ECONOMIC LIBERALISATION, POLITICAL SPACE AND THE ROLE OF TRADE UNIONS IN VIETNAM

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Thesis
entitled

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ABSTRACT

This thesis aims to assess, through the lens of trade unions operating under the umbrella of the Vietnam General Confederation of Labor (VGCL), the extent to which economic liberalisation in Vietnam has resulted in political spaces being opened. The thesis addresses three questions namely, if and to what extent has economic liberalization, under Doi Moi since 1986, driven the transformation of Vietnam's Trade Union system into an agent capable of acting independently of government rather than being a mere 'transmission belt' for government policy to workers; if and to what extent has 'political space' within the Trade Union system shifted to a more democratic form; and to what extent have workers' demands, manifest in frequent illegal strikes, influenced the internal struggle within the Trade Union system.

The thesis takes an institutional perspective on political change that assumes the primacy of the institutions of state in producing 'openings in political space'. The thesis uses primary data from one-on-one interviews with union officials and factory workers together with focus groups comprising workers in industrial areas in different parts of Vietnam. Desk study, including review of regulatory documents and analysis of text and guidelines on trade unions, as well as academic documentary research, has been also conducted intensively.

The research reveals that although political space is still limited in Vietnam - the Communist Party of Vietnam (CPV) still tightly controls politics and trade unions are not considered to be fully independent – expansion of political space was identified.. Despite being an arm of the CPV and the State, unions are no longer simply 'transmission belts' for government policy to workers; they are being encouraged by the State to respond to workers' interests and demands at all levels of the union system. Moreover, the VGCL has been rather effective in lobbying for changes to laws that expand the role of unions. In addition, within the union system itself democratic processes have been implemented, notably in that in enterprise-level unions workers can elect their leaders and union leaders no longer need to be CPV members. It was also found that although illegal strikes cannot be interpreted, on available evidence, as being based in an organized 'labor movement', strikes have generally been tolerated by government, thus signifying the inadequacy of trade unions in representing workers' rights and interests. The findings suggest that the union system now behaves more as an element of 'semi-civil society' rather than simply as an arm of government. The thesis concludes that it is possible to identify the widening of political space in a localized and incremental sense although it is still a small space and thus may not lead to political change at national level. The many and significant legal and institutional changes that have expanded the role of trade unions can also be read as pragmatic responses by the State to enable trade unions to mimic the behavior of unions in democratic states without the State giving up ultimate control. The Vietnamese State has in fact opted to widen the space for the participation of trade unions whilst ensuring on-going control at arms length.

KEY WORDS: VIETNAM/TRADE UNIONS/POLITICAL SPACE/SEMI-CIVIL SOCIETY/ LABOR RIGHTS

245 pages

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LIST OF ABBREVIATIONS

CBA	Collective Bargaining Agreement
CPV	Communist Party of Vietnam
CTV	Vietnamese Confederation of Workers
CVTC	Vietnamese Confederation of Christian Workers
FDI	Foreign Direct Investment
HPAE	High Performing Asian Economies
ICP	Indochina Communist Party
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MNC	Multinational Cỏrporation
MOLISA	Ministry of Labour, Invalids and Social Affairs
NCL	National Confederation of Labour
NGO	Non-Government Organisation
NIC	Newly Industrialising Country
SME	Small and Medium Enterprise
SOCB	State-Owned Commercial Bank
SOE	State-owned Enterprise
TPP	Trans-Pacific Partnership
TU	Trade Union
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodical Report
VCCI	Vietnam Chamber of Commerce and Industry
VGCL	Vietnam General Confederation of Labour
WTO	World Trade Organisation

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CHAPTER I
INTRODUCTION

1.1 Context

Since 'Doi Moi' (economic liberalisation) policy was initiated in 1986, Vietnam has relied on market solutions that have produced very high rates of economic growth(Cheong, et al. 2010).Challenges to Vietnam's adherence to its statist political ideology have ensued.[1] In the nation's contemporary economic setting, Marxist-Leninist ideology on the role of the working class and classical labour movements seems not to have much to offer. Indeed the very principles of a classless society and collectively determined social justice outcomes are highly contestable.Gainsborough (2002)has, however,argued thatpolitical liberalisationis unlikely to result from the growth of a middle class.Rather, he argues,liberalisation will derive from factions within the State and from within the authoritarian governing regime itself; in other words from measures initiated from above, rather than via pressures from below.

Theories, and empirical studies identify a wide range of factors that have driven democratisationand regime change in nation states over time and space and under different types of political regime. Factors associated with regime transition include economic development and concomitant legal and institutional reforms, economic difficulties, changes in social structure, class structure and state-society relations, new actors in political mobilisation and external pressures.The relationship between economic liberalisation and democratisation is contested by scholars. Paul (2010), amongst others, argues that in communist states strong demands for further liberalisation of an economy inevitably weaken the legitimacy of party control and result in conflicts that produce changes in power relations. Others, notably Saxonberg (2012) and McCormick (1998 and 1987), noting the continuity of communist regimes

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[1] Marx's notions of justice are based on collective ownership of the means of production and centralised distribution of welfare in all its forms (see Marx, 1992).

in China and Vietnam under economic liberalisation, argue that regimes can maintain power by pragmatically adapting to pressures arising from social change.

As an element of this debate, the privatisation of its economy is giving Vietnamese trade unions greater autonomy than they enjoyed prior to Doi Moi (Saxonberg, 2012). In order to provide a manageable remit for a thesis that has as its backdrop prospects for democratisation in Vietnam the decision was made to focus on the role of organised labour, essentially in the form of trade unions, in the widening of political space. Theoretical and empirical relationships between unions and democratisation are discussed below. [2] At this point, however, the works of Rueschemeyeret al. (1992), O'Donnell et al. (1986), Przeworski (1991,2006), Saxonberg (2001, 2012) and Gill (2003), on democratisation and pathways to regime change, are acknowledged as touchstones for the investigation reported on in this thesis.In the thesis the term 'trade union' is preferred to the term 'labour union'. Although there are semantic arguments as to distinctions between the terms, for present purposes they refer to the same entities.

A notable feature of Vietnam's economic transition is the 5000 or so wild cat strikes(illegal/unofficial/not organised by unions) that took place between 1995 and 2012.[3]Notably,all were peaceful, with no interpersonal violence or demolition of machines involved. Nor has any strike been based on a struggle for reform of the political regime (Vu, 2011). Strikes, spontaneously organised by workers, are still occurring in significant numbers due to the absence of other means to progress rights' claims, including the failure of trade unions to effectively represent workers' interests. From the theory of social movements, such collective actionsare produced upon conditions of people and resources and incentives to mobilise (Oberschall, 2008).

Such movements potentially create the dynamics for social change and a contentious politics. In this scenario,it may be conjectured,since strikes have been largely tolerated by Vietnam's government (with few arrests having occurred) - if only

[2] "Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives" (Vienna Declaration and Programme of Action, 1993). Democratisation is theset of processes whereby a democratic political system is established.

[3] Statistics from Vietnam General Confederation of Labour and Ministry of Labour, Invalids and Social Affairs (seeFig. 6.1)

because they impact on businesses and not government directly - political space[4] has widened in recent years. However wild cat strikes may be explained (see Chapter 6), the key to any discourse on the role of organised labour in rights' claims is Vietnam's official federation of trade unions, the Vietnam General Confederation of Labour(VGCL). Further research needs to be undertaken to explore the notion of a labour movement, through the lens of trade unions in Vietnam, as a collective organisation of working people, who campaign in their own interests for better treatment by their employers and governments, in particular through the implementation of specific laws governing labour relations. In fact, as will be shown in this thesis, unions have gained much autonomy since Doi Moi, especially in connection with the right to organise and to support workers against their employers. The Trade Union Law, passed in 1990, removed much state control over unions. Enterprise-based unions need only inform the appropriate government body, or the VGCL, that they have been established; this makes it possible to create more autonomous unions (Clarke et al., 2007).

Although wild cat strikes have not been organised by the VGCL or its affiliated unions, the question of how unions act to protect workers' rights and interests requires explication; and further, whether unions can actively lead the rights struggles of workers. These are important questions because, in Vietnam, the general lack of definable social movements, especially union-led movements connected with limitations on access to human rights by citizens – such as freedom of association, freedom of expression, right to strike – constrains any potential shift towards democracy. [5]

As official State organisations – such as trade unions - become more independent of the Party-State, they may eventually start making political demands

[4]The notion of political space is central to this thesis. The concept has been used widely in the literature but a useful definition is given by Tkacheva et al. (2013): "In a fully democratic society, political space is an area where unconstrained articulation and organisation can occur and where political authority using the structures of the state cannot arbitrarily control or inhibit the will of the people."

[5]It needs to be made clear that although Vietnam is a one party state, there are within the political system formal and informal waysthrough which individuals can influence and be consulted during policy making.The electoral process requires citizens, as voters, to eliminate two of five to seven candidates, in their electorate, for election to the National Assembly. Candidates may put their names forward for consideration but have to be approved by the CPV before being allowed to stand for election. The system is referred to by the CPV as 'centralised democracy'. It is a highly constrained form of 'democracy' and the term is arguably inappropriately deployed.

(such as for social policies to help workers). In so doing, they may morph into being a kind of ‘semi-opposition’ (Linz, 2000, p.168) and thus play a role in democratizing the regime:

> The limited pluralism of authoritarian regimes and the different shares that the tolerated pluralistic components have in the exercise of power in different moments leads to complex patterns of semi-opposition or pseudo-opposition within the regime. There are semi-opposition groups that are not dominant or represented in the government group that engage in partial criticism but are willing to participate in power without fundamentally challenging the regime.

The notion of a ‘semi-opposition’ (alternatively‘semi-civil society’ – after Saxonberg, 2012) in relation to the role of the VGCL needs to be explained. Even if civil society did not play a great a role in bringing down former communist regimes, as some civil society theorists claim, there is good reason to believe that semi-civil society has evolved and been influential. Saxonberg (2012) defines this situation as one in which official organisations gain more autonomy to act. It is conceivable that Vietnam’s VGCL, whilst acting as a loyal arm of the State, could evolve into a quasi-political opposition.

An essential point about terminology needs to be made here. TheVGCL is an officially sanctioned socio-political organisation, an arm of government in fact. Established and operating under its aegis are many separate trade unions at Provincial and District levels, and within business enterprises and government agencies.Whilst able to operate independently to some extent under devolved powers,these unions remain affiliates of the VGCL.Figure 1.1 describes the trade union system in general terms

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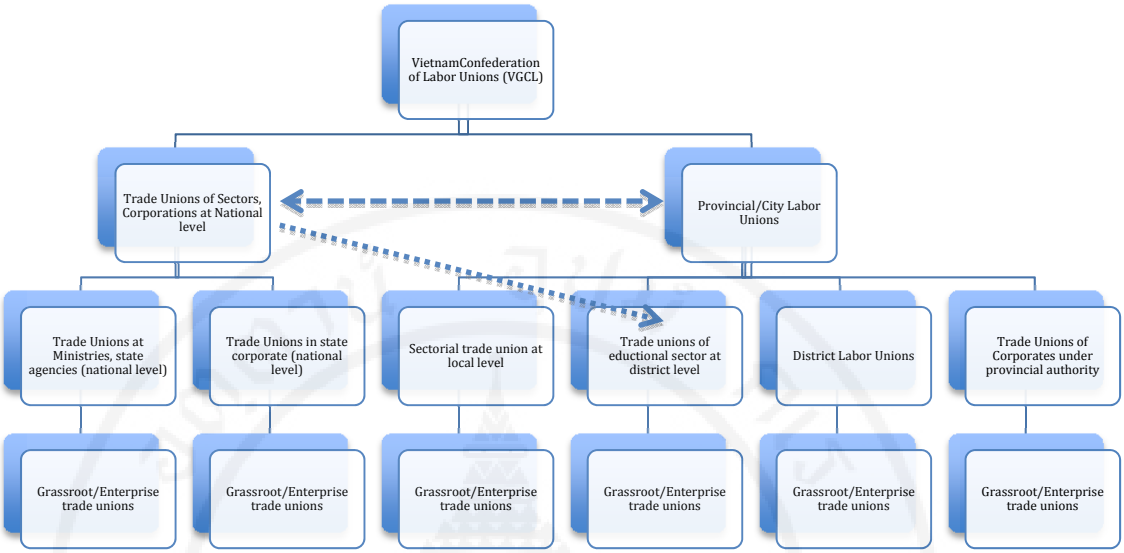

Figure 1.1: VGCL structure

1.2 Scope

In reviews of trade unions in communist countries, it has been shown that unions were (and are) officially state-sanctioned organisations, and hence loyal to their regimes. They have nevertheless played a major role in promoting reforms (Saxonberg, 2012). In fact unions played a significant role in democratising Central European countries. In some Asian countries, such as South Korea, the union-led labour movement emerged from and supported economic growth. The communist State of Vietnam retains the VGCL under its umbrella. Nor until recently did the State recognise strikes as being legal and no strike has to date been led by a union (Vu, 2011).

Within the context outlined above, there is a gap in understanding as to why and how Vietnam's VGCL and its affiliates have transformed in their remit and capacity to represent the interests of workers since the onset of economic liberalisation in the mid-1980s. This gap is the primary focus of the thesis. To the extent that significant changes have occurred, *the thesis is that these shifts signify a widening of political space for unions and their members to act independently of direct State control and to behave in line with Saxonberg's (2012) notion of semi-civil society*.

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Within this scope, the research will examine:

1. The political context of a single party regime and social structures in Vietnam after Doi Moi policy was proclaimed in 1986, focusing on the history of the VGCL and its affiliate unions and a key indicator of labour movement formation, namely wild cat strikes.

2. Changes in attitudes and practices amongst factory workers to demand that unions represent their interests in negotiations with employers and the state.

3. Changes in power relations, role and capacity of unions to act as elements of 'semi-civil' society vis-a-vis the State in advocating for workers rights. Specifically, the focus is on the VGCL with regard to its relationship to the State, union members and capitalists. Empirical research covers institutional arrangements, capacities and attitudes of the unions. This enables analysis of the extent to which the VGCL has changed its role and attitudes in ways that may indicate a widening of political space.

1.3 Purpose

The purposes of this research are twofold. First, the research presents an analysis of the extent to which,and why, economic liberalisationand its policies have influenced the role of unions. In particular, as stated above, the research examines the transformation of trade unions into agents capable of acting more independently of government than hitherto.

Few efforts have been made to understand the relationship between economic liberalisation andthe enlargement of politicalspace that may presage a wider democratisation in Vietnam. Globally, however, it has been argued that socio-economic development -resulting from industrialisation, urbanisation and higher levels of education - is prerequisite to democratisation. This argument, forcefully put by Lipset over 50 years ago (1959, 1960)was central to the Vienna Declaration and Programme of Action (VDPA) resulting from the World Conference on Human Rights in 1993: "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing." Other discourses have also

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discussed the dynamics of how economic growth can engender democratisation (e.g. O'Donnell, et al., 1986 & Przeworski, 1991).

It could be said that Vietnam has, to date, experienced economic liberalisation but not political democratisation. Although liberalisation may have led to splits in leadership and the creation of civil society, Vietnam has maintained collective leadership. Changes and reforms have been based on a pragmatic gradualist approach rather than being led by organised oppositions or a culture of dissidence. The research thus examines power relations between the State and trade unions and changes in State ideology.The research in particular examines the extent to which, on the one hand, the VGCL acts as a 'transmission belt' in relaying party ideology and policies and, on the other hand, acts as an element of 'semi-civil society' representing workers' rights and interests. The research thus aims to assess the extent to which, if at all, the political space of,and within,trade unions has shifted to what may be interpreted as greater autonomy from the State.

The research further examines changes in trade union roles and practices in response to members' needs; in particular how workers can be represented in a more democratic way.Of special interest is whether, and the extent to which, workers' demands, exemplified through frequent wild cat strikes, have influenced the internal struggle within unions for a more inclusive political space from legal, political and practical perspectives. Is there a union culture embodying a sense of autonomy in promoting and defending members' interests, including against the State and any socio-economic prerequisites existent in Vietnam to facilitate democratisation?

In sum, the research addresses these three questions:

1. Why and to what extent, and in what ways, has economic liberalisation influenced the transformation of Vietnam's Trade Union system into an agent capable of acting more independently of government?

2. Why and to what extent has the political space within the Trade Union system shifted to what may be interpreted as a more democratic position?

3. Why and to what extent have workers' demands, exemplified through frequent strikes, influenced the internal struggle within the Trade Union system for a more inclusive political space from legal, political and practical perspectives?

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1.4 The Oretical Framework

Although, as will be pointed out below, the thesis works from an institutional perspective in interpreting the shifting role of Vietnam's trade unions, theoretical perspectives relevant to the content of each chapter are adduced at various points throughout the thesis. What follows provides a general context for positioning the role of organised labour, in the form of unions and labour movements, in democratisation. Two broad categories of theory inform the structure and interpretations of the thesis: (1) Theories of democratisation and the roles of trade unions and labour movements; (2) Theories of social movements and labour movements. Trade unions, acting as political arms of government and transmission belts for regime policy ,potentiate reforms being made from the 'top down'. In contrast, when unions mobilise the voices of workers 'bottom up' pressures exist.

1.4.1 Democratisation and trade unions.

Theories of democratisationaim to identify pathways in transitions to democracy and to identify rational political choices of elites that drive change. From this perspective it is not so important to determine the structural preconditions for democratisation but rather the process and the role of elites that drive regime transition. From this perspective more 'objective' conditions and structural prerequisites are considered minor factors in democratisation processes. Rustow (1970, p.345) argued that "a dynamic model of the transition must allow for the possibility that different groups – e.g. now the citizens and now the rulers, now the forces in favour of change and now those eager to preserve the past – may furnish the crucial impulse toward democracy." Rustow inspired the 'pact' school on regime change, which emphasises elite accommodation over stressesby the regime. Key representatives of the pact school are Linz and Stepan (1996), and Przeworski (1991). Comparative studies of transitions to democracyare notably represented by O'Donnell, et al. (1986). The complexity of economic liberalisation and its relationships with, and effects on,democratisation have nevertheless proved to constitute a clear factor in this theoretical framework. This theory challenges Lipset's pre-requisites on democracy (1959, 1960), notably as he argued that socio-economic development - resulting from

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industrialisation, urbanization and higher levels of education - is prerequisite to democratisation.

