of the emerging Vietnamese non-profit community."[15] Thus, in practice, the legal framework places exclusive emphasis on retained State control rather than the protection and promotion of freedom of association.

With regards to the creation, registration, governance, operation and management of associations, various restrictions have been put in place. Decree No 88/2003/ND-CP on the organization, operation, and management of associations issued on 30 July 2003 was the first of its kind and serves as a guiding document for implementing the 1957 law on the right to form associations. Decree 88 was subsequently replaced by Decree No 45/2010/ND-CP on the organization, operation, and management of associations, issued 21 April 2010 with some minor changes. Decree 45 was amended with Decree No 33/2012/ND-CP, affecting only a small number of articles. An obvious problem

13 See Decree No 102-SL/L-004, 20 May 1957, signed by President Ho Chi Minh promulgating the law on the right to form associations.

14 This comment is reflected in Report No 38/TTr-CP, 17 April 2006, by the Government to the National Assembly on the draft law on associations.

15 Sidel, M, 'Maintaining firm control: recent developments in non-profit law and regulation in Vietnam' International Center for Non-Profit Law, 2010, available at http://www.icnl.org/research/library/files/Vietnam/MaintainingFirmControl.pdf

with these decrees is the substantial curtailment on a fundamental civil and political liberty, freedom of association (stipulated by all Vietnam's constitutions, the 1966 International Covenant on Civil and Political Rights (to which it acceded in 1982), as well as the 1957 Law). Article 2 of Decree 88 and Decree 45 reads:

> (1). An association under this Decree means a voluntary organization of Vietnamese citizens or institutions with the same business or interest or in the same circle that unite for a common goal and operate regularly and disinterestedly to protect lawful rights and interests of the association, its members and the community; and support one another to operate effectively, contributing to national socio-economic development. Associations shall be organized and operate under this Decree and relevant legal documents.
> (1). Associations may be called differently as society, union of associations, general association, confederation, association, club with the legal entity status and other names under law (below collectively referred to as associations).

Strictly limiting the forms of associations allowed in Vietnam according to their purposes, the Decrees interpret Art 1 of the 1957 Law differently. It reads:

> *The right to form associations by the people shall be respected and ensured. The purpose of establishing an association shall be legitimate, appropriate for the people's interests, uniting the people with a view to contributing to building a people's democratic regime in our country.*

As a commentator points out, the Decrees completely distort Art 1 of the 1957 Law.[16] Clearly the definition of associations and their purpose is extremely vague and ambiguous, giving the authorities carte blanche in interpretation and decision-making. While the Decrees recognize associations as legal persons, there is a significant deviation from the 2005 Civil Code on its purpose and legal entity status. According to the 2005 Civil Code (Arts 100-105), a legal person is categorized based on its operating purpose which can be political, social, economic, and/or professional. However, the Decrees are silent on which types of legal entity status associations may have. Furthermore, the Decrees explicitly exclude the VFF (a political organization) and five political-social organizations (namely, the Vietnam General Confederation of Labour, the Vietnam Women's Association, the Ho Chi Minh Communist Youth League, the Vietnam

16 Lenh, N, 'Da co du can cu phap ly de thanh lap mot dang khac ngoai Dang Cong san Viet Nam?' ('Is there sufficient legal ground for establishing another political party besides the Communist Party of Vietnam?'), Commentary on basam.info, 29 August 2013.

Farmers Association, and the Vietnam War Veterans Association), collectively referred to as mass organizations, from the scope of regulation.[17]

Both Decrees 88 and 45 maintain firmly that the establishment of associations must be allowed by the Party-State, meaning that it is a formal requirement for associations/civic organizations to attain official registration status. This firm control is also reflected in the conditions imposed on registration procedures, monitoring, and in the operation of associations. As associations with special characteristics (hoi co tinh chat dac thu, in Arts 33-35, Decree 45), however, a small number of large State-affiliated umbrella groups enjoy some special privileges. Key constraints on the conditions and procedures for establishing associations, associational speech and advocacy rights, and other serious obstacles appear to be attributed to the dual management mechanism of associations set out in these decrees. For example, Decree 45 (Art 23(7)) limits an association's ability to comment, advocate, and provide feedback to circumstances where there is a request from relevant government agencies. The restrictive nature of these government decrees regulating Vietnam's associational sector has been widely criticized.