Within a vast literature the works of O'Donnell and Schmitter (1986) and Prezworski (2006) may be cited for their direct relevance to the current investigation. They have discussed the dynamics of how liberalisation can lead to democratisation. They argue that liberalisation can lead to splits in the leadership between 'hard-liners' and 'soft-liners'. When this happens soft-liners might turn to civil society to gain support against the hard-liners. One could say that Vietnam,which to date has experienced liberalisation but not democratisation, if a split in the ruling elite was to occur, since civil society is rather weak it is likely that soft-liners will turn to semi-civil society (Saxonberg, 2012). The concept of semi-civil society or semi-opposition means that official organisations are garnering capacity to act autonomously of governments. As such they may serve as intermediaries between a nascent civil opposition and the ruling regime (Saxonberg, 2012).

Worldwide the breakdown of authoritarian regimes, including communist regimes, has commonly been the result of economic difficulties. Haggard and Kaufman (1995), for example, studied 23 democratic transitions, over the period 1975-1990, that were primarily driven by declining economic growth. In four cases (Korea, Chile, Turkeyand Thailand), however, transition occurred when economic conditions were actually favourable. Moreover, a state can resist democratic transition by adjusting policy at the outset of crisis, as was the case, for example, in Chile during the early 1980s. A review of these various cases showed that economic difficulty alone is not sufficient to induce regime change, but identified other variables explaining democratic transition (Grill 2000). Saxonberg (2001 & 2012) pre-eminently compares the fall and survival of communist regimes in Eastern Europe and East Asia respectively. His arguments about the relative weights of loss of legitimacy by regimes and rising expectations amongst citizens are especially pertinent. Economic difficulties can, in particular, create policy disputes amongst leaders with factions, divisions and disputes emerging within ruling elites. Economic difficulties can also create changes in state relationships with industrial sectors. Economic difficulties challenge power and legitimacy and undermine public confidence in the capacity and rights of elites to rule.

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The communist rulers in Vietnam face a similar loss of ideological legitimacy, as their economic reforms are pushing the country in an increasingly capitalist direction. The regime in Vietnam has, as a result, had to turn to building pragmatic acceptance for its policies, rather than stressing its ideological legitimacy Saxonberg (2012) has conjectured that in Vietnam the leadership is split because it no longer believes in its own ideology, so many more views have emerged amongst leaders. This split gives the unions more autonomy and creates the possibility of alliances between union leaders and liberalizers.[6] Nevertheless, whilst there may be a loss of ideological legitimacy and there may be dissident leaders who tried to oppose a regime this may not guarantee regime change.[7] Thus, an important question in relation to the expansion of political space is whether the VGCL has distanced itself over time from the sphere of state power, of which it remains an arm, in order to better protect workers' rights.

Leaderships have to make policy changes but often meet opposing factions within ruling regimes in handling economic setbacks and in introducing new policies (O'Donnell and Schmitter, 1986). Economic and political challenges are, however, interdependent in forcing regime change. This commonly makes for disputes and disunity within regimes.[8] When leaders mobilise popular forces to strengthen their positions conflicts within a regime may result. Conflicts may thus be heightened by changing relationships within a regime and between a regime and the society it theoretically serves. The same theory may apply to an organisation's transition whereby leaders opt for change due to external pressures and demands of their elites and initiate change from within (Rustow, 1970).

[6] Saxonberg's formulation of 'pragmatic acceptance' is based on the idea that when a regime loses its ideological legitimacy then the population might still accept the regime as long as it thinks it is performing reasonably well. But if the economy were to begin faltering then the population is likely to stop pragmatically accepting the regime, which is why it becomes weaker and prone to mass uprisings.

[7] In the case of Cuba, as Saxonberg discussed, dissidents attempted to cooperate with workers and even set up an independent trade union of 135 groups but the regime succeeded in crushing it in 1996 (Saxonberg 2012).

[8] In the early period of economic renovation in Vietnam, Nguyen Van Linh and Vo Van Kiet from the South were the first to challenge the strict Marxist-Leninist ideology of the North espoused by Le Duan (General Secretary of the Labour Party from 1960-1976 and of CPV from 1976-1986) and Do Muoi (General Secretary of CPV from 1991-1997).

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Economic liberalisation is a process whereby the state winds back its control in order to make room for autonomous action by producers and consumers of goods and services (O'Donnell and Schmitter, 1986). Changes of regime may result directly from economic development. There is a high probability of authoritarian regimes falling as a nation's middle-income population achieves a 'threshold for transition' to democratic rule. But if a state survives the 'transition zone' it may be able to endure without democratisation (Saxonberg, 2012, Prezworski 1991). The lack of clear linkages between economic liberalisation and democracy and the likelihood that there exist different pathways to democracy requires further studies of other factors for democratisation such as the dynamic of rights claims and how they are organised.

Economic liberalisation creates a new class and social structures. Industrialisation has, as noted, induced major shifts in social structures in emerging economies. Industrial development affects the lower social strata in important ways: e.g. people shift from rural to urban areas and into factories in designated industrial zones. The new working class becomes conscious of its poor living and working conditions. Especially favoured by change is the new class of industrial entrepreneurs who ally their interests with ruling regimes and international actors, including foreign investors. Business in the private sphere emerges from the failure of state-controlled economic performance as the alternative. Modernisation theory predicts that the emerging bourgeoisie will play a role in democratisation, since this class resents arbitrary state interference in its business affairs (Rueschemeyer, et al., 1992). Economic growth leads to changes in socio-economic structure, notably the growth of a capitalist class.

With regard to relationships between economic development, class structure and regime change, Gill (2003) argued that there comes a time when authoritarian structures cannot accommodate the stresses created by the process of economic development caused by significant change in the class structure: the growth of a middle class and of a commercial and industrial bourgeoisie, the growth of unionization. He argued that changes in class structure may challenge the capacity of regimes to survive. It is important to note too that democratisation is not about moving toward political and economic equality. It often leads to market reforms that decrease

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economic equality, for example. Democracy is a political system, so it is not clear what types of economic policies will emerge from it.

Changes in class structure may not however lead to democratic transition if a civic culture is absent or in the presence of an authoritarian government. In Vietnam, in the face of vast increases in numbers of workers, there is thus a question as to whether the emergent bourgeoisie (capitalists) will support democratisation or whether the working class will be the driving force, or both. Economic growth leads to an increase in the economic standing of the working class and consequent demands to unionise and in other ways to organise to represent their interests to employers and state agencies. The class struggle continues to surge albeit in a gradualist views of politics. Workers become better organised and may constitute a new political force with which regimes must cope. If the economy stagnates or declines, a regime may face difficulties in providing welfare benefits and maintaining living standards. The emergence of more autonomous workers' unions and/or independent worker leaders may lead to opposition in the form of strikes or demonstrations in support of political demands beyond merely economic interests. This putative dynamic is central to the inquiry that is the basis of the present thesis.

Economic liberalisation implies diversification of the economy as well as society. Citizens may demand greater political freedoms and a strengthened civil society may reduce a regime's control (Gill, 2003). Civil society, that is to say social forces constituted by more autonomous, legitimized groups, may begin to act on behalf of their members' interests in the private sphere. Over the period of liberalisation in Vietnam, civil society has grown in numbers and range of work, as exemplified by the many NGOs that are financially independent of the Party-State (Vasavakul, 2003). Other groups can form their own organisations or associations to avoid regime control. They may even be active in law making; for example the VCCI is a business association established under investment law.[9] One important difference between Vietnam and other countries is the lack of any tradition of dissidence under the CPV regime. It would be thus be difficult for regime change led by opposition or dissident groups to occur (Saxonberg, 2012). Socio-political organisations, such as the VGCL, as Saxonberg (2012) argues, may be construed as organisation of semi-civil

[9] To be discussed further in Chapter 2.

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society. The VGCL may find itself in a difficult situation in which it has to meet contradictory demands and find a way of balancing the demands of regime and citizenry. If it moves too fast it might fall off the political tightrope but if it goes too slowly it might get left behind if society is in the midst of change. Thus, the actual behaviour of organisations of semi-civil society depends on both the capabilities and strategies of organisation leaders and the degree to which political openings are taking place. If actors such as Vietnam's VGCL play a constructive role in bridging the gap between society and the state then they may participate well in the political sphere to widen state-society relations.

Saxonberg (2012) posits the idea of openings in the 'political opportunity structure' (POS) as being one of the most important aspects of semi-civil society. He argues that when a regime begins liberalizing then the POS opens and creates space for official organisations to become more autonomous. Since, as is argued below, this thesis is largely an institutional analysis then POS is really the theoretical key to the argument. The notion of 'resource mobilisation', is also central to the investigations reported in the thesis: official organisations obviously have many more resources than organisations comprising civil society, which is one reason why semi-civil society can be so important in bringing about democratisation (McCarthy and Zald, 2008).

Theories of democratisation reveal close links between democracy at work and democratisation in the wider society. Democratisation involves changes in power relations between actors within a state or between nation-states (Paul, 2010). In economic relationships, democratisation pre-supposes employee participation rightsin an interplay between democratic processes of politics and employee pressures applied through trade unions or similar interest representation (Engelstad, 2004). Dahl (2000) viewed democracy, within the sphere of the state, as a form of government recognizing political rights, including effective participation, equal voting and inclusion. But he also argued that democracy cannot ignore the work sphere. Democracy at work is a concept that embodies recognition and autonomy at work, including the right to participation in decision-making and advocacy for employee interests though trade unions. This means that recognition and autonomy at work are exercised within the frame of society and under democratic norms. Considering democracy at an organisational level, there is no single answer as to whether

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democracy starts from associations, trade unions, economic enterprises or special interest groups (Dahl, 2000). Dahl pointed out, however, that there are underlying conditions favourable to democratisation, namely a market economy and modern society. Similarity, Rueschemeyer'set al.l. (1992) structuralist approach argued that the spread of global markets will lead to the creation of middle classes that will demand voting rights to secure political representation and the formation of liberal democratic institutions. In this scenario, capitalism and industrialisation can strengthen the working class in favour of democracy. The power of employees, linked with democratic norms, may be exercised through four channels: (i) ownership rights; (ii) direct vote through parliamentary channels to assert legal rights of employees by binding employers to ensure their participation; (iii) employees' human capital; (iv) and the possibility and capacity for collective action and collective bargaining (Engelstad, 2004). Democratisation can be measured by various ways: (i) polyarchic criteria (Dahl, 1971); (ii) legislation and institutionalization of protection of social, economic and political rights and obligations of citizens, and; (iii) fulfillment of human needs and human security (Paul, 2000).

1.4.2 Social movements

The second frame for the research is theories related to 'social movements', more specifically the sub-set of 'labour movements'. These may be deployed to explain the link between workers' voices, trade unions, so-called wild cat strikes and the consequent widening of political space in Vietnam (see Chapters 2, 3, 5, 6 & 7).

There are a number of reasons for deploying social movement theory. First, theory is used to explain a nexus between changes in class structure and regime change. Second, theory can be tested in the context of labour movements where trade unions act for workers and are involved in the organisation of movements. Whether or not movements lead to regime changes embodying democratisation varies and need not depend on preconditions such as economic liberalisation. Thus the research reported in this thesis addresses the extent to which Vietnam's VGCL leads, de facto or de jure, a labour movement in supporting rights' struggles of the working class and opening up the prospect of political change towards democracy. It should be

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emphasised at the outset that whilst the notion of labour movements (as a form of social movement) is deployed in Chapter 7, in the discussion of illegal (wild cat) strikes, the conclusion is that whilst there have been large numbers of strikes there is no evidence that they have emerged from anything that could be described as a movement. At best strikes may form the basis for consistent, if sporadic and unorganised, pressures on trade unions and government to provide greater support for workers' rights.

Theories of social movements may be class based but not all are. Marx's conception of a revolutionary labour movement was predicated on the interests of the working class. Marx had faith in trade union power or the power of whichever institutional apparatus to which workers' delegate the exercise power. The historic mission of the working class was to struggle for redistribution of productive forces from capitalists. In contrast, contemporary thought questions the revolutionary power of the working class and its capacity to control and to achieve collective appropriation. Although it is obvious that workers cannot seize power within the sphere of industry or the state Gorz (1982) rejected such a conception of democracy. But some advanced economies have witnessed the successes of social democracy i.e. liberal democracy aligned with welfare capitalism. The power of workers has even expanded and become an active force in bringing about democracy. The question posed for further investigation in a modern context is whether there is a labour movement in Vietnam advocating class-based claims. If so, can trade unions continue to play a role in leading labour movements? The research on which this thesis is based did not explicitly address these questions but the review, in Chapters 7, of trade union practices in organizing labour and representing workers will reflect on them.

Contemporary thinking about social movements sees them as being defined by a set of opinions and beliefs held by groups of people that embody preferences for changing some elements of the social structure. Collective action may result if citizens have the resources and incentives to mobilise (Oberschall, 2008).In most developed countries that have experienced a successful transition (from authoritarian regimes), the situation and issues of labour now relate to claims of economic benefits within work places and, in some cases, extend to claiming civil rights and welfare packages outside of workplaces. Even in societies with 'democracy

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deficits', however, not all labour movements can lead to social movements demanding political change. Pinkney (2003), for example, argued that social classes, especially middle classes, weaken authoritarian regimes as they become less dependent on the state with economic development; even the lower classes can challenge authoritarianism for better welfare and rights protection. Labour movements can be regarded as a form of social movement. In many developing countries, economic conditions are conductive to collective working class pressure on the state and employers. The imbalance of power between the new urban working class and others classes, resulting from industrialization and privatisation, whereby welfare gaps between capital owners/employers and workers are widened, may drive such a trend. Urbanization leads, as Huntington (1991) argued, to the emergence of new types of class formations and political struggles. City-based labour movements may be mobilised into labour unions claiming improved wages and working conditions. From that platform workers may move into the political arena (Lane 2006). Labour movements initially focused on the 'right to unionise' but the attention, in western industrialised economies, has shifted elsewhere. The rights struggles of workers may extend beyond the sphere of work and will challenge the state to respond. States will be called upon to meet their obligations to support the economic and social conditions of citizens and to recognize their rights, including basic freedoms such as freedom of association, freedom of assembly, freedom of speech, social security and other economic rights. Political spaces can thus be widened because, when an authoritarian regime cannot accommodate the stresses created by rights struggles, it may opt for power sharing and greater political participation of the wider society (Engelstad, 2004).

The transition to democracy can be explored as a democratisation process that may or may not be based on class conflicts. Conflicts may relate to claims against capitalists within the workplace or rights struggles against the state within the civic sphere. On different grounds, labour movements can be based on the rise of trade unions or other institutions of civil society. From the theory of labour movements regarding the role of trade unions, a shift in the role of trade unions towards safeguarding civil rights may occur (Herod, 1998). So to explore any particular labour movement, the workforce will move to more collective actions in support of rights

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claims without being organised or with the support of organisations such as trade unions. Of interest are the grounds on which collective action can be orchestrated to change the social structure or to claim for civil rights. To contribute to the main thesis research question, concerning the extent to which workers' demands can influence trade unions to occupy/widen political spaces, the research explored, for the case of Vietnam, the proposition that whilst there may be an identifiable labour movement it will be less class based but rather is emerging from rights claims against capitalist or rights claim outside work places, in the civic sphere, in relation to the state. The role of trade unions is considered regarding how they shift into civic culture to lead the labour movement rather than merely in operating in workplaces as part of the state apparatus (Chapter 7).

1.5 Research Methodology

1.5.1 Institutional framework

Since much of the dissertation is about institutions - how unions are organised, what kinds of incentives and demands they face - an institutional perspective provides an appropriate frame for the empirical work conducted for the thesis (Ostrom, 2011). Moreover, since there is an attempt to bring in some ideas from social movement theories, an institutional approach fits in well with the literature on 'political openings' or 'openings in the political opportunity structure' (McAdam, et al., 1999). The political and economic reforms described in the thesis could be considered openings in the opportunity structure that give unions the possibility of acting more autonomously. The ideas of 'resource-mobilisation' theorists, such as McCarthy and Zald (2008), Oberschall (1973) and Jenkins (1983) are also of relevance. The ability of unions to take advantage of openings in the opportunity structure depends on their resources. If union leaders in factories are paid by the national union rather than by the enterprise, for example, they will have more resources and can act more autonomously of enterprise management. Saxonberg and Ngo (2015) note, for example, the simple matter of whether the local union has its

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own bank account or whether its money is controlled by the enterprise and it must thus ask the management for permission before spending its money.

1.5.2 Grounded theory

Grounded theory encourages researchers to collect data on the experiences of participants in the research and to inductively explain how their actions are constructed (Atkinson,et al., 2007). Grounded theory based in research findings emphasises the examination of what takes place on the ground and why but is not bound by particular hypotheses or theories (Charmaz, 2006). Charmaz further argues that grounded theory is suited to investigating new perspectivesrather than testing hypotheses derived from existing theories. Based on the research reported in this thesis, interviews of informants can be inductively used to analyze causes, conditions, process of transformation of trade unions and the labour movement. By the same token, because there is so much extant theory, as outlined above, data analysis involves interpretations against those theories.

1.5.3 Research design

(a) Desk study

Primary texts reviewed are those that relate to the VGCL and its affiliate unionsand cover laws and other regulatory documents, including CPV resolutions. Secondary sources include newspaper and magazine articles and union publications. Public opinion on issues around the role of unions and labour rights was examined. Analysis of media coverage over time further deepened understanding of the public interest in, and reaction to, issues related to the subject matter: how the mass media discusses the changing role of unions; what the VGCL itself has written about its changing roles; discussion of relevant events, notably wild cat strikes. Discussions were also held with five journalists. They were asked about public interest and media reactions around labour issues and conflicts as well as eliciting insight into evolving media interest and how media plays a role in supporting workers rather than merely disseminating the State's commands. Because this was not the focus of empirical study no direct quotes or citations are, however, used in the thesis.

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Rapid assessments of actors from social groups and other non-state actors were made. Group discussions from civil society were held on the basis that institutions where they work are concerned with labour issues. The assessment was also based on research conducted on the role of civil society vis-à-vis the corporate sector. The assessment sought to identify views on state-society relationships. Also assessed were institutions' current work programmes and their roles in relation, and contribution to,labour rights and the processes of the labour movement. The assessment enhances an understanding of the dynamics of civil society and its relationship with the state and the business sector. There is the possibility from all of this to validate whether there are spaces for civil society and social organisations to engage in social movements, in particular around labour rights from their current programme and the way they work with workers. It is also possible to compare conditions for civil society to act and to push for labour rights in the ways trade unions work. More evidence is discoverable on how civil society organisations can work in partnership with unions or otherwise introduce innovative approaches towards changing roles of civil society.

(b) Empirical research

Interviews were undertaken with union leaders, trade union activists and workers. Interviews were semi-structured with guided topics and questions (see below and Appendix 1) but allowed for a free flow of discussion and the telling of stories and experiences. In addition, focus groups were used with workers because they are often living and working together. When approaching workers, it was helpful to create a sense of openness even with some sensitive issues through group talk.

Interviews with trade union leaders and cadres[10]

Interviews (see Appendix 1.a) with union officials and leaders were conducted. The interviewees were selected to represent the levels where they work including national level, provincial, city, district and enterprises. As at the time of the research, Vietnam is in the sensitive process of debating about role of trade union and

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[10]These 20 interviews of trade union leaders and cadres were undertaken in joint research with Steven Saxonberg (see Saxonberg and Ngo, 2015).

multi – trade union systems, therefore it would be safe that the thesis have informants in anonymous manner when they express their personal views on trade unions.

Out of 20 interviews of trade union leaders and cadres, two were with leaders at the national level of the VCGL and two each in ministry trade unions. As trade unions have affiliated branches and offices in provinces, districts and industrial zones, under the management and direct guidance of VGCL, two interviews were with provincial officials, four at city level and two at district/industrial zone levels. The different levels enable assessment of different roles with regard to the relationship with the VGCL, the state, and the work related to policies. Interviews were further stratifies by location. Interviews were made with geographical selection. Of the 20 interviews, four were from the south and the rest are from the north, including VGCL national office in Hanoi. Informants are from three Provinces (Hanoi, Ho Chi Minh City, Dong Nai Province) because there are larger trade union units in these cities and provinces whichenables them to be more active.

Interviews are also selected based in type of enterprises. Out of 20 interviews, 10 interviews were with enterprise leaders, with different types of enterprises: two from state owned enterprises, five from foreign invested companies, and three from joint stock companies. The companies selected are in Hanoi, Hai Duong (the North) and Ho Chi MinhCity (South).

Interviews focussed on: what union leaders believe to be the problems and challenges they now face; how their (the leaders') role has changed in recent years; and the kinds of influence they believe they have on policy-making. Informants were invited to share their views on labour rights struggles and how to solve them within the mandate of the VGCL.

Specifically, interviews were based on the following questions:

- How the VGCL has changed its focus, goals, organisation, ways of operating
- Current goals and operations
- Challenges and problems brought about by economic liberalisation
- Demands of union members and responses to them
- Union relationships with state, civil society, international organisations

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- How members influence union policies
- Election of union leaders
- Labour conflict cases: successful legal or illegal strikes
- How union leaders engage in or support strikes

Interviews with workers

Focus groups and 'one-on-one' interviews were conducted with workers who work in factories and interact with trade union (see the list in Appendix 1.b). Workers in discussion were selected for in depth interviews if it is found that they experienced certain types of rights struggle, including claims of wage, working conditions or conflicts at work or they might have participated in, or have participated in strikes. For the purpose of the research, based on the need to keep the project to manageable proportions, 42 interviews with workers were made in combination of focus group discussions and questionnaire in Hai Duong and Vinh Phuc province that are among the largest industrial and manufacturing provinces. Of 42 workers, in-depth interviews were conducted with 15 workers who were identified to be workers' leaders, who have participated in dealing with conflicts or strikes.

Group discussions focus on how workers experience and react to the effects of economic liberalisation – such as rising job insecurity, inequality in incomes, poor working conditions and lack of representative and bargaining mechanisms. Perceptions and cases of wild cat strikes were also captured. Insights from life stories about rights struggles were sought. Opinions and experiences in organizing workers were asked about in connection with life stories.

1.6 Ethical Issues

Most of the apparent ethical issues relate to the politicized nature of the topic, and the delicate context of social movement and human rights issues in Vietnam. Liamputtong's writings (2010, 2008, 2007), and those of Mertens and Ginsberg (2009), on the subject of research in such context's have been especially informative in conducting interviews and focus groups.

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Firstly, the research attempted to be as objective and open as possible. The research acknowledges that the researcher possesses opinions regarding labour rights, union roles and political context. Secondly, the research aimed to ensure that confidentiality was paramount by independently controlling all data collected, and ensuring anonymity when necessary. As the research itself possesses political elements, labour rights as human rights, informants may not have been comfortable in sharing their views. The VGCL is a state organ, not fully independent. Therefore, union leaders may have wanted to retail the state guidance during rather than conveying their own opinions. It was therefore absolutely necessary to respect the confidentiality of informants.

Interviews were conducted by email, telephone or in person. Some interviews were tape recorded with agreement of the informants. Interviewees were informed about consent prior to, and following, interview. Any interviews that occurred outside of the field research are only utilized to support the research. If extenuating circumstances arose, all issues regarding consent and protection of information were ensured. Before referencing participants, all quotations and relevant sections, as well as the actual reference of the individual, were sent to interviewees for approval prior to any distribution of the research.

In terms of field research with workers in three provinces in Vietnam, research was conducted with the support of some NGOs and media that are engaging with workers in factories through their programmes so the process was entirely non-threatening. With these focus groups, questions were asked in a way that does not pinpoint the political structure but only to test on public interests as additional information to support the empirical research that focuses on trade unions and workers.

1.7 Structure Of Thesis

Chapter 2 describes and explains the trajectory of Vietnam's economic development before and after Doi Moi, the period of economic liberalisation that was initiated by Vietnam's government in the mid-1980s. This chapter establishes a context for analyzing the role of the VGCL in supporting the interests of workers and

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the extent to which the state has changed its ideas on the role of unions in the context of economic liberalisation.

Chapter 3 provides an overview of historical experiences of trade unions from different parts of the world against which the Vietnam case may be calibrated. The question is: to what extent does Vietnam's experience parallel or differ from international patterns. Where there are divergences then explanations, or at least conjectures as to possible explanations, are required. Answers to these questions are suggested in the conclusions to Chapter 5 and again in Chapter 8.

The primary question addressed in Chapter 4 is the VGCL's relationship to the state, within the political realm, and the degree to which, if at all, there is evidence that the VGCL and its myriad associated unions can now act more independently of the state than was the case prior to Doi Moi. Following from this primary question are a number of secondary questions. What factors are driving changes in the role of the VGCL towards more autonomy from the state? What actually indicates autonomy? How do the state and the CPV guide policy in setting the VGCL's mandate, policy and programmes? How does the VGCL use its increased autonomy, assuming this exists, to negotiate and make changes in law and policies? Are there barriers to changes in the role of the VGCL?

Chapter 5 examines changing union approaches to dealing with challenges and pressures arising from the new economic order. The key questions are: (1) to what extent and by what means have trade unions in Vietnam become more autonomous, both from the state (as discussed in Chapter 4) and from management; and (2) how have unions responded to the demands of their members and the needs of society at large. The Chapter concludes by reflecting on theories and empirical studies outlined in Chapter 1 to assess the extent to which the Vietnam experience conforms or diverges. The conclusion also recapitulates the international experiences detailed in Chapter 3 to assess the extent to which unions in Vietnam compare and contrast with international experiences.

Chapter 6 examinesthe notion of human rights in Vietnam, of which labour rights are a sub-set, and sets them in the context of international human rights mechanisms and conceptions of rights and labour movements. The chapter examines and assesses the extent to which, and the manner in which, workers' demands, voiced

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through strikes and by other means, have expanded their political space within which to demand human rights. The chapter responds to several interrelated questions. How are labour rights perceived as human rights by different stakeholders, including the state, unions and workers? Why are workers restive? What rights do they claim? In the case of strikes, have workers been empowered as a result? The chapter thus paints a picture of workers' rights struggles and their transformation in content and methods since Doi Moi.

The main questions addressed in Chapter 7 are: (1) to what extent have rights claims through strikes emerged through labour movements; and (2) how have such workers rights' struggles transformed the VGCL into a more independent agency better able to protect workers' rights and to push for widened political spaces?

Chapter 8 concludes the thesis by considering the extent to which it has been able to answer the research questions laid out in Chapter 1. Further work needed on the general theme of the thesis and specific investigations that might be conducted are identified.

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CHAPTER II
ECONOMIC LIBERALISATION IN VIETNAM

2.1 Introduction

This chapter describes and explains the trajectory of Vietnam's economic development before and after Doi Moi, the on-going period of economic liberalisation initiated by Vietnam's government in the mid-1980s. The following questions are addressed:

- What was the paradigm for economic development in Vietnam before Doi Moi?
- What were the consequences of a socialist economy before Doi Moi?
- What led Vietnam's government to initiate economic liberalisation?
- What were the main elements of Doi Moi and the development path following its initiation?

Answers to these questions establish a context for analysing the VGCL system's role in supporting the interests of workers and the extent to which the state has changed its ideas on the role of the trade unions in the context of economic liberalisation. Ensuing chapters of the thesis will analyze the processes through which unions have gained, or might gain, greater autonomy and capacity to act in ways that to widen political spaces. If so, and this is the overarching interest of the thesis, has economic liberalisation engendered a shift towards democratisation in which the VGCL and its affiliates are key actors? Apart from authors cited in the text below, the work of Fforde (1997) and Fforde and Vyder (1996) has been useful regarding the first decade of Doi Moi. Felker (2004) provided a broader context for Doi Moi in the economic history of Southeast Asia.

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2.2 Doi Moi

2.1.1 Causes

In its first decade of power over the territory covered by today's sovereign State of Vietnam, commencing in 1975, Vietnam's CPV-government operated a Soviet-style central economic planning system. Under General Secretary Le Duan (1960 to 1986), the State followed hard line policies mandated by a strict Stalinist ideology, including: the rapid state takeover of economic functions, including confiscation of formal-sector private enterprises; and forced collectivisation of agriculture. Notwithstanding the earlier communist tolerance of a 'petit bourgeoisie' (1959), now even small farms were mandated to be collectivised. After the unification of North and South Vietnam in 1975, the nation struggled through a series of Soviet-style 'Five Year Plans', until 1985, to collectivise agriculture. Outcomes were, however, far below expectations because the policy worked against the motivations and interests of working people (Boothroyd & Pham 2001). March 1978, in the North, saw the wholesale confiscation of industrial and commercial properties. In the South of the country this policy saw major disruption to the national economy since most of the production from industrial and commercial units and farms was located there.[1]

Central planning thus caused serious disruptions to the economy's performance and the quality of people's lives; industrial stagnation and mounting foreign debt were the order of the day. Until the mid-1980s, gross inefficiencies were legitimated by communist dogma. Shortages of technology, skilled labour and private capital led to low productivity and shortages of all types of goods and services. In 1985, after the adjustment of 'price-wage-currency' policy failed[2], there was hyperinflation, as high as 500% in 1986 (Nguyen, 1999).[3] To compound the situation there was a severe economic recession between 1976 and 1980, also accompanied by

[1] See in *Nguyen Ngoc Chinh's Memoir*. Before 1975, in Saigon, there was strong manufacturing infrastructure on a par with other countries in the region and with private companies and industrial factories. See more at http://chinhhoiuc.blogspot.com/2012/09] read 16/9/2014

[2]The policy on prices, wages and currency reform was made in 1985 according to the Resolution of Central Committee Session 8, Vth congress, Communist Party of Vietnam. It aimed to transform the subsidised system into socialist marketsto encouragegreater independence of production units from the state.

[3]Read further at http://webh01.ua.ac.be/cas/PDF/CAS22.pdf for information.

high inflation.[4] Lack of sufficient quantities of food led to high levels of imports and dependence on foreign aid, mainly from the Soviet Union. It should be noted that this period encompassed the first half-decade after the end of the civil war between separate governments of North and South Vietnam. The economy was essentially in ruins after decades of armed struggle between communist and non-communist forces, French colonisers and American supporters of non-communist forces.

As was the case in many countries forced into economic transition, economic difficulties in Vietnam during the early 1980s drove the CPV to rethink its strategy of how to operate and grow the economy and to improve citizens' material standards of living. Widespread hunger demanded that the Party respond to the need for change.

The 1986 Party Resolution raised the need to address high prices, low wages and inefficient distribution of goods and services. The Party therebyset the nation on the pathway to renovating state management of economic activities.[5] 'Marketisation' policy was initiated in 1989 and was a major gesture towards an 'open door' policy to foreign investment and trade, although still following a gradualist approach (Vo, 2005). This policy was forced into being under the pressures of an economy in macroeconomic instability, economic crisis and the drying up of aid from the former Soviet Union after its break-up in the late 1980s.Even before this crisis Vietnam's leaders had looked for an economic reform model. Incentives to boost agricultural and industrial production were provided, and thus led to new policy on industrialisation. Reform policy drew on the Chinese case during its early 1980s market economy reforms.

Vietnam's political system is characterised by what the CPV refers to as 'centralised democracy'.This formulation ,embraced since Party Congress III, valorises the guiding role of the CPV in all policy and law making. The idea is that CPV members take part in policy discussions and elections at all levels but must

[4]The state of Vietnam's economy during the recession of 1976-1980 is discussed in many books and papers, notably Vo Van Kiet's *The Firer*. Youth Publisher: Ho Chi Minh City.

[5]Report of Central Committee at the CPV's VIth Congress.http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=9&leader_topic=549&id=BT2880637189 [accessed 30/08/2014]

ultimately follow decisions made at higher levels.[6] Political and policy-making processes are supposed to be based on 'consensus' leadership. Despite this principle, in practice there was a situation and time when decisions of leaders were creating friction within the Party. With the implementation of Doi Moi there was ideological opposition against the market economy and economic liberalisation. Conservative elites remained strong believers in Marxism and socialist orthodoxy and were thus uneasy. Conservative elites within the CPV in the North were not fully persuaded of the need for renovation.[7] The transition to socialism in the South was largely halted with a reduced commitment and willingness of people to go for collectivisation. This was a key factor in reform being successful in 'breaking the barrier' of the opposition (Duc, 2012)[8]. In the North, some reformists did support the idea of a market economy.[9]In line with the institutional perspective taken in the thesis it is worth pointing out the problem of low State capacity in southern Vietnam when it came to nationalising industry and agriculture. Since the south had just been defeated in the war it probably did not have a good working system of governance. This would have made it difficult to rapidly take over all industry and agriculture.

2.2.2 Roll-out

CPV Congress VII, held in 1996, after a decade of Doi Moi, importantly recognized that economic reforms need to be combined with political reforms but in a way whereby economic reform is the focus and political reform follows gradually.[10]TheMarxist ideology held to by conservative elites in the CPV leadership

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[6] This principle was encoded, in Central Committee 6, session 2, VIII congress, as: "Central Democracy is the guiding principle in organisation, culture and activities of the Party".http://123.30.190.43/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=9&leader_topic=551&id=BT23120381529

[7] Truong Chinh and Le Duan (in top leadership post from 1960-1986) were critical of economic models taught by the Soviet Union and China but yet they opposed the market economy.

[8]Huy Duc. 2012. *Người Của những quyết định lớn*. [The person with big decision] In 'Võ Văn Kiệt Người thắp lửa'. Vo Van Kiet,*The Firer*. Youth Publisher: Ho Chi Minh City. P. 198-209.

[9] Kim Ngoc, Party Secretary of Vinh Phuc Province (1966-1967), invented a pilot plan [Khoán] that granted certain freedomsto farmers with initial results of increasing rice yields. He was considered offensive to socialist ideology.

[10] TheCPV's 1996 Reporton 10 years of Doi Moi stated: "There is a need to combine economic renovation and political renovation from the beginning. Economic renovation is, however, the focus and political renovation takes place in gradual steps".
http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30146&cn_id=190385

has, however, made the renovation process slower than it might have been in terms of structural and political reforms.When a market economy was deemed necessary, it was agreed that it required both economic reform and legal reform/political changes that emphasised moral and nationalistic norms (Gillespie and Chen, 2010).The following section of the Chapter describes how reforms were undertaken in different periods in order to demonstrate the gradualist reform approach.

Prior to the 1980s

Reform rolled out in three main phases. The first ran from the unified Vietnamese State's inception in 1975 through to 1986. In this period the economy was essentially a centrally planned one and operated at a low level of development. Major characteristics of the economy included: (i) state or collective ownership of the means of production (including land); (ii) government administered supply of physical inputs and distribution of outputs; (iii) lack of business autonomy, absence of factor markets, highly regulated goods and services markets; (iv) and a bias toward heavy industry in investments, which were overwhelmingly dependent on external sources of funding. By the end of the 1970s, the failure of the centrally planned system had become apparent and pressures for changes in economic management increased substantially (Beresford, 2008).

The pre-reform period marked the debate in leaderships about what reforms would look like and what reforms to make. There were of course frictions in the top leadership in these debates. As noted above, reform took hold nationally only after some success in the South. The informal sector and peasant farmers retained ownership under a programme of land reform and successfully resisted collectivisation. Despite conservative opposition in the North to reform, reformists from the South, notably Nguyen Van Linh and Vo Van Kiet,pushed for Doi Moi and implemented successful reforms first in the South in the period, 1980-1982 (Vu, 2011).[11] In 1980, Vo Van Kiet, as Secretary of Ho Chi Minh City, announced a halt in

[translation: Kết hợp chặt chẽ ngay từ đầu đổi mới kinh tế với đổi mới chính trị, lấy đổi mới kinh tế làm trọng tâm, đồng thời từng bước đổi mới chính trị].

[11] At VIth Party Congress, Le Duan stepped down and Nguyen Van Linh took the position of General Secretary (1987- 1991). He brought in reforms that replaced old fashioned central planning with the

the collectivisation programme in the South and this opened the way for small enterprises and private ownership in agricultural production.

Reforms marked the nation's shift from an outmoded agricultural model to an industrial basis; from the closed and barter economy into an open economy with international integration; from a centrally planned economy into a market economy with a socialist orientation; and from a state managed by administrative commands into a rule of law in a socialist state.[12] Specific reform programmes included:

- Prices for goods and services to be largely set in free markets
- A large devaluation of the currency
- Unification of the exchange rate: i.e. official rate set by the state bank and the black market rate[13]
- Increases in interest rates to positive levels in real terms
- Substantial reduction in subsidies to the State-Owned Enterprise (SOE) sector
- Agricultural reforms: replacing co-operatives by households as the basic decision-making units in production and provision of security of tenure for farm families[14]
- Encouragement of the private sector, including enabling Foreign Direct Investment (FDI)
- Removal of domestic trade barriers and creation of a more open economy generally.

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notion of a 'socialist market economy' coupled with an open door policy towards international trade and investment, recognizing private property rights and the private sector. Vo Van Kiet, Prime Minister from 1992-1997 also advocated extensive reforms.

[12] See Inter-Agency Steering Committee, 2002, p.18

[13] Unification of the exchange rate in Vietnam started in 1986. Prior to this, official rates pronounced by the state bank and those obtainable in the black market rate differed sharply..

[14] Cf. Luong and Unger, H. (1998) Even given the extended long period of collectivisation under Marxist – Leninist (soviet-style) central planning system, Vietnam ever fully collectivised agriculture in the south. In the Mekong delta, for example, only 3.7% of rural households joined agricultural cooperatives; 15% did so in the south-eastern provinces; and 42% in the central highlands.

1986 – Doi Moi initiated

Doi Moi involved promulgation of economic reform policies that stressed transformation of SOEs into quasi-privatised businesses under a 'socialist oriented' model.[15]Industrialisation and privatisation were the keys in Doi Moi policy to drive changes in the social and economic spheres of society. Land Law (1987, amended 1993) granted farmers land use rights. Foreign Direct Investment Law, 1987 [Luật đầu tư nước ngoài] and Corporate Law and Private Enterprise Law, 1990 [Luật Công Ty] were the first laws designed to enable private ownership of capital in its various for

Although Doi Moi is still rolling out it has been maintained throughout the renovation period. Consensus about the need for it developed within society.[16] Critically, its implementation showed that the CPV could not guide and decide rules over the public sphere and business activities without the participation of business sector and society;a key example was the making of company law in 1987.[17]The Party also amended the constitution in order to give private enterprises the same rights as state-run enterprises (Thayer, 2001).

Policy on Adjustment of Prices, Wages and Currency was implemented from 1985. Initiallyit aimed to encourage adjustments in the prices of agricultural surpluses to market prices. This was to encourage production and distribution of outputs whilst at the same time the policy addressed wage increases for public sector workers. However, inflation 'sky rocketed' in 1986, leading to instability because economic units started to speculate in goods thus creating dramatic price increases. In the period, 1986-1989, supply-side policies were introduced to promote price stabilization (Nguyen, 1999).[18]

[15] This orientation was quoted in the Central Committee of the CPV. Ref. 02-Q§/TW, 12 1, 1987 at http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/?topic=191&subtopic=7 [accessed on 30/7/2014]

[16] CPV report of 2006 cited: "To improve the consensus in the society and the practice of wide democracy." [Củng cố sự đồng thuận trong xã hội; thực hành dân chủ rộng rãi,] Bài học kinh nghiệm chủ yếu qua 20 năm đổi mới]

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[17]The example of VCCI as business association conducted consultation with its stakeholders under permission of the party on investment law first in 1987.

[18]Nguyen Tri Hung. 1999. The Inflation of Vietnam in transition. CAS Discussion Paper no. 22. Center for ASEAN Studies.

The market-oriented reforms of1988-1989marked a turning point in the history of Vietnam's economic development. The nation emerged from crisis in the late-1980s and the face of its economy and society began to change significantly. By 1989 inflation was under control and since then it has stood at a low rate.[19]

Later stages of reform: 1990 – 2005

The policy shifts associated with Doi Moi- and the political construct of the 'socialist-oriented market economy' - could therefore be seen as an attempt by the CPV, pressured it may be conjectured by market-oriented actors in the wider society, to renew its legitimacy and authority by encompassing a broader spectrum of institutions and economic management processes within the governing ethos of the one-party socialist state. Moreover, CPV Congress VII in 1990 adjusted economic policies to be even more market oriented.[20]An alternative interpretation is that because the reforms went against the CPV's ideological legitimacy it in fact gave up some legitimacy to gain a degree of support (i.e. pragmatic acceptance).

In general, economic reform in Vietnam has been a process of 'learning by doing' and characterized by gradualism. Reform had notable turning points associated with significant institutional changes starting in 1989-1990. The outcome of this gradualist approach was very different in comparison to the experiences of transitional economies in Eastern Europe, although the liberalisation and stabilisation measures used were similar to what occurred in those economies (Saxonberg, 2001, 2012). It is notable that various stages of radical reform and policy reversals did not embody political changes involving one group of individuals displacing another within the structure of power. Unlike in other transitional countries, there were no coups d'etat, no political purges and no open infighting. Equally striking, the reform process did not involve heavy outside influences. Within the one-party state, Vietnam is keen to hold onto authoritarian governance. There are, however, on-going challenges for Vietnam in retaining its statist ideology which have emerged out of economic liberalisation. The reforms were not smoothly implemented, given the ideological, economic and

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[19] In 2004 the annual inflation rate (measured by CPI) increased considerably, to about 9%, from the low rates seen in 2000-03.

[20] See:http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=9&leader_topic=549&id=BT2880637189 [thích ứng với những điều kiện của nền kinh tế thị trường]

social factors that they had to take into account.[21] Vietnam has accepted the necessity of market-driven economic growth but at the same time the CPV demands that this dynamic continue to be under 'under state management' and that it is consistent with 'with a socialist political orientation'. There was nevertheless friction around privatisation because it was seen by some as being contrary to an ideological commitment to socialism.[22]

The renovation process of Vietnam was not an outright imitation or import of any pre-packaged economic model. Although the process was not seen as being the same as in communist regimes in Eastern Europe,[23] it has been observed that Vietnam's policies were influenced by China. This reflected a common history of communism and the sense of brotherhood of neighbouring countries (Saxonberg, 2012). Vietnam did however learn from China's experiences, including the manifest failure of the Great Leap Forward and the Cultural Revolution. For example, Vietnam initiated (in the north) its own version ofthe Cultural Revolution in 1959, for a short time involving mandatory collectivisation in agriculture and confiscation of land away from wealthy peasants. Doi Moi policies, including reform of agriculture, aimed to improve productivity. Reform then spread to the industrial sector whereby ever larger numbers of people moved away from rural areas to work in geographically concentrated locales (cities and industrial zones) in labour-intensive factories. As Saxonberg argues, throughout the reform process Vietnamese political leaders have been able to maintain a nationalist legitimacy (Saxonberg, 2012). As McCormick (1998) noted, in both China and Vietnam economic reforms require abandoning strict communist ideology. The question of making reforms or losing ideological legitimacy faced Vietnam, as well as China. As reforms took root they drove economies remorselessly down the capitalist path, although reform in Vietnam may not have been as strongly capitalist as in China because many Vietnamese leaders still carry a revolutionary spirit and retain a strong belief in socialism. Hence along with economic

[21] See also Vo Tri Thanh (2005)

[22]For example,there was a breakthrough moment when Investment and Company Law was first drafted in 2005. The draft was widely discussed within the business sector and society at large. It was also openly debated in the National Assembly.

[23] Whilst Vietnam is following a transition to capitalism as in Eastern Europe the transition is actually being guided by policies much different those applied in Eastern Europe. Itt would, moreover, be wrong to term the collapse of communism in Eastern Europe liberalisation. Liberalisation usually refers to what happensunder a non-democratic regime (Saxonberg 2012)

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and market reform, Vietnam undertook more social policy programmes, such as worker control over work places.

Vietnam's one-party State controls the socio-political organisations within its political system, including trade unions. Accordingly the CPV gives unions their orientation and mandates them to ensure the welfare of workers, although not to represent them as per the traditional functions of unions internationally. Such a broader mandate would emphasise workers' rights, including the rights to democratic participation in union management and the right to representation by independently formed unions.

Economic liberalization entrained privatisation and expanded industrialisationthat have underpinned increasing demands by workers for better levels of welfare as well as for the protection of labour rights. Increasing numbers of workers from rural areas created challenges in ensuring decent working conditions and wages and access to State-provided services. Workers also demand democratic representation within more independent unions. As a result, work-related conflicts began to blossom because grievance mechanisms for workers were not effective and unions were not able to defend workers collectively before management (see Chapter 6). This has indeed challenged the traditional role of trade unions.

Above all, the extensive reforms of Doi Moi resulted in strong economic growth.[24] GDP grew at 10%in 1994,and at 9.5% and 9.3% respectively in 1995 and 1996. Reform over the years from 1996 to 1999nevertheless was constrained by the yoke of the centrally planned economy, especially in dealing with the SOE sector (including the commercial state-owned banks) and the allocation of state investment funds. The subsequent reforms of 2000-2004 were also incremental but consistent with market reforms and international integration, although measures used to protecting high cost and import substituting industries as well as the abuse of public investments were substantial. The period after 2005 was marked by post-WTO (World Trade Organisation) commitments that required more comprehensive policy reforms due to the forced implementation of existing commitments to reforms and international integration and accession to the WTO(Vo, 2005)

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[24]An average annual GDP growth of 7.5% between 2000 and 2005 (according to GSO, IMF).

2.2.3 Economic policy

Industrialisation

In the 1950s and 1960s, following the Soviet model, there were policies to implement rapid industrialisation through public investment generally and the creation of a large SOE sector. The State further transformed all industrial establishments via nationalisation of existing industries and massive government investment in newly established industrial and other public sector SOEs. SOEs were given more autonomy but generated insufficient production. The decades-long experiment with Soviet-style central planning meant a concentration of production in SOEs. The state provided guidance and found many challenges.[25]

Doi Moi created the enabling environment for a new round of private investment generally, including the privatisation of SOEs.[26] In fact economic reforms commenced as early as 1982 when Party Congress V committed the State to improving the production and distribution of goods and services in the economy whilst still relying heavily on SOEs.[27] However, until Party Congress VI the CPV' sorientation was to promote import substitutes and export goods.[28]

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[25]Resolution No. 09-NQ/HNTW of the VIthCommunist Party Congress, dated 8/1990, said that: "the economy was imbalanced and inflation was at crisis levels. The market economy transition is too fast." http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=9&leader_topic=549&id=BT2880637189 [Nghị quyết số 09-NQ/HNTW của Hội nghị lần thứ 9 Ban Chấp hành Trung ương Đảng (khoá VI) về một số vấn đề kinh tế - xã hội cấp bách (tháng 8-1990), ngày 28 tháng 08 năm 1990] Nền kinh tế mất cân đối nặng, đất nước chưa thoát khỏi lạm phát và khủng hoảng; Quá trình chuyển sang cơ chế thị trường có quá nhiều điều mới mẻ]… [accessed 15/6/2014]

[26]Privatisation and equitisation of SOEs also saw improvement in the 2002-06 period with 2,813 enterprises being privatized (source: Government Statistics Office)

[27] The CPV's Resolution No. 06 – NQ/TW of the V congress dated 10 Dec 1982 cited:"to improve and increase the quality of state owned economy, correct industrialised private capitalists." [Kiện toàn và nâng cao chất lượng của kinh tế quốc doanh, cải tạo công nghiệp tư bản tư doanh] Nghị quyết số 06 - NQ/TW của Hội nghị lần thứ ba Ban Chấp hành Trung ương Đảng (khoá V) Về phương hướng, nhiệm vụ kinh tế - xã hội năm 1983 và mức phấn đấu đến năm 1985, ngày 10 tháng 12 năm 1982.http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=9&leader_topic=548&id=BT2180639669.

[28] Resolution 09-NQ/HNTW of the 9th session of VIth CPV Congress,28/8/1990, stated that: "There exist state capitalism in many forms whereby families and individual capitalists account for significant economic production. [Kinh tế nhà nước thực hiện tốt vai trò chủ đạo và cùng với kinh tế hợp tác xã trở thành nền tảng. Kinh tế tư bản nhà nước dưới các hình thức khác nhau tồn tại phổ biến. Kinh tế cá thể, tiểu chủ, kinh tế tư bản tư nhân chiếm tỉ trọng đáng kể]

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Only after 10 years of Doi Moi's implementation, at the Seventh National Congress in 1996, was the policy diversified to include all economic sectors so as to enable households, state corporatists and capitalists to flourish. The policy was set to support new rounds of industrialisation and modernisation of the nation.[29]

Vietnam established its industrialisation policy as a latecomer compared to other East Asian NICs (Newly Industrialising Countries). The experiences of other late industrialising High Performing Asian Economies(HPAEs)suggested that industrial policies in the region were generally effective in terms of attracting FDI and its effects on economic growth. There were, however, cases of failed industrial policy such as the automobile sectors in Indonesia and Malaysia. These countries became attractive to foreign investors and individual companies, with the attendant risk of misallocation of resources in the pursuit of individual interests at the expense of the wider society (the opposite of what free markets are supposed to achieve).

The question was, what Vietnam could learn from international experience? It was suggested that industrial policy would work best if there were structural transformation and a strong institutional framework for governance. In other words good industrial policy was needed (Jomo, 2001). Industrialisation in Vietnam was largely implemented by means of a market-oriented economic system, an open door to international trade and foreign investment with resulting vast penetration of Foreign Direct Investment (FDI) and Multinational Corporations (MNCs) into production sectors, especially export-oriented and low-cost labour manufacturing firms. In fact, government strategy of upgrading and restructuring of SOEs was designed to encourage FDI through joint ventures with SOEs (Beresford, 2008). Vietnam hence became very attractive to out-sourcing by foreign investors. The law on FDI was issued in 1987 and included incentives to attract FDI. As a result, the

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[29]The Report of the Central Committee of CPV Congress VII, presented by Comrade Do Muoi, General Secretary (28-6-1996)stressedthat **"**industrialisation and modernisationrepresent an undertaking of the entire people, of all economic sectors, amongst which the State economic sector plays the leading role." http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30146&cn_id=190385.. The strategy for industrialisation and modernisation, 2020,was set by the Party (Central Committee CPV 2001:1). However, industrialisation is viewed as policy that lays the foundationfor Vietnam to be an industrialised country *along socialist lines* (still a strong emphasis in many CPV resolutions).

growth in FDI was rapid.[30] The Enterprise Law was enacted in 1999. A surge in development in the private sector can be observed following implementation of the New Enterprise Law after 2000. The Law was amended again in 2005, at the time of Vietnam's accession to the WTO, in order to give equal legal status to both foreign investors and local businesses. Between 2000 and June 2004, about 90,000 private enterprises were registered under the new Law with total capital equivalent of about USD 13 billion.[31] Vietnam became a WTO member in 2006 and currently stands 6th among the most attractive economies in the world in terms of foreign direct investment (FDI).

MNCs entered Vietnam to create production networks with smaller firms. This trend increased sharply when Vietnam liberalised the business environment for firms through changes to its legal framework. Firms drove out-sourcing strategies by using labour-intensive manufacturing processes. Up until the late 1990s, the first sectors to experience rapid growth were garments and footwear.[32]

Industrial development has had a strong effect on the lower levels of the nation's social strata. People migrated in vast numbers to the cities and industrial zones to work in the new factories. These new segments of the working class became consciousness of their poor living and working conditions. Being crowded into the cities/industrial zones workers can be more easily organised to claim their rights and to negotiate with management in different ways. Wild cat strikes, organised spontaneously by workers themselves, have occurred because workers rights and entitlements continued to be declined or violated (see Chapter 7).

In agricultural areassocial structure was based on ownership of land and the capacity to produce after the break-up of co-operatives (Kerkvliet, 2006). Poverty tends to be attached to absence of land ownership, which was obvious in the South. Those who lost land were more likely to move to cities or factories for paid

[30] FDI capital inflow to Vietnam stoodUSD1.3 bn in the years up to 1991.A further USD3.3 bn had been invested by 2001 for a total of USD5.1bn. By 2012 the number wasUSD 16.3 bn (source: Government Statistics Office, Ministry of Planning and Investment).

[31] This figure is much higher than FDI during the same period and five times higher than that for private enterprises established between 1991 and 1999. See also Vo Tri Thanh (2000)

[32] In this period, light industries developed rapidly with high labour intensity and low costs. In 1995, the light industry volume accounted for USD347 million (11.2 % of total industrial output), in 2000 the figure was USD303 million (13.9% of total industrial output) and in 2005 was 16.9% of total output. Source: MPI, IMF 2006.

employment (Ravallion and Walle, 2006). Rapid expansion of wage employment in the domestic and foreign private sectors, accounted in 2005 for 67% of the wage labour force (Government Statistics Office, 2007). Numbers of industrial zones and factories have expanded greatly since 2006. As a result, there was further strong rural-to-urban migration (hereafter referred to as in-migration).[33]A burgeoning population thus joinedexisting workforces in the low-end urban service economy and in industrial sectors. These sectors of course offered the lowest incomes. There were associated challenges for migrants as a result of limited access to public social services and incomes too low to meet urban living standards.

As noted, industrialisation brought in new international actors - foreign investors, seeking cheap labour, supported the State in its rent seeking from exploitation of State-owned land and other resources.[34] MNCs came to Vietnam as an option for global out-sourcing and production strategies based on cheaper costs, mainly from tax rebates, other investment incentives and low labour costs. Whilst the international integration of manufacturing industries required open market rules it also needed to meet international standards on labour. Global companies thus imposed production and labour standards on their suppliers or contractors and established auditing systems.

Both capitalists and workers seek to pursue their interests not only in the economic sphere but also by applying pressure in the political realm. A particular case is workers' strikes in support of better pay and conditions (see Ch.6) that represent further challenges to the regime to meet citizens' expectations. The CPV has raised the

[33] 'In-migration' refers to the movement of people into one geographical area from another within a nation state ('immigration'refers to migration from one country to another seeking permanent settlement rights (usually citizenship)). A sub-category of in-migration is 'rural to urban migration'. In developing countries such as Vietnam, rural to urban migration is driven by the search for work and better access to state, private and social capital. The category of 'migrant worker'refers to people working away from their home countries who are not seeking or who are not eligible for citizenship.

[34]Firms see Vietnam as a place to enjoy the benefits of investments resulting from low land costs, low taxes and cheap labour. For example, Microsoft decided that Nokia production facilities would be moved from China to Vietnam by the end of 2014 because of increasing labour costs and decreasing tax incentives in China. In the case of Samsung, the company enjoyed favourable conditions for FDI. When Samsung established two large factory complexes in Bac Ninh Province in 2008, and in Thai Nguyen Province in 2013, with about 60,000 workers, the corporation enjoyed land and tax incentives provided by the localities to encourage investment. By 2014, Samsung Corporation was trying to move large parts of its operations Bac Ninh to Thai Nguyen province after only 5 years since they no longer enjoy low taxes.

importance and priority of industrial relations. It accepts that strikes have occurred because the relationship between employers and employees is poor, in terms of possible violation of rights and interests of workers/employers around areas such as contracts, wages, working conditions, insurance and so forth.[35]

Privatisation

In the early years after Doi Moi was proclaimed it seems that Vietnam's political leaders tried to avoid the word 'privatisation'.[36] Since the opening–up of the economy to market forces and international trade and investment from the late 1980s, the nation has nevertheless engaged strongly with globalisation processes via its export-oriented economy and the rapid development of its private sector. Vietnam is entering into stronger and faster global economic integration, especially with the facilitation of foreign investment, trade and domestic economic reforms. The pressures of globalisation, and especially WTO membership, bring with them new economic opportunities and fast growth, through increased foreign investment, transformation of SOEs into business enterprises competing without state subsidies and booming privatisation of business generally. Markets dominated by global chains, with attendant pressures to lower production costs give rise, however, to potential for worker hardships and violations of rights in terms of minimum standards on working hours, health and safety conditions.

The first effort in privatisation - driven by Party Resolution and General Programme - was restructuring and equitising of SOEs. The first phase of reform unfolded slowly even though SOEs were given the license to become more efficient. In the 1990s, a second round of reforms aimed to equitise SOEs, with the aim of reducing SOE numbers from 12,000 in 1991 to 6,300 in 1994. In the period 2003-2005, 3,000 SOEs from a total of around 5,000 were scheduled to restructure, of which

[35] Resolution 05 on Industrial Relations, 2008: "The phenomenon of strikes in FDI and the private sector generally is high and serious" (report on 5 year term X of Labour Union, 2008). Read more in [Nghị quyết số 20-NQ/TW ngày 28/1/2008 Hội nghị lần thứ sáu Ban Chấp hành Trung ương khoá X về tiếp tục xây dựng giai cấp công nhân Việt Nam thời kỳ đẩy mạnh công nghiệp hoá, hiện đại hoá đất nước]

[36] Resolution no. 09-NQ-HNTW of the 9th session of the Central Committee of VIth Congress on some economic urgency (8-1990). Read more in: http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=9&leader_topic=549&id=BT2880637189

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1,459 were to have been restructured in 2003. In fact the number of transformations fell far short of the target: only 945 enterprises, or 62% out of the planned target, were reformed. In 2004, despite efforts to accelerate the transformation process, including the equitisation of some General Corporations and state-owned commercial banks (SOCBs), there had still been no major improvement. In the first eight months of 2004, the number of equitized SOEs accounted for 35% of target, or 350 out of 1,000. The 'enterprises under transformation' programme accounted for only 24% of SOE employment, 14% of capital and 3% of debt(Vo, 2005).

CPV Congress then elaborated the roles of different economic actors, including SOEs and joint stock companies, in which the State takes stocks, in key industries. In the boom period, SOEs typically retained dominance in major domestic industries but their levels of government subsidy and budgetary support made them less competitive after Vietnam adopted economic integration. Thanks to the Enterprises Law in 1999 and market economy policies, enterprises were given more autonomy, the same that enabled SOE directors to decide on their business activities. However, insofar as the market economy imposes constraints on profitability, the functions of taking care of social welfare and security of employees were less of interest. The outcome of equitisation and restructuring of SOEs was massive lay-offs of workers(Beresford, 2008).[37]

Alongside economic success, CPV leaders established a legal framework to ensure equal opportunities and enjoyment of growth benefits in all sectors, including private or state, domestic or foreign owned companies. The second phase of Doi Moi reform saw remarkable success measured in economic growth and the level of privatization with increasing numbers of small and medium size enterprises (SMEs). Collectives, individual capitalists, state corporatists, and foreign invested companies were also encouraged.[38] One company law in 2005 encouraged more investment and private companies. The number of registered enterprises increased to

[37] cf. Beresford. The major shake-out of SOEs that occurred in 1990-91 saw some 750,000 people (mainly women) laid off and was associated with a rise in the national unemployment rate to 13%.
[38] Resolution of the VIIth National Congress: "strategy on stability and socio-economic development to 2000." Dated 27 June 1991. It requires that the state must ensure consistent multi-stakeholder engagement in the economy without any discrimination. Read more in: http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=224&id=BT2440655517.

over 500,000 by 2010, of which 97% were SMEs.[39]SMEs, moreover, account for more than 90% of all registered firms and contribute significantly to the national economy at around 65% of GDP (value added output), 85% of the industrial labour force and 20% of exports. SMEs comprise a large element of the supply chain of MNCs in terms of division of labour and trade.

Industrialisation and privatisation policies have together challenged the welfare and social security policies embodied in the State's socialist ideology. Such challenges came apart from loss of job security resulting from equitisation of SOEs, the sense of profitability and non-interests in employees of private investors as well as of joint-venture companies. At the same time, privatisation has created a new class of capitalists whereby workers no longer own the means production. As noted above, industrialisation engendered marked shifts in social structures, including, quite naturally, a new class of industrial entrepreneurs who ally their business interests with the interests of the political regime's. A new middle class, together with capitalists and industrialists of many types, also emerged under Doi Moi. Workers in many cases experience poor working conditions insofar as they want to keep their jobs, so they accept that they will be exploited. The relationship with employers becomes more vexed with growing numbers of conflicts and voices less heard. With that situation, a new source of vulnerability was created because workers claims for better working conditions and wages continued to be refused. This is the source of conflict and labour discontent, which in many case leads to the 'wild-cat' strikes analysed in Chapter 7.

2.3 Doi Moi and Trade Unions

Although there was a strong political will to reform the economy there was also political friction when it came to decisions as to how renovation should be implemented. Of particular concern was that radical changes in the political system should not occur that would weaken the legitimacy of party control as a result of conflicts that might create pressure for changes in power relations (Paul, 2010). It may be presumed that democratisation pressures could emerge as a corollary of economic

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[39]Statistics from Vietnam Chamber of Commerce and Industry, 2010.

liberalisation as had been the case in other, formerly communist, countries, but this might not be the case of Vietnam.

As noted, the fear of loss of ideological legitimacy has pressured Vietnamese leaders to prove their effectiveness in improving the lot of citizens (Saxonberg, 2012). Using similar approaches and systems, Vietnam followed China in wanting to prove to the world that economic development can be achieved under one-party regimes and that development will be faster, better organised and provide for greater social stability. Although there have been strong demands to further liberalize the political economy, Vietnam has taken a gradualist stance in reforms. Economic reforms came first and faster than political reforms. The early days of reform saw the nation permit and enable the co-existence of a multi-sector economy with diverse forms of ownership. The government did not, however, totally abandon its control and in fact maintained a steering function in SOEs in key sectors. Legal reforms and institutional reforms came later, as noted by Gillespie and Chen (2010). In Vietnam the CPV and the national government that it controls hold firmly to power and resist calls for political freedoms and other human rights (Tan, 2000). Again, the same call was made for solutions to implementing economic reforms and political reforms thus recognising that "the nation belongs to the people."[40]

Economic liberalisation, under the market economy and industrialization ,have engendered profound changes in economic relationships. Labour relationships have changed within enterprises with a distinction emerging between workers and private employers. Under the market economy, the private sector has inevitably increased its bargaining power. The State has, however, been ineffective in ensuring that its on-going concern for workers' rights has been recognised due to its policy of less interference in the business sphere. Even the issue of wages was for a long time left in the hands of businesses. Under capitalist-worker relations, wages are maintained at a low level compared with the cost of living, especially in foreign-

[40] See Report of Central Committee, Term X, for Party Resolution, Term XI, read by General Secretary Nong Duc Manh on 12. 01. 2011. It states: " the relationship between renovation, stability and development is made between economic renovation and political renovation" [Quan hệ giữa đổi mới, ổn định và phát triển; laf quan he giữa đổi mới kinh tế và đổi mới chính trị;] Read more in: http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=989&id=BT531160145.

invested factories. For many years, under the market economy system, in terms of wages, workers have related directly to employers whom they expected to meet their demands but without any real power and instrumental means for wage negotiation. In the market economy, labour markets are deregulated in ways that give more space for businesses to negotiate labour contracts with individual employees. The State did not impose policy on wages, instead regarding wages as a matter to be determined in the economic sphere, until the enactment of the new Labour Law in 2012.[41] Continued low wages, in the face of high living costs for most workers, became a common cause of labour discontent. Policy on minimum wages and mechanisms to negotiate wages with the business sector were vague and gave less power to unions to negotiate on behalf of workers. Due to the lack of a legal framework for wage negotiations, negotiations that were traditionally the role of the VGCL, unions could not actively deal with worker unrest or confront enterprise managements. Unions could act as mediators but there is a question as to how consciousness of their potential will result in the expansion of their roles. These matters are addressed in later chapters of the thesis.

During Vietnam's process of global economic integration there have been several economic shocks that rendered workers more than usually vulnerable, notably the global financial crises of 1997 and 2008. Job lay-offs in many privately financed (including FDI-invested) firms led to flows of workers back to their hometowns. At the same time, economic reform, especially the restructuring of SOEs, posed challenges for workers, including high lay-off rates and increasing numbers of workers crowding into factories.[42]In terms of workers' ownership status, it seems that workers lost the sense ownership that they had under the old SOE system where the state owned the capital embodied in enterprises but theoretically shared ownership with workers. Trade union leaders no longer sat on management boards so union participation in decision-making was attenuated. Wage and profitability requirements

[41] After Vietnam embraced the market economy in 1986, for the ensuing decade, there was no sector-wide regulation of minimum wages. Until 1997, a mandated minimum wage did apply in the public sector. Labour Code 2013 encoded the minimum wage for all sectors into law (Art. 91).

[42]Statistics from Government Statistics Office, 2007.Over 900,000 workers were employed in industrial SEs in 2005.Rural underemployment was estimated at 20%.

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also required union leaders to be professionals. They became regular paid workers and did trade union work as an extra.

Doi Moi brought about marked changes in workers' ownership entitlements and thus status in their workplaces, the labour force generally and in labour relations. Industries and factories established vast and complex production chains utilising increasing numbers of workers from rural areas. Such people, however, come to work in the cities and industrial zones with little knowledge of their new work and life settings, limited or no specific job skills and little or no experience in negotiating with employers on their own behalf. Workers become more vulnerable and less heard, because they lack the capability to voice their concerns and to bargain. They naturally seek a collective voice. At the same time, as will be shown below, union representatives have become weaker, less capable of projecting a voice to private employers.

Labour conflicts emerged in the public domain in the form of wild-cat strikes (which will be analysed in depth in Chapter 6) and that trend has entailed large challenges for trade unions.[43] The flow of labour from rural areas to work in factories with paid jobs but poor working conditions has created a new dimension of urban poverty and a burden on government of ensuring social security. Most workers lack coverage by health insurance and social security, experience poor housing quality, poor access to local services (clean water and sanitation, electricity), weak social inclusion, and poor physical safety. The State has not been swift in responding to these needs and workers' discontents have burgeoned. Most of strikes have been ad-hoc and resulted from unheard and unmet claims for higher minimum wages, better social security, better working conditions and protection from the threat of unemployment (Paul, 2010); numbers peaked between 2004 and 2008 (see Fig. 6.1). The State viewed strikes as being threats to economic development and thus sought ways of stabilising the labour force to maintain a climate favourable to investors. Since the State inevitably saw that it could not fully accommodate stresses arising from strikes, it demanded that actors such as trade unions solve the problem. This point will be explored further in the Chapters 3 and 4)

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[43] According to VGCL (report to XI Congress 2013) and GSO, Vietnam has 50.3 million people of working age of which employees and cadres account for approximately 15 million and FDI-invested businesses around 1.7 million.

The market economy entails qualities of individualism and opportunism that complicate the relationship between employers and workers and increase the potential for conflict between them. As a result, ever larger numbers of workers have joined together to claim economic entitlements from an individual rights perspective. Since workers lack awareness of how to proceed and, in particular, what unions can do for them, they choose means such as strikes, even if illegal. Although wild cat strikes have occurred without organisation by trade unions they effectively imply workers movements. Workers in their right struggles, in whatever form they take, nevertheless lack the political sensitivities needed to empower them to challenge institutions such as unions to protect them. That said,the task of trade unions in protecting workers' rights is not an easy one. They have to balance pressures from workers and the power of management whilst at the same time working under State control. This challenges the State to ensure that the socialist model provides for the welfare and security of workers. The State has therefore opted to widen the space for participation by actors in the public sphere thus changing established state-society relationships. Nevertheless, whilst Vietnam has taken small steps to political reform within a gradualist approach, to date there is nothing resembling political plurality (Saxonberg, 2012). Political space may however be enlarged as the nation takes forward its reforms; State institutions may even be allowed to participate in driving, or at least encouraging, regime change**.**

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CHAPTER III
TRADE UNIONS AND LABOUR MOVEMENTS: A GLOBAL PERSPECTIVE

3.1 Introduction

Trade unions havehistorically been associated with class struggles. Marxist theory, which underpinned the political ideology of the 'Left' in Europe, cherished the ideas of revolution and class struggle. Classical Marxists saw collective mobilisation as class mobilisation to achieve a better society. Trade unions were key organisations to lead such movements. Trade unions today, whilst class-based as always, are less revolutionary than they were. This is in line with a shift from anti-capitalist class struggles, towards the expression of labour interests through mutual sharing and participation rather than through confrontation via strikes and other means. In contemporary times, in the west, there is no single model of trade unionism (Herod, 1998).[1] Indeed unions today face the challenge of declining membership, partly because they are often seen as appendages of political parties and their leaders are not seen in a positive light by the "majority of management and at times by workers" (Sodhi, 1994).

With respect to the thesis this chapter first reviews social movement theory, expanding on the gloss in Chapter 1, and identifies models of union links with labour movements. The chapter then briefly presents experiences from around the world, especially transitional regimes like South Korea and Eastern Europe, where unions face challenges in linking with their members and participating in social movements. Labour movements have other dynamics than the purpose of uprising to push for regime change. Successful regime changes in Eastern Europe may not signal a path for remaining communist countries, such as Vietnam. This chapter provides a context and models against which trade unions in Vietnam will be analysed in depth in Chapters 4 and 5.

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[1] Herod (1998) also lists the examples of German, French and Canadian models

3.2 Conceptions And History Of Labour Movements

The term ‘labour movement’ broadly covers the development of self-organised groups of working people which campaign for better treatment of workers by employers and governments, in particular through the implementation of specific laws governing labour relations. Labour movements are thus a means of resolving social conflicts regarding labour issues, or where labour rights are not fulfilled in a systematic manner or due to institutional causes. Typically conflict resolution requireslabour unions to stand up in struggles to claim rights and interests of a particular group (Paul, 2010).

Labour movements were active in the early to mid-19th century when labour parties and trade unions were formed throughout the industrializing world. A key claim was the right of workers to organise. The first Communist International (Comintern) policies included the right to an eight-hour working day. In 1871, French workers rebelled and the Paris Commune was formed. Karl Marx stands out as one of the earliest and most prominent advocates for workers’ rights. His political philosophy and economic theory focused on labour issues and advocated an economic system based in socialism and a society that would be ruled by workers. Many social movements advocating workers’ rights were associated with groups influenced by Marx. Central to the history of labour movements around the world has been union-led protests by the working class in support of democratisation. Throughout the 20th century union power became deeply embedded in the structures and politics of nation-states, virtually according unions the status of semi-public actors (Offe, 1985). In parallel with this trend, there is the need to examine labour movements and unionisation, and their political influences on state power, in the context of states’ democratic challenges and democratic transitions in the present era, including current socialist/communist societies; Gorz (1982), in particular, believed that trade unions can challenge state power.

Globalisation and economic liberalisation place pressures on labour movements, essentially because the interests of capital and the state increasingly coincide. In earlier industrialised societies, the results of globalisation included pressure on welfare states and, as such, challenges to the idea and value of trade unions; specifically a trend to redundancy of trade unions. The victories of organised

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labour in past struggles now became threats to anti-labour coalitions of power and interests before the onset of industrialisation in developing economies. Nevertheless, states need capital for development, including FDI, and need to clear the path to implementing free-trade policies, thus becoming embroiled in labour struggles.

In contemporary times, in emerging market economies, labour movements can emerge to progress rights struggles when the imbalance of power between workers and capitalists is acute. There are increasing numbers of conflicts between these actors, because of lack of economic democracy at work, a situation perpetuated by business owners and managers. 'Democracy at work', a concept referred to in Chapter 1, demands autonomy of trade unions, including the right to participation in decision-making and to advocate for employee interests (Engelstad, 2004). An absence of these capabilities leads to conflicts that may form part of the dynamics for labour movements to emerge. Within the sphere of the work place the role and power of labour unions is contentious. Organisations need to engage in collective bargaining to protect and defend workers' interests and rights. In some cases, unions can help to channel workers' voices into political exchanges with the state. In so doing unions may enhance their legitimacy amongst workers. At the same time, they should have the capacity to achieve political influence through various means, including political lobbying to support their roles of representing their members. Typically, if there is no alternative means to resolving conflicts in a democratic way within workplaces then the demand for rights, including civic rights of workers, may go into the civic sphere. Workers demands call on the state to recognise rights claims, including basic freedoms - such as those of association, assembly and speech, social security and other economic rights within state-society relations. Whilst these demands can form the raisons d'etre of labour movements, whether or not trade unions play key roles in, or lead, such movements is in question. Some unions may be able to shift roles to become elements of a semi-civil society (Saxonberg, 2012).[2]

Whatever their dynamics, including the role of unions, there is no guarantee that labour movements can engender democratisation. Rueschemeyer (1992) argued against the proposition that the rise of the middle class due economic

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[2] It should be emphasised that the argument about semi-civil society in the thesis pertains to non-democratic systems. In democracies unions belong to civil society.

liberalisation would drive democratisation, instead advocating for the pre-eminence of the working class. Regime change through a democratic process is, however, contingent on political conditions. If Rueschemeyer's proposition is valid, a close link between labour movements led by the working class and democratisation could be elaborated..

Theories reviewed pertain to how trade unions can play a role in labour movements and, to the extent that they do, how they accommodate the rights and interests of members in such movements. It is further necessary to assess if there is room for effective participation, for example via equal voting of union members in order to influence a wider political agenda. This implies further research on specific polities and situations of trade unions - as in the case of Vietnam - to explain why and under what conditions democratisation has occurred (or not) based on the union-led labour movement.

3.3 Trade Union Models

In the theory of the socialist state, trade unions play the role of organizing the working class for the purposes of production but there could be possibility that trade union transform themselves into revolutionary organisations (Trostsky, 1940).Unionsare also the organisations and schools for the administration of communism (Lenin). In communist states, notably the former Soviet Union, the development of trade unionism commenced withthe First International and the Bolshevik revolution. Trade unions inChina and Vietnam,on the other hand, face an historically unique situationbecause,traditionally, unions have not played a role in struggles for better working conditions (as Trotsky advocated). But in these models, unions are social and political organisations, so they implicitly bear this responsibility. In addition, unions have also had the role of providing some welfare services, since they were - and still are - socio-political organisations instead of purely interest-based organisations as are unions in multi-party democracies. In centrally planned economies it was difficult for unions to represent workers' interests and to make demands for better working conditions, salaries and the like. If unions had acted solely on behalf of workers they would have been see as acting in opposition to the Party-

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State. Trade unions in such polities thus act/acted as ‘transmission belts’ for Party policies (Saxonberg, 2012). In acting as transmission belts unions may be constrained in their autonomy and capacity to represent workers’ interests.

In successful transitional states in Eastern Europe, the impact on labour relations and labour markets of marketised economies had clear-cut impacts on trade unions (Herod, 1989), notably in the reduction in numbers of SOEs, where trade unions were part of management. This meant that unions became less concerned with representing state interests and instead focussed on the private interests of workers; thus unions shifted away from the core of communist ideology in the fight for working class interests against capitalists. Nevertheless this shift does not guarantee that unions can increase their independence or present a challenge to a Communist Party’s monopoly of power and its desire to maintain one-party rule. Unions can only join semi-civil society under reforming dictatorships.

Trade unions are collective organisations within societies, organised for the purpose of representing the interests of workers (Kochan and Katz, 1988).Several models of trade unions have been examined in the literature. In the 1970s, the model of unions in social democracies in Nordic countries and the social partnership institutions of the German ‘Wirtschaftswunder’ (Economic Miracle), within vibrant capitalist economies and stable democracies, were widely admired. New Zealand, which in the 1990s emulated ‘Thatcherite’ economic policy from Great Britain, turned to a more Northern European approach of re-regulation and social partnership in an effort to develop a socially sustainable strategy (Rasmussen & McLaughlin 2000).

At an international scale, after WWII, the International Confederation of Trade Unions (ICTU) was established in the late 1940s and then the World Federation of Trade Unions (WFTU). Regional ICTUs were established in Africa, the Americas and the Asia Pacific region. There are also independent associations such as the Organisation for African Trade Unions (OATU) and the International Confederation of Arab Trade Unions (ICATU). Trade unions are networked in many European states. Trade union integration may embody various forms of political coalition to delimit regime competition and to defend social and labour standards. Global institutions, notably the World Trade Organisation (WTO), the International Labour Organisation (ILO) and the United Nations (UN) exemplify the trend. The International Labour

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Organisation (ILO), in particular, advocates a liberal–pluralist model of trade unionism and has influenced governments in setting labour standards by means of which unions are empowered to claim rights. Although not essential, unions may be more successful if they are aligned with regional structures that enable pressure to be exerted on governments and institutions.

In some world regions, as in the case of the European Union (EU), regional rules have strongly influenced nation-states and have also affected the way that unions work at a national level, including focussing more on the economic interests of the region rather than solely representing their members at nation-state level. Regional processes of integration are inevitable in a globalising economy. Although the EU has provided unions with certain opportunities and resources that have contributed to an improvement in their political credibility at home and have given them some protection against the impact of unfettered market competition (Dølvik and Visser 2001),some national trade unions have found themselves caught between EU rules and national interests. In most Western European countries, the twin effects of fiercer external economic competition and domestic labour market restructuring have caused growing strains within national systems and erosion of trade union power and membership.

Modern trade unionism is abandoning traditional political aims derived from socialist or communist ideology (Hutchison and Brown, 2001). Unions now typically join with other social forces and become members of what might be described as ‘semi-civil society.’ Unions, where they remain official mass organisations in socialist nations, find themselves somewhere between civil society (where members can freely organise) and the Stalinist model of being ‘transmission belts’ of state policy to managers and workers. Whilst they may take political actions as a sort of ‘semi-opposition’ they are ultimately arms of the state. As such, these organisations are similar to ‘loyal oppositions,’ inasmuch as they do not normally oppose political regimes directly but rather test the boundaries of how far they may go in advocating for non-revolutionary reforms (Saxonberg, 2012).

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3.4 Trade Unions, Labour Movements And Democratisation

This section of the chapter considers how trade unions act as part of labour movements. Trade unions have led social movements to promote democratisation, as was the case in regime change in Eastern Europe during late 1980s and Korea during 1990s. The experience in Europe has seen changes in the role of trade unions along with changes in national economies, industrial restructuring and changes in the roles of industrial relations actors (Dølvik,2001). Unions in Europe have been on the defensive but have shown greater resilience than expected (Ferner and Hyman, 1998). They have lost power whilst workers' shares of GDP have declined. Unions have also been weakened by high unemployment and loss of members. Yet, in spite of significant decentralisation, national-level collective bargaining persists as the main means of regulating wages and working conditions, and several countries have witnessed a resurgence of social pacts and centralised bargaining (Fajertag and Pochet, 2000). While the setbacks of unionism are frequently attributed to irreversible structural trends, there remains the potential for union recovery if labour markets catch up (Booth et al. 2001).

In Eastern Europe, momentous political changes occurred in Poland and Czechoslovakia during late 1980s (Saxonberg, 2001). It should be remembered, moreover, that even in Central and Eastern Europe, state-controlled unions had a habit of transforming themselves as soon as opportunities arose. During the Warsaw Pact invasion of Czechoslovakia, unions led occupations of factories to protest against the invasion. Even in Poland, where the rise of the independent Solidarity Union seemed to render the official communist union insignificant, the communist union not only succeeded in transforming itself into a democratic union, it has now become much larger than Solidarity.

Once regimes begin reforming themselves, space opened up for official organisations, to become more autonomous. In the East European cases, official organisations played a major role in bringing down communist-ruled regimes (Saxonberg, 2001).In the case of Czechoslovakia, there were times when official unions played an important role, by occupying factories, in the resistance to the Warsaw Pact (Russian) invasion of Czechoslovakia. The trigger for revolution, led by mass organisations during the 1990s, was when they broke away and no longer

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remained loyal to their state-defined roles. Notable in this were the Socialist Youth Organisation and the Socialist Party in Czechoslovakia that both supported the revolt against the regime. They were thus in a special situation of being parts of the official Party-State system whilst at the same time being potential opponents or even leaders of an opposition. At the same, they had to balance many contradictory demands in being loyal to the Party-State, whilst better defending their members' interests and at the same time working for reforms that in the short-term were still within the system.

Poland is another interesting case of social movements led by trade unions and how unions transformed themselves to become more liberal (Gardawski et al., 2012). Scholars have tended to look only at Solidarity, a Polish trade union, and to ignore the official trade union. Poland held to a Marxist political ideology until the 1990s (Gardawski et al., 2012). In the context of Poland, Solidarity was more important than the official union for bringing about change. After martial law was imposed and Solidarity outlawed, the official union also disbanded and a new one was formed, because the old union had lost all legitimacy. The new union had to try and be a bit more autonomous so that it could get some legitimacy. Thus, during the Round Table negotiations that led to elections in 1989, the official union often disagreed with the ruling party and had its own position. Once the regime lost power, most observers thought that the official union would disappear and Solidarity would replace it.[3] Now, however, Solidarity has all but disappeared as a union, whilst the former communist union still has millions of members. But the official union actually played a role in the opposition, so it is not simply that Solidarity caused the downfall.

East Asian experiences (e.g. South Korea and Indonesia) demonstrate the power of opposition movements when workers' strikes proliferate or other groups are mobilised to claim rights. In the case of South Korea, economic development created conditions for people to 'take to the street' to demand welfare and other rights and to organise opposition to state policies (Woodiwiss, 1998).June 1987, called the Great Workers Struggle, was engendered by NGOs and labour unions as a coalition supporting workers' rights against the domination of power-hungry politicians and greedy corporations and had different characteristics from the 1997 general strike

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[3] After the negotiation, when Solidarity led a coalition government, it was converted into Solidarity Electoral Action Party in 1997. It then lost the role of trade union.

against neo-liberalism (Katsiaficas, 2012). The victory made for significant increases in workers' wages and the establishment of radical democratic unions under the umbrella of the National Congress of Trade Unions. Prior to this, during the 1987 'Workers Struggle,' in which workers themselves were at the centre of things, there was a lack of a union role in the struggle because the leaders of the Korean Confederation of Trade Unions (KCTU) felt loyal to the government. This was because, under Chun Doo-Hwan's dictatorship, there was no legal basis for an independent union. With the June Uprising, the labour movement, marked by the establishment of Hyundai union, became a social movement. Workers did not simply want higher wages or better working conditions, they also wanted a changed relationship between production and democratisation of the economy. Workers organised autonomous unions to represent their needs. The workers movement, carried forward by thousands of strikes and hundreds of thousands of workers taking to the streets, demanded the establishment of independent unions, especially in big corporations like Daewoo and Hyundai. Thus within one year, 4,000 unions were established, and unions increased their coverage from 39% of workers in 1986 to 73% in 1989. In sum, the movement in Korea was a breakthrough moment in Korean democracy. In 1987, however, workers were directly responsible for change, but not through unions. The later aim was, however, to establish unions so that workers would be better organised to represent their interests against capitalists (Katsiaficas, 2012). In Korea, the new administration, after the period of military dictatorship from 1997, implemented neo-liberal programmes that permitted foreign investors to 'discipline' the workforce. During the Park and Chun dictatorships, the working class in Korea endured long working hours and harsh, government-set, minimum standards of living, thus leading to thousands of strikes.[4] Roh Tae-Woo became president in 1997, marking the transition from dictatorship to democracy. His policy enhanced the power of police to suppress workers. He in effect declared 'war' against the working class (Sigur, 1992).Korean working class interests were marginalized.

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[4]Average of 54 hours a week. About 82% of workers received, in wages, amounts less than needed to coverthe minimum costs of living. According to Christian Institute for the Study of Justice and Development, *Lost Victory*, 2014.

In Southeast Asia (SEA), 'political unionism' was rooted in anti-colonial struggles merging with labour issues and broader political and social agenda rather than in growing support for a liberal–pluralist model of trade unionism. Unionism changed notably after WWII. In most cases, politically associated labour organisations were no longer considered valid for nationalist or independence struggles in post–colonial states. The political exclusion of organised labour was characteristic of the first phase of industrialisation, the import–substitution phase (Hadiz,1998). Resulting rapid urbanisation led to the recognition of common interests amongst workers. Resulting political struggles of urban-based labour movements morphed into labour unions acting to claim higher wages and better working conditions in political arenas (Lane, 2006). Whereas poorer, less skilled workers' claims for the right to unionise may be weak, middle class employees are more likely to push for democratisation in order to improve their financial positions. The larger question is to what extent state and unions can create room for effective participation, equal voting rights or representation for union members to influence political agendas.

Amongst SEA nations, Indonesia[5] demonstrates the power of opposition movements. There, workers' strikes proliferated and other groups mobilised to win more rights. During the 1960s, the demolition of the Indonesian Communist Party (PKI) by a coalition of the army and the urban middle class pursuing joint interests led to the end of the tradition of political trade unionism. Ensuing regimes confined the ways in which organised labour could operate. From the 1970s up to the fall of Suharto's New Order, the labour federation was outlawed and there was only a state–created labour organisation. Notably, however, Indonesia was worst affected of all the SEA nations by the Asian financial crisis of 1997 and this in turn engendered political crisis. Subsequent changes in the national political space were not actually led by organised labour but opportunities were opened up for labour to self–organise (Hadiz, 1998). With some 25 million people living in the national capital, Jakarta, worker militancy linked with student activism played an important role in the downfall of Suharto. Yet although there was now a new array of trade unions, there was no central organisation that could replace the unravelling Federation of All-Indonesian Workers'

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[5]Example of Indonesia's Sundanese peasants forming a mass movement to reclaim their land.Labour force movement from rural areas for better income jobs and due to landless situation bring increasing movement of landless peasants and workers.

Unions (FSSPSI) in negotiating on behalf of workers. The continued lack of influence of labour organisations was evidenced in 2000 when a new Trade Union Law was passed that allowed the government to disband unions if they were seen to be harmful to the national interest.[6]Labour organisations and activists nevertheless continued to press for periodic wage increases until the enacting of the new law on industrial relations, which gave room for the right to strike.[7] Later, during 2002, labour organisations in Indonesia faced challenges posed by South Korean and Japanese investors to the Indonesian Government through capital strikes. The country faced losing its competitive edge as unions claimed wage increases and made other demands. Workers' struggles and trade unions were accordingly seen as threats to the national economy and have been brought under tighter control of government. In the case of Vietnam, there are many similarities with regard to the role of trade unions and right to freedom of association of workers being limited in support of government policy to attract foreign investment.

In Malaysia, during the anti-colonial period, the labour movement was both ethnically and class based. The influence of Chinese from outside of Malaya, mainly through the ideological frame of the Chinese Communist Party's links with the Malaysian Communist Party, mobilised workers. The period from 1948 to 1960 in Malaya witnessed the defeat of the communist insurgency. What followed was the establishment of a state-sponsored, anti-communist labour organisation – the Malayan Trade Union Council (MTUC). The first labour legislation in the 1940s was more or less responsive to the idea of state-controlled unionism (Jomo and Todd, 1995). Legislation introduced in 1967 barred collective bargaining and strikes. Unions lost the right to strike if a dispute had been referred to the industrial court (Rasiah and Shari2001). The net result was that there was no democratisation of labour legislation. The MTUC established a close connection to the state and therefore constrained itself in being a source of political opposition (the evidence was even clearer when President Zainal Rampak actually joined the United Malay National Organisation (UMNO) and became a Senator in 1998). There was even a case reported involving the use of

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[6] Read Jakarta Post, 11 July, 2000.
[7] Act Number 2, 2004, concerning Industrial Relations Dispute Settlement through Industrial Relations Court as a part of Industrial Relations Disputes Settlement.

employee superannuation funds by the government.[8] The financial crisis in 1997-1998 again showed the lack of influence of labour organisations in state policies. The MTUC, before the crisis, urged the government to take steps to reduce inflation and unemployment, to introduce social 'safety net' programmes and to ratify international labour standards that provided for greater freedom and union rights to bargain and strike. The Malaysian trade union's role was in fact to support the government's harsh policy towards hundreds of thousands of illegal immigrants and workers (mainly Indonesian) in Malaysia. Furthermore, the opposition movement in Malaysia, led by Anwar Ibrahim, was never strongly linked with the labour movement.

In sum, in SEA, economic globalisation has impacted strongly on the states of the region. Capital's mobility enhanced its power over states to demand favourable investment climates and to restrict the arena available for organised labour to act (although, of course, nation states are not simply the passive 'victims' of global capital). Nevertheless, it is quite clear from the history of SEA states reviewed above, that it is unlikely that the concept of trade unionism, emphasising economic struggles and being geared towards broader social and political agendas, will take hold in the foreseeable future.

3.5 Conclusion

This chapter has glossed the history of trade unions in different parts of the world and under differing political regimes. Throughout the 20th Century, up until the onset of the current period of economic globalisation (around 1980), unions were typically strong and highly capable of representing the interests of their members in bargaining with employers and the state. Unions, in some cases, actually evolved into, or at least provided the material basis for, political parties. Unions too became involved in agitating on social and environmental issues that were not related to workers conditions and rights. As will be seen in the next chapters none of these tendencies is reflected in the Vietnam case to date; the single party State does not allow for the existence of more than one political party (the CPV) and does not legally permit unions to act for other than workers' rights in the narrow sense. Unions'

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[8] New Straits Times, 15 September 2000.

capacity to act on behalf of workers is further constrained by their lack of resources and their unwillingness to 'step on the toes' of political masters.

In brief, international experiences of organised labour, specifically through the vehicle of trade unions, show significant variations over time and space and across differing regime types. In communist states unions exist, as arms of the state, to transmit government policy to workers. Whilst they may advocate for workers' rights they are ultimately beholden to toe the party line. In such states, of course, workers are theoretically regarded as the focal point of government and should therefore, ironically, not actually need protection from independent unions. In western-style democracies unions are independent of the state. They are fully autonomous social actors. They act to protect workers' interests and also, commonly, advocate for policies and actions by governments that are not directly related to workers rights. The history of political development in such nations is marked by the emergence of union-based political parties that have wielded, and continue to wield, great influence. In countries that have transformed from communist to democratic systems there is on-going debate about the importance of unions, and more generally labour movements, as forces driving change. What is not in doubt is that in such transitional states union roles have shifted in ways that are both beneficial and problematic for workers: beneficial in the sense that unions may advocate openly for workers rights whatever the position of governments may be; problematic inasmuch as unions no longer have the direct power of the state behind them and face challenges of relevance to their worker constituencies. In the case of authoritarian states (including communist states) unions play a role in governance and support of workers' rights that differs markedly from their roles in democracies. For the most part they remain 'caught between a rock and a hard place': needing to represent workers in the face of market forces whilst still beholden to the state to support its power.

Labour movements can lead to democratisation. They are, however, not the only path to democracy. Dahl (2000), among other scholars, argued that there is no single answer as to whether democracy starts from associations, trade unions, economic enterprises or special interest groups. This argument can be tested, in the case of Vietnam, by analyses in Chapter 4 and 5 regarding the extent to which the VGCL system has been accorded greater autonomy by the state to act independently at

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an organisational level. From the theory of social movements, it is likely that workforces will move more towards collective actions, in support of rights claims that may widen political spaces (Engelstad & Osterud, 2004). This argument, as it applies to Vietnam, will be examined in Chapter 6. As Paul (2010) argues, democracy at work is demanded and thus requires more power for labour unions. Labour movements may be the basis for resolving conflicts but labour unions are needed to stand up for the protection of workers and their rights struggles. This argument will be assessed for Vietnam case in Chapter 7.

Vietnam and China are unique in being Communist states running largely private sector economies. Whilst not the subject of this thesis a comparative study of the two nation's experiences should be illuminating; it is noted that,in China, similarly to Vietnam, the introduction of private sector unions to some extent relieves them of their role of merely being transmission belts of Party policy as was common in traditional communist regimes. Instead, unions now find it easier to act more like unions in democratic countries, which feel loyalty toward their members rather than to enterprises, when these enterprises are no-longer controlled by the party-state (Saxonberg, 2012). Although the case of Vietnam is similar to China, Saxonberg has conjectured that trade unions in Vietnam have become more autonomous than those in China but insufficiently so as to drive regime change. The question then is how does the VGCL system stack up against international models in its approach in reform? A further question is to what extent the VGCL system can evolve as an independent force of semi-civil society actors, a question that will be considered in Chapters 4 and 5.

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CHAPTER IV
TRADE UNIONS IN VIETNAM

4.1 Introduction

Unions in Vietnam, under the economic liberalisation process, have come under pressure from the CPV, their members, international organisations and from society in general to adjust their modus operandi. This chapter analyses these contexts for change. The primary focus is the VGCL's relationship to the Vietnamese State, within the political realm, and the degree to which, if at all, there is evidence that the VGCL can now act more independently than was the case before Doi Moi. Deriving from this primary focus are a number of questions. What factors are driving unions towards having greater autonomy from the State? What indicates autonomy? How do the State and the CPV guide policy in setting the VGCL's mandate, policy and programmes? How do unions use their increased autonomy, assuming this exists, to negotiate and make changes in law and policies? Are there barriers to changes in the role of unions?

The chapter is based on two sources. The first consists of mandates in State policies regarding the VGCL (and its predecessors) over the period since 1945. The second is a set of interviews conducted with union officials concerning their views about their relationships with the State (see Appendix1). The chapter identifies differences between the traditional role of trade unions around the world and the VGCL. As a generalization, these differences arise from the political context in Vietnam that binds the VGCL, as a socio-political organisation, into the political system. The chapter further considers the degree to which the State has allowed more 'space' within which the union system can act autonomously. To anticipate, analysis of the State and the Party in relation to the VGCL suggest that there has been no fundamental change in the status of the VGCL in the political system, since it remains a socio-political organisation. Opportunities for unions to act autonomously have,

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however, emerged and been exploited. The State has in fact required changes in the union system as part of responding to the impact of economic liberalisation. Other factors driving change have arisen from challenges arising from economic liberalisation and economic integration after Doi Moi. These may be examined from several points of view: (i) changing economic relations, whereby capitalists emerge vis-a-vis increasing numbers of (especially) factory workers, a dynamic that changes the characteristics of industrial relations; (ii) increasing demands by workers for the protection of their rights and interests (see Chapter 6) and; (iii) increasing demands for social equity, including recognition of social and economic rights e.g. housing, health, education, higher wages and decent working conditions. By analysing these matters in connection with changes in political ideology after Doi Moi, the chapter argues that there have been changes to the position and expectations of the State and the Party regarding the VGCL's role and that these have conferred more space, however modest, within the political setting. This contention is consistent with Saxonberg's (2012) concept of semi-civil society that was discussed in Chapter 1.

4.2 Historical Development

Vietnam's workers have been a crucial political force since colonial times, leading up to the (self-styled) August revolution in 1945. The history parallels that of organised workers' movements in other countries although, in Vietnam, the working class movement and associated labour unions were part of the national struggle for freedom from colonization. The movement's origins can be dated from the early 1920s and its evolution following Vietnam's international recognition as a nation state in 1975 can be tracked.[1]

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[1]Ton DucThang, on Workers' movement in Vietnam. Youth Publisher. [PhongTrao Cong Nhan].

Table 4.1 Trade unions in Vietnam's history

1925-1929: Vietnam Thanh Niên Cách mạng Đồng Chí Hội
1929-1935: Red Federation [Công Hộ iĐỏ]
1936-1939: Solidarity Federation [Nghiệp đoàn ái hữu]
1939-1949: Anti-colonial workers association [Công nhân Phản đế]
1941- 1945: National association for protection of workers[Công nhân cứu quốc]
1946 -1961: Vietnam General Federation of Labour [Tổng Liên đoàn lao động Việt Nam]
1944-1946: The South General Trade Union [Tong Cong Doan Nam Bo], Federation of Trade Unions of SaiGon-Cho Lon;
(1946-975): Several Trade Unions in the south: Vietnamese Confederation of Christian Workers in 1948 transformed into Vietnam Confederation of Labour in 1960

4.2.1 Pre-1945

Before Ho Chi Minh, on behalf of the CPV, declared Vietnam to be an independent state in 1945 various associations had been formed to lead rights struggles of workers against employers and to gain independence from French colonisers. These associations, during the struggle for independence, were regarded by the CPV as 'schools for class struggle' and 'schools for economy and socialism for working class and workers.' Union leaders were accordingly mandated to mobilise workers and the working class more generally, to fight against exploitation by colonists. A working class thus self-identified in colonial times. Initially the level of organisation was low and it was a significant step for workers to become leaders of the revolution. During the revolutionary period, the union-led movement displayed both class-consciousness and nationalistic characteristics. Work stoppages (strikes) came to be symbols of the nationalist movement and provided momentum for the independence struggle (Boothroyd and Pham, 2001).

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The CPV, established in 1930, recognised the working class as part of an organised movement for revolution that culminated in August 1945 (although it was 1954 before the French ceded independence to separate governments in North and South Vietnam with the CPV in control only in the North). The organisation of the working class transitioned from being spontaneous to being formally structured by the CPV. It was claimed that workers' movements were 'class based' and were guided by and for the benefit of workers. This rhetoric reflected Soviet ideas that imbued workers with a great deal of 'spiritual' power. Trade unions were organisations established for all workers, led by the CPV, and aimed to organise workers to play the leading role in revolution – since they were more aware of politics than were farmers. It should be pointed out, however, that the revolution relied more on peasants than workers even if Marxist parties are supposed to be based on the working class. Moreover the Party elite does not necessarily in practice represent the working class even if it claims to do so (Steven Saxonberg, pers.comm., April 2015).

In this period the workers' movement in Vietnam was in line with international movements inspired by Karl Marx's conceptions of the working class and its role in international communism. These movements were also attached to de-colonisation and freedom of nations. Workers' movements were thus empowered with political purpose and a sense of solidarity. Even though there was suppression in the French colonies of Indochina, workers' unions could be established in different forms and sectors. Each carried political mandates and had clearer ideologies and strategies apart from what the Communist party and other political parties mandated elsewhere:

- 1920: Nationalist struggle. Ton DucThang was leader of the workers' movement. Vietnam Trade Union joined with French Seamen's Union and Chinese Trade Union.
- 1926-1927: 17 discrete workers' struggles. Notable was the strike at Cam Tiem Rubber Plantation where the French Federation of Trade Unions raised its voice opposing exploitation by the colonial French.
- 1928-1929: Workers movement changed from spontaneous actions to being more organised, with greater solidarity, awareness and clarity of objectives.

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This period witnessed some 40 strikes whilst the size of the workforce grew to an estimated 220,000.[2]

- 1929: Establishment of Red Union (Cong Hoi Do) as an institution for workers led by Ton DucThang. In this period, there were large-scale strikes, notably in the Ba Son shipbuilding factory. Labour News newspaper established as a tool for mobilisation and mass communication for raising awareness amongst workers.
- 1929: Establishment of Thanh Niên Cách mạng Đồng Chí Hội, led by Nguyen Ai Quoc (subsequently known as Ho Chi Minh) following Marxist-Leninist principles with high awareness of exploitation. Organised labour thus became an independent political force that led the nationalist movement.
- 1929: Indochina Communist Party established, July 1929; An Nam Communist Party, September 1929; Indochina Federation Communist Party; February 1930, Vietnam Communist Party.
- 1931: First Workers' Congress of Indochina established for workers' movement and trade unions.
- 1937: Many unions (Nghiep Doan) established despite suppression by colonial masters. Unions lacked rights to association and other freedoms but newspapers nevertheless wrote in Marxist-Leninist terms.
- 1939–1945: Workers Association for Saving the Nation (Hội Công nhân cứu quốc), was active in the northern and central provinces preparing for the August revolution by force.
- 1946: Vietnam declared to be an independent nation by the CPV. Workers Association for Saving Nation was renamed Vietnam General Confederation of Labour (VGCL).

4.2.2 1945–1975

After autonomously declaring Vietnam's independence from the French in1945 the CPV set out on the path to socialism and the trade union of the time was mandated to representative people inempowering them to 'own'their lives in society. It should be emphasised that whilst the CPV defined itself as the legitimate post-colonial

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[2]See Vietnam History: http://www.lichsuvietnam.vn/home.php?option=com_content&task=view&Itemid=33&id=1186.

government of Vietnam its legitimacy was challenged by different Vietnamese elites. The result was that when the French gave up their claims on Vietnam, in 1954, the territory was divided, under Geneva Agreement, into North and South Vietnam with separate interim governments. This arrangement existed until 1975 when CPV-led military forces controlled both North and South Vietnam and the State was unified by force rather than by democratic elections.

Wehrle (2013) outlines the history of trade unions in this period. The French Confederation of Christian Workers (CFTC) backed the establishment of a Vietnamese Confederation of Christian Workers (CVTC) during the period,1948-1950. CVTC underpinned the operations of unions in the south for the next 20 years. It did not, however, prove to be independent of the military governments of the South and thus it fell into a paradoxical balancing act between the State and the interests of workers.

In the South in 1945, another union movement was established by the nationalist, Tran Quoc Buu.[3] Its goal was to create independent trade unions that would play equal roles in representing the interests of their members in bargaining between employers, employees and governments. Buu led the movement until 1975, making great efforts to organise unions, even though his activities were deemed to be illegal. In fact, a major demand of this movement was to revoke the labour code that criminalized the formation of labour unions by workers movements. In 1952, the Bao Dai government issued a labour code that permitted workers to organise and represent themselves. Under Ngo Dinh Diem's regime in the South, from 1954, union leader Buu joined Diem's Revolutionary Personalist Labour Party (Dang Can Lao) and it seems that Ngo's regime had a certain influence on the CVTC. The CVTC supported the government in some campaigns, such as the victory of Diem's family in the Battle of Saigon in 1957. There were, however, tensions between CVTC and the Diem government that clearly intended to control the CVTC. It in turn was determined to remain autonomous and to reserve the right to publicly criticise Ngo's family. After Ngo's regime, the new Government of Nguyen Khanh put Buu into custody and listed CVTC (then renamed Vietnamese Confederation of Workers (CTV) as an enemy of

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[3]Buu met Gilbert Jouan who inspired Buu on the possibilities for an independent role for trade unions (Wehrle, 2013. p.17).

the state. Backed by the Americans, who wanted to see a free union in order to show that South Vietnam was democratic, Buu was released and there was growth in numbers of unions accompanied by a series of strikes and other kinds of work stoppages. In fact, there was an attempt to establish an autonomous, social democratic trade union during this period.

Wehrle (2013) also discussed the evolution of CTV, mainly in the South of Vietnam. In September 1964, the CTV regained its power. With the fall of Nguyen Khanh, handing government to the new Prime Minister Nguyen Cao Ky, the movement saw a victory when Ky's government announced that it was "pro-workers and pro-peasants."[4] CTV at the time mainly organised members from amongst Vietnamese employed by Americans and was reluctant to directly confront government–owned corporations, Republic of Vietnam officials and the police whilst at the same time responding to younger members' interests in democratisation and workers' rights. US policy support for unionisation meant that the American military had to avoid confrontation with Vietnamese employees. Still, CTV continued to lead with a series of strikes, including hundreds of wild cat strikes during 1968. But by this time the movement was being subjected to propaganda attacks by communists in order to fire up the revolutionary struggle in the build up to the 'Tet Offensive' of 1968 in the South. The CTV further engaged in politics when it decided to join the National Alliance for Social Revolution (Lien Minh Dan Toc Cach Mang Hoi) and formed the Cong–Nong Party (Worker-Farmers) in November 1969. During this period, the Cong-Nong and CTV faced economic difficulties, especially rising unemployment due to the progressive withdrawal of Americans from South Vietnam. The CTV also faced a challenge from Vo Van Tai, who established the National Confederation of Labour (NCL). In 1972 President Thieu banned strikes to ensure economic stability. Buu of the CTV decided to stand with the Saigon government. When Thieu announced the formation of the ruling Democracy Party (Dang Dan Chu), Buu called for the establishment of a labour wing. The union movement led by Buu over two and half decades in the South resulted in Vietnam being known to be fertile ground for labour movements, acceptance of independent unions, recognition of rights to unionise,right

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[4] US Saigon Embassy to US State Department, 2 November 1965, Box 1340, Central Foreign Policy Files, 1963-1966, General Records of the Department of State, RG 59, NA. Sourced from Wehrle, (2011).

to strike and promotion of democratisation. The development of unions in the South from 1954 to 1975, through the activities of CVTC/CTV, showed that unionism was mandated to be independent but engaged in the political process around labour-state relations. At the same time, unions tried to avoid confronting governments. The experience of CVTC/CTV was its pursuit of corporatist labour relations in tripartite dialogues for conflict resolution(Wehrle, 2011) All of these 'way points' suggest that the labour movement in the South was indeed led by trade unions backed by America's support for democracy. There were several independent unions and they were free to organise workers.

In the period, 1954-1959, from the North, communism influenced workers in the South. Communist ideas about worker movements gained influence. This period created the sense that workers' movements could actively participate in the nationalist movement. Commencing when Vietnam was called to unite after a proposed general election in 1955, an estimated 70 per cent of Saigon's population demonstrated and went on strike to ask for negotiations between North and South Vietnam to implement the election. But calls from the movement were mainly for political freedom and democracy as against domination by power brokers, including military governments. Later the movement was upraised to call for "peace, negotiation, freedom and democracy, free unions".The movement was strong in the South despite the suppression of the Diem Government (Wehrle, 2011). History indicates that the political mandate attached to nationalism made the workers' movement strong.

In this same period, unions were generally supported by Diem's Government and American forces, and thus more unions publicly organised themselves and demonstrations. The CPV took advantages of free unions and workers movement in the South to mobilise workers inside factories. On 1 August, 1954, 50,000 workers and other citizens demonstrated to call for peace and the release of political prisoners. In 1958-1959, in contrast, the workers movement in the South was labelled by the CPV as being 'anti-American' and the CPV called for the demise of the (so-called) dictatorship of Ngo Dinh Diem, and the establishment of a Democratic National Union Government in the South to recognise national freedom and

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democratic rights.[5] On 28 January, 1958, workers from 144 factories fought for holiday compensation. Then, late in 1959, the Diem government commenced the search for communists and suppression of workers. The years from 1961 to 1963 also witnessed large numbers of strikes.[6] In 1964, in the South, a series of strikes and stoppages was organised by the Vietnamese Confederation of Workers (formerly CTV). During the years,1965–1968, while the civil war raged (Chiến tranh cục bộ.) the focus of demonstrations led by the CPV was against America. Several unions supported the anti-war movement. On 1May, 1966, a demonstration was led by the Labour Union Federation (Tong Hoi Lien Doan Lao dong) and another was led by Vietnam Labour Solidarity Force (Lực Lượng thống nhất hành động lao động Việt Nam) and Vietnam Confederation of Labour (Tổng Liên Đoàn Lao động).Workers' unions supported the supply of war material for the Communist backed Southern Free Force (Quân Giai Phong). Up until 1969, at the peak of the civil war (called by the Americans, Việt Nam Hoá Chiến tranh), America fomented divisions amongst workers. The CPV, in its Southern Regional Congress, called for "civil rights for women, democracy, against suppression, exploitation." On 25 June, 1969, there was a general strike of some 100,000 workers in Thu Duc against employment termination, and also in support of wage increases and union freedom. Over the entire period there was a rapid increase in union membership: from 300,000 in 1955 to 670,000 in 1969. The focus for the workers' movement during this period was to implement the Geneva Accord. In 1973, a demonstration by 3,800 railway workers demanded economic and political rights (Wehrle, 2011). Whilst the country remained divided, the union movement in the South remained strong. Workers flexed their muscles through work stoppages, strikes and even demonstrations, mainly in factories, where different trade unions and workers came in to organise the movement.

Although there existed two different political paradigms:(1) the anti-communist Southern Government (Republic of Vietnam), influenced by America to

[5]The call is "chống đế quốc Mỹ, đánh đó độ ctài Ngô ĐÌnh Diệmn, thành lập chính quyền liêen hiệp dân tộc dân chủ ở Miền Nam, thực hiện đọc lập dân tộc và quyền tự do dân chủ"[translation:" fight against America, reinvent Ngo Dinh Diem's dictatorship, establish democratic nationalist associated government in the South to achieve national independence and democratic rights and freedom"].

[6]Included 287 struggles in 1961, 324 strikes with 103,032 workers in 1962, 505 strikes and 200 000 workersin 1963.

promote democracy and free unionism; and (2)the communist polity of the North.Workers' movements were used as tools to promote the nationalist movement across the country. The communist force from the North took advantage of the Southern workers movement, for the political purpose of national reunion. America supported workers movements and free unions for the sake of establishing a democratic state in the South. Therefore, workers movement, led by unions, were attached to different political mandates.

4.2.3 1975 – 1986

After the union of North and South Vietnam in 1975, the CPV government set a direction towards socialism. Under socialism the economy was to be centrally planned. The rapid growth in numbers of SOEs, representing public ownership of the means of production and distribution, was driven by strong state regulation. The state takeovers of the economy and the programme of collectivised work were rapidly expanded, although Stalinist ideological rhetoric claimed that workers must be "masters in social production."[7] Following Chinese and Soviet models, Vietnam established control over the whole of society including enterprises and workers[8]. As with other Marxist-Leninist regimes, all workers faced pressure to join trade unions. The State was responsible for providing welfare benefits and unions were mandated to implement this agenda amongst workers. Under the policy of public ownership of the means of production, workers shared ownership of enterprises and played important roles in them. At that time the spirit of workers was strong.[9]

[7] CPV 8th Congress, 1996: "to establish, consolidate and enhance the status of workers as masters in social production", COV, Political Report of the 7th National Committee to the 8th National congress. Following Lenin's claim that workers should "supervise and control"nationalised factories. (Vladimir Illich Lenin "Left Wing Childishness and the Petit-Bourgeois Mentality" Collected Works, Vol. 27. 4th English edition Moscow: Progress Publishers, 1972 [1918] pp. 323 -334.

[8] North Korea, Laos and Cuba, of course, still have communist regimes.

[9] Ho Chi Minh City website, says:

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"CTCTN đã tịch thu tài sản của 171 nhà tư sản mại bản, 59 tư sản công thương nghiệp cỡ lớn để biến thành 400 xí nghiệp quốc doanh, 14.000 cơ sở tiểu thủ công nghiệp, thu hút 270.000 công nhân và lao động, vận động hồ h ương lập nghiệp và từng bước phân bố lại lao động".

Table 4.2 Roadmap of unions: 1945–1975

- 1948: Vietnamese Confederation of Christians Workers (CVTC) established
- 1952: Labour code legislated to recognise workers' right to strike
- 1954-1975: Several different unions were active in the North and the South
- 1954: CVTC joined Revolutionary Personalist Labour Party (Dang Can Lao) under Diem's regime
- 1961: Labour Association of Free Southern Region formed (Hội Lao động Giải phóng Miền nam)
- 1961- 1988: VGCL operated in North Vietnam

Sources: Wehrle (2011)

The unionism struggle over long decades in the South left an important legacy of many leaders experienced in organising workers. There are thus continuities between past and the present. Notably, for example, the current VGCL President, Dan Ngoc Tung, was an organiser of construction workers in Saigon amongst many other union officials or activists in the 1970s. It should be noted here that after 1975 all existing unions ceased to exist and the VGCL filled the vacuum.

After the civil war between the North and the South, the nation-building period in Saigon (the former name of Ho Chi Minh City), up to around 1980, substantially involved recovering and converting existing factories. By that year, their workforce numbered around 500,000, distributed across 1,200 production workshops and factories. 185 cooperatives accounted for 25 percent of the industrial output of the whole nation. In the north, industrialisation was mainly developed in the form of SOEs. Workers retained their symbolic role as the 'leading force in history.' The workers' movement was linked to production capacity through slogans such as:'Three good,' 'Individual good example' and 'When in need or in difficulty there is Youth.'[10]

The year 1986 marked the momentous announcement of Doi Moi. It demonstrated that whilst socialism in Vietnam was capable of adapting to changing

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[10] Original text is "PhongtràoThiĐua Ba Gioi, Đâucầnthanhniêncó, Đâukhócóthanhniên.."

global economic conditions (Fforde, 2004).[11] Reforms were made at State level and in SOEs to better regulate, restructure and equitise them. This shift directly undermined central economic planning.[12] Early in the 1990s, shortly after the collapse of communism in the Soviet Union, Vietnam and China remained the only countries with a socialist orientation but on the road to 'market socialism.'[13] The process of equitisation (i.e. the allocation of shares to non-government entities and individuals) of SOEs was slow in the first phase of reform but it brought new economic forces into play: private capital and foreign investment entered the economy and changes ensued in economic relationships between workers, employers and the State. Labour relationships in particular changed within enterprises with the distinction now being made between workers and capitalists. Workers lost their entitlements to ownership and were no longer on management boards of SOEs.[14] In some SOEs, during the process of equitisation, there is evidence that management was exploiting workers in ways typical of capitalism (Greenfield, 1994).

Marxist concepts of distributive justice and class struggle were no longer deployed in conventional form as the basis for demands for redistribution of wealth, income and other resources from capitalists to workers. Required now was that State law and regulations, and indeed a larger political process, respond to new rights-based demands of labour.

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[11] State-Owned Enterprises, law and a decade of market oriented socialist development in Vietnam. http://www6.cityu.edu.hk/searc/Resources/Paper/WP70_04_Fforde.pdf.

[12]217-HDBT, Regulations, such as No. 13 (business accounting) and No. 26 (on the role of the Chief Accountant), also No. 144 (financial management; also No. 408).

(No. 2), (dealing with shed labour and the continuing programme of equitisation) No. 93 on depreciation and No. 316 (on 'capital allocation' profit shares and the nature of the property relations between the state and the SOE) Decree No. 27 on Enterprise Unions.

[13] This term refers to businesses owned by the state acting as if they are private sector firms. In Vietnam today there remains a large SOE sector that is expected to operate in this manner. It is widely recognised, however, that the continuing inefficiency of SOEs is a brake on economic growth

[14]It is wrong to say that workers had owned the enterprises, in practice, although that was an element of socialist rhetoric. The state always in fact owned the enterprises. Nor is there evidence at hand to show that workers felt like owners. [At least for Eastern Europe there were a lot of studies showing that workers felt alienated from state-owned enterprises (S. Saxonberg, 2015 pers. comm.)].

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In this brave new world the VGCL continued to organise workers under a socialist ideology in factories. Henceforth all workers carried the mind-set that they were masters of production in a non-exploitative, non-class society in which welfare was equally distributed. There were no strikes or reported periods of unrest during this period. Under State ideology, workers remained as leading forces in society under a strong 'workers and farmers coalition.' It is important, of course, to differentiate between ideology and reality. Officially workers were a leading force but this does not mean that they were so in reality.

4.3 Ideology

4.3.1 Political ideologies

Vietnam's contemporary political history has embraced three main political ideas: Communism, Marxism and Socialism. The level of influence of these ideologies has, however, varied over time. Three main periods will be analysed in this part of the chapter. The years, 1945-1954, encompassed the nationalist struggle against colonization with the vision (amongst some Vietnamese) of international communism as a guiding light. The period, 1954-1975, was heavily communist (amongst some Vietnamese, particularly in the North) in both ideology and practice for national unity and economic management. The period, 1975-1986, was one of reconstruction of the nation towards socialism. In all three periods, political ideology supported authoritarian government. The ideologies and practices of these authoritarian regimes have strongly influenced how the concept of human rights is construed in Vietnam. Indirectly the State's political character influenced the role of trade unions in the political system and the mandate that will be analysed later in the chapter.

1945-1954

Vietnam was for most of its long history governed under feudalism and then, for a brief period, was a French colony prior to the August Revolution in 1945 (although in international law it remained a colony until 1954). French colonial legalism imported Western rights-based law and political morality into Vietnam.

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Many people, during the 1930s, shared anti-colonial nationalist sentiments at large in Southeast Asia. Leaders of movements for political change first looked at Japan as a model for getting away from Western imperialism but later adopted liberal Western political thinking, aggressive nationalism and Marxism (Elson, 2004).

The year 1954 saw the departure of the French from Vietnam, followed by the Geneva Treaty that divided Vietnam into two parts. The (ironically named) Democratic Republic of Vietnam (DRV) took power in the North and the State of Vietnam governed in the South – initially under Bao Dai, as head of state. The South Government adopted forms of parliamentary democracy based on a presidential model of government when Bao Dai was in the South – later on Bao Dai ceded government to Diem in 1954. North Vietnam was ab initio, a Communist quasi-state.

1954-1975

During the subsequent war between North and South (1954-1975) the communists promulgated values of patriotism and solidarity and tended to downplay the rhetoric of 'class struggle' that is,of course, the basis for revolution under Marxist dogma. The DRV government did, however ,impose a socialist bias against artistic and literary work and intellectuals who did not hold to Marxism in their ideology. From that point in time, the revolution upheld both nationalism and Marxism as goals. Over 20 years of warfare, with the North/South division eliminated in 1975, there was actually little implementation of socialist policies. This trajectory was observed in many formerly colonized nations, including the Philippines, Indonesia, Malaysia, Myanmar, and Laos. All had either military regimes or civilian-led authoritarian regimes for their structure of governance. Democracy was therefore notable in its absence.[15]

The South Government had been ceded to Ngo Dinh Diem, the nationalist and anti-communist appointed by Bao Dai's State of Vietnam. Soon after, however, in 1955, the US backed Diem's driving Bao Dai from power. The general election called

[15] For example: Indonesian leader Sukarno proposed the idea of 'guided democracy', based on deliberation and consensus rather than on free political contests; Burmese Nationalist leader U Nu (Prime Minister from 1947 to1958 and again from 1960 to 1962) was attracted to fascism and one party dictatorship, as was Lee Kwan Yew, in Singapore (in power from 1959 to 1990).

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for by the Geneva Accords, by mid-1956, was not realised as neither the State of Vietnam government nor its backer, the US, signed up. The State of Vietnam and the US thus prolonged the partition of Vietnam and led Vietnam into two decades of civil war; a civil war instigated by the communist north, backed by the Soviet Union, and resisted by the predominantly anti-communist south. Diem's regime cracked down on Viet Minh (communist) followers in the South. He also reversed land reform policies proposed by the communists and discriminated against Buddhists. This led to widespread demonstrations by monks and nuns. With his hidden agenda to resist American pressure for political change, the US did not regard Diem as a good ally and hence supported a coup to overthrow the regime in 1963. This marked the end of civilian government in the South. After that, until 1975, South Vietnam remained under military rule. The bitter outcome of the Geneva Treaty, i.e. the partition of Vietnam into two halves, resulted in two Vietnamese governments that had different positions, strengths and degrees of political legitimacy. The so-called Democratic Republic of Vietnam (DRV) in the North imposed stronger controls in rural areas and was able to gradually implement socialist policies, with a strong focus on agriculture. Agricultural co-operatives became the main source of food.

The legitimacy of the Vietnamese political system has both changed over time and at any one time varied between different parts of the country. For over three decades, Vietnam faced the challenge of uniting two parts into a nation whilst still pursuing conversion of the economy into a socialist model. The State, however, faced on-going challenges inasmuch as the revolution and its supporters, both in the North and in the South, embraced patriotism more so than being ideologically committed to socialism. The period, 1951 to 1970, was nevertheless strongly marked by influences of the USSR and Chinese communism.[16] Adherence to Marxist-Leninist ideology was central to the CPV's orientation. Later on, Communist party leaders elevated to pre-eminence Marxist-Leninist socialist ideals together with Confucian ideals concerning power and rule. In Marxist ideology the roles of social class, social structures, and individuals reproducing social systems are central. In the South, after years of

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[16] Charter of Workers' Party 1951: "Đảng Lao độngViệt Nam lấychủnghĩaMác - Ăngghen - Lênin - Xtalinvàtưtưởng Mao TrạchĐôngkếthợpvớithựctiễncáchmạngViệt Nam làmnềntảngtưtưởngvàkimchỉnamchomọihànhđộngcủaĐảng".

partition, many people did not support the collectivisation of agriculture and the implementation of a planned economy. As a consequence, the growth of factories, commercial firms and private farms continued to generate major production for Vietnam even after reunion.

1975 -1986

After 1975, Communist military forces were victorious in all of the former French colonies, namely Cambodia, Laos and Vietnam. Vietnam and Laos began transitioning into socialist economies under control of the Communist party (CPV). Vietnam was then facing difficulties under trade embargoes and the economy was proving less robust than anticipated under socialist ideology. By the mid-1980s Vietnam thus began to abandon 'hard core' socialist policies to enable transition towards a market economy when the economic situation had become quite desperate. In the south of the country, transition to socialism was halted.

The 1982 Constitution, in Article 4, nevertheless reaffirmed the centrality of Marxist-Leninist ideology: "The Vietnamese Communist Party, acting on the basis of Marxist-Leninist doctrine and Ho Chi Minh thought, is the force leading the State and society." The 1980 Constitution formally brought into being a Vietnamese socialist state. Since then, Vietnam has remained an authoritarian state under a one-party system operating under a state-centric and 'centralised democracy' model. While the nation's constitution and political ideology embrace Marxist-Leninist notions of justice – an idea of justice derived from collective production and distribution of welfare under socialism – these tenets are now being contested under conditions of economic growth.

Reforms towards 'market socialism' during the 1980s resulted from the political dynamics of survival. While it remains very difficult to observe, let alone make sense of and influence the dynamics within the Party and the political leadership, it is widely recognised that the current government (as of 2015) is more conservative in nature i.e. harking back to traditional socialist ideals. At the same time, the CPV and government have always demonstrated pragmatism, often aligning with or compelled by dominant or emerging interests of the time. In fact, it can be argued that political leaders have a deep sense of mistrust of anything that may look like

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ideological socialism and a reason to hold power. Vietnam holds to a socialist ideology in a way that is not much different to Stalinism where the Communist party was placed in control of the State by legislation (Beresford and Fforde, 1997). The latter further argued that during the reforms of this period, the State (and the Party) could effectively mediate between social groups without the use of legal mechanisms per se and that it was perhaps this political success rather than socialist doctrine that achieved outcomes. While it changed the way the State controlled society and regulated SOEs, the CPV stressed the role of the State as mediator between interests: public and private sectors, local markets and related actors.

Beresford and Fforde (1997) analysed Vietnam in the early 1980s and argued that there was 'a changing notion' of socialism. Two fundamental principles co-existed. One was public ownership of the means of production, central planning, and distribution according to labour value and principles of equality. The other was an operational principle, including government monopoly on foreign trade and the domestic circulation of goods, cooperative production in the agricultural and handicraft industries, central planning of industrial production, state control of finance and credit, state determination of virtually all prices (including wages) and planned allocation of labour. So systems of central planning and public ownership of the means of production coexisted with market-based domestic circulation of goods and market-based determination of industrial production. The DoiMoi reforms thus involved retaining classical socialism and elements of public ownership but losing the old content of central planning. The State used its authority to regulate the internal workings of the economy.[17] The growth of SOEs within a State regulated system made for a paradox (Beresford and Fforde, 1997).

4.3.2Political parties

On 2 September 1945, Ho Chi Minh proclaimed the Democratic Republic of Vietnam and in 1946 the first Constitution was written. However, soon after its declaration of independence from France, the colonial power, which did not wish to give up its colonies in Indo-China, nor to support communism, declared the State of Vietnam under former Emperor Bao Dai – now to be known as Head of State but not

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[17] Cited: Party Resolution XI: "T0 make effective economic management".

asEmperor. The Vietnam Communist Party (CPV) was newly established after its predecessor, the Indochina Communist Party (ICP), was formally dissolved in 1951. The Vietnamese political party was renamed the Workers Party (Đảng Lao Động) and known as such until the defeat of the French in Dien Bien Phuin 1954. After that the Workers' Party was renamed the Communist Party of Vietnam (CPV) in 1976.[18]

Between 1963 and 1969, the communist-led civil war in South Vietnam was driven by a complex of forces, with the co-existence of the Workers' Party (Dang Lao Dong) and the National Liberation Front (NLF) - with its unit in the South called People's Liberation Armed Forces and Provisional Revolutionary Government. The increasing military insurgence from the North to the South, together with anti-American resistance amongst communist armed forces in South Vietnam, saw, by the late 1960s, the failure of both the South Vietnamese regime and the 'Vietnamisation' strategy of the US government. America sought an exit strategy, allowing the Thieu regime to become vulnerable. The 1973 Geneva accords formally eliminated foreign power – largely American – in Indochina. The fall of the South Vietnamese Government in April 1975 gave power to the Provisional Revolutionary Government and, a year later, the North and the South were united as the Socialist Republic of Vietnam.

At the core of Vietnam's political framework is a one-party state as set out in the Constitution. Vietnam is a Socialist Republic with the Communist Party of Vietnam (CPV) as the ruling party.[19] Vietnam has remained a one-party regime since 1976. All policy making occurs under the control of the CPV and remains within the Party and Party members. The Politburo is the supreme body. Its 14 members are the top leaders of the Government and National Assembly. The Politburo sets the direction of the Party and the Government. Central Committee usually confirms policy

[18]A trade union as a formal organisation existed from 1946. Over time it name changed many times. It has been named VGCL since 1988. (Table 4.3).

[19]Article 4 of 1992 Constitution and 2013 Constitution states:

The communist party is the leading force of the working class, and of all working people .... the party should be loyal to the interests of workers and working class.. . following Marxist – Leninist ideology... [Đảng Cộng sản Việt Nam - Đội tiên phong của giai cấp công nhân, đồng thời là đội tiên phong của nhân dân lao động và của dân tộc Việt Nam, đại biểu trung thành lợi ích của giai cấp công nhân, nhân dân lao động và của cả dân tộc, lấy chủ nghĩa Mác - Lê nin và tư tưởng Hồ Chí Minh làm nền tảng tư tưởng, là lực lượng lãnh đạo Nhà nước và xã hội].

set by the Politburo. All important government positions are held by party leaders or by key cadres. Implementation of policy made by the party is thus ensured. In this context, the CPV government established the role and mandate of the VGCL (for detail see Tables 4.3 & 4.4)

4.3.3State ideology on unions and the working class

Twenty-five years of DoiMoi have seen both huge increases in numbers of urban-industrial workers and changed conceptions of the working class. The latter has moved away from its historical role of protecting the nation to one of supporting the nation by means of market-oriented production. Economic liberalisationhas created an emerging class structure that embodies new social forces and engenders new social conflicts.As economic development leads to competition between economic sectors this in turn impacts on the division between the working class and the new class of capitalists