Concerning foreign non-governmental aid, the legal rules also reflect the Party-State's general strategy of limiting domestic civil society, particularly the ability of independent groups to organize. All over the world, authoritarian regimes have increased restrictions on foreign support for civil society, particularly targeting NGOs that monitor the government, promote human rights, and strengthen the democratic process.[18] Foreign funding in these politically sensitive areas was always likely to cause tensions between the State and CSOs due to the blurred lines between political activism and the social justice work of NGOs. Given this sensitivity, foreign funding for CSOs in Vietnam is an important concern for the Party-State. As such, to maintain and enhance State control over foreign non-governmental aid, the government issued Decree 93/ND-CP on promulgating the regulations on the management and use of foreign non-governmental aid in October 2009, followed by Circular 07/2010/TT-BKH issued by the MPI which provided implementation guidelines in March 2010. The restrictions and burdensome appraisal processes necessary for foreign funded projects to gain approval, together with heavy and difficult reporting requirements are evident in Decree 93 and Circular 07. As a result, it usually involves greater costs for compliance and longer times for appraisal approval:[19]

17 For an official typology of these organizations according to their purposes, see Art 9 of the 2013 Constitution.

18 See Christensen and Weinstein, 'Defunding dissent: restrictions on aid to NGOs' Journal of Democracy, 2013, Vol 24(2), p 79.

19 Decree 93 stipulates a deadline of 20 days for the appraisal of foreign non-governmental aid items following the receipt of full and valid dossiers, but there is no specific deadline for approval after conclusion of the appraisal.

Organizations that are more independent from the State, like local NGOs established under VUSTA, sometimes face double approval: once by VUSTA at the central level and once by the People's Committee at the provincial level. With regards to appraisal and approval time, the questionnaire surveys reveal that the process usually takes longer than permitted by Decree 93.20

In short, a lot of attention has been given to the regulatory framework and the material conditions necessary to exercise the right to associate in Vietnam even though the Constitution has long provided for it. As such, the never-ending debate about how to both mitigate CPV concerns about the security of the political regime and accommodate demands to actually practice this fundamental human right looks set to continue.

B. Workers' Rights

More than half of Vietnam's population (54 million, of which 51.6% are men and 48.4% are women) is in the labour force. Over the past decades, Vietnam's transition to a market economy has resulted in many workers' rights issues leading to "an unprecedented level of industrial action" across the country, notably, wildcat strikes, high labour turnover, and absenteeism in foreign invested firms.[21] Labour conditions in Vietnam also figure prominently in its participation in the TPP trade negotiations and application to join the Generalized System of Preferences (GSP) program. Labour unrest is an increasingly prominent issue although the number of wildcat strikes has decreased since 2011 (when they reached a peak of about 1000 strikes). Wildcat strikes take place mainly in foreign-invested companies where the scope for protest seems likely to increase. Under current State practice, strikes are officially illegal while formal bargaining processes remain weak. The May 2014 riots against foreign-owned firms in industrial areas near Ho Chi Minh City were partly motivated by workers' frustrations with factory conditions. Indeed, labour activism in foreign-owned firms often take place on an informal basis and are less easily suppressed than in other sectors including State-owned enterprises, domestic private enterprises, and government agencies. Other factors explaining wildcat strikes in foreign firms may include cultural differences and poor labour management.[22] In particular, Vietnamese workers may have taken to strikes because of a perceived lack of representation by official unions.

20 Nam, PQ, and Anh, NN, 'Implementation of Decree 93/2009/ND-CP: issues and recommendations' Care International in Vietnam, 2014.

21 Chi, DQ, and van den Broek, D, 'Wildcat strikes: a catalyst for union reform in Vietnam?' Journal of Industrial Relations, 2013, Vol 55(5), p 783.

22 Chi, DQ, and van den Broek, D, 'Wildcat strikes: a catalyst for union reform in Vietnam?' Journal of Industrial Relations, 2013, Vol 55(5), p 783 at 785-789.

Worker and union complaints do not necessarily concentrate on employers' actions but also against government policies including social insurance and pension policies. In March 2015, for example, 90,000 textile workers at a Chinese-owned factory in Binh Duong province protested against changes to social insurance. This was the first time such a large strike had been organized around a legal or political demand, rather than against employers, wages, or working conditions.

The efforts by the CPV-led government to adapt to rapid social and economic change as well as the demands of integrating into the world economy have introduced a new dynamic into the labour rights regime. Although Vietnam has made significant improvements in its labour laws, local government enforcement and business compliance remain ongoing problems.

Formal labour rights, unions, and labour organisations are of great interest to the Party-State and remain under close control. For example, there are tight restrictions on workers' rights to form trade unions outside the Vietnam General Confederation of Labour (VGCL). In fact, workers have no legal grounds to form unions independent of the VGCL (a mass organization under the Vietnam Fatherland Front) at all. As the only organization responsible for upholding workers' rights in Vietnam, the VGCL is supposed to organize a union within six months of the establishment of any new business, regardless of its ownership – State, foreign, or private. Workers automatically become members of the union of their workplace and all labour unions must be a member of the VGCL. As a result, strong links between the CPV-led government and unions at all levels monitor worker industrial action. This relationship is even more consolidated at State-owned enterprises (SOEs) where workers find it almost impossible to call for official strikes.

The TPP and GSP negotiations are likely to result in an increasing acceptance of space for unions. Positive signs can be seen in the VGCL's support of the government's ratification of the remaining fundamental international labour conventions including those relating to freedom of association (ILO Convention 87), and collective bargaining (Convention 98). Some observers are optimistic that these moves may lead to some changes in unionization, demonstrating that union independence and freedom of association may no longer be untouchable issues.[23]

23 Van, D, (2015) 'Chủ tịch Tổng LĐLĐVN Đặng Ngọc Tùng làm việc với LĐLĐ tỉnh Gia Lai: Đặt quyền lợi người lao động lên hàng đầu' ('VGCL President Đặng Ngọc Tùng works with Gia Lai provincial Confederation of Labour: put worker's rights as the top priority'), Lao Dong, 18 May 2015, available at http://laodong.com.vn/cong-doan/chu-tich-tong-ldldvn-dang-ngoc-tung-lam-viec-voi-ldld-tinh-gia-lai-dat-quyen-loi-nguoi-lao-dong-len-hang-dau-326877.bld, accessed on 16 August 2015.

Despite restrictions on independent rights to organize, gradual progress has been made in worker rights. An ongoing series of reforms under consideration has sought to balance workers' interests in the foreign investment sector with foreign investors' concerns. In 2015, discussions about proposals that would make it easier for employers to dismiss under-performing employees were ongoing. In a number of provinces, 'strike action teams' have also been set up to address disputes rapidly.[24] In January 2015, the government passed Decree 05/2015/ND-CP to speed up the process by which strikes may be declared illegal.

Workers' concerns are also recognized in the new Labour Code passed by the National Assembly in June 2012. This new law is likely to herald a number of changes to working conditions that will be generally favourable to workers and their rights, e.g. increasing maternity leave from four to six months. Moreover, in April 2014, the VGCL established a Committee of Labour Relations. Given the continued large number of wage-related strikes and pressure from the public, the government has tightened its inspection of working conditions and supervision of wage policies, especially for foreign-funded factories to deal with violations more effectively.

According to the CRS report, hundreds of unaffiliated and, therefore, unofficial 'labour associations' appear to have sprouted without significant repression from the government, and in many recent cases, the VGCL has evolved into a more aggressive advocate for workers.[25] For example, the government of Vietnam took "no action" against the more than 150 strikes that occurred in the first half of 2013, despite the fact that all were technically illegal. In practice, most strikes are still officially illegal given that the process of legally registering a strike under the Labour Law and associated legislation is cumbersome and impractical. Most strikes are settled informally with workers often gaining some concessions.

In short, as Vietnam transitions to a market economy and pressure under TPP negotiations grows, greater independence for unions may be required to bolster formal labour relations. The increasing space for union organization outside the official VGCL parameter could offer a more measured channel to address workers' grievances, facilitate better industrial negotiation and arbitration, and thus, reduce the scale and scope of wildcat strikes.

24 Tu, NP, 'Vietnam Labour Code strikes out at labour disputes' East Asia Forum, 24 April 2015, available at http://www.eastasiaforum.org/2015/04/10/vietnam-strikes-out-at-labour-disputes/.

25 Manyin, ME, 'US-Vietnam relations in 2014: current issues and implications for US policy' CRS Report, 2014, Washington: Congressional Research Service, p 16 at 20.

Part 3: Conclusion

Vietnam's introduction of a market economy, the development of a socialist law-based State doctrine and the exposure of Vietnam's long-held socialist norms of human rights to liberal universalism, have paved the way for an evolving human rights regime. As can be seen from the 2011-13 constitutional amendment debate, the discourse around human rights is dynamic and ever changing. On the one hand, legal limits on freedom of association and workers' rights, freedom of the press and peaceful assembly, including the right to demonstrate, and access to information, are apparent and are used by the Party-State to control civil society and to prevent any group or individual from potentially engaging in political advocacy. On the other hand, despite setbacks and restrictions in the regulatory framework on a number of human rights issues, it must be stressed that efforts to institutionalize a more effective and consistent legal-rational model of human rights has made some progress. The 'new thinking' on the rule of law and human rights has been gradually transplanted and developed while still drawing resistance within some conservative elements of the CPV. A number of reforms have been proposed and considered seriously that could open up truly substantive and constructive deliberations. Thus, a more effective and consistent legal-rational model is beginning to take root in Vietnam.

The foregoing analysis has aimed to shed clearer light on the ongoing issues on the right to association and workers' rights in Vietnam. While the Vietnamese Party-State has accepted the universality of human rights at a high level of abstraction, it still disagrees with western countries and international institutions over the content, justification, interpretation, and implementation of these rights in practice at a more detailed level. The interim solution to this impasse is necessarily a syncretism that enables "new and contradictory substantive ideas to enter and enlarge the range of values applied to new situations."[26] While the socialist legality doctrine is in decline and a law-based state is still embryonic, a dynamic and tolerant political model of human rights is likely to embrace such syncretism and adjust itself in the long-run.

26 Gillespie, J, 'Concepts of law in Vietnam: transforming statist socialism' in R Peerenboon (ed), Asian Discourses of the Rule of Law, 2004, London: Routledge, at p 172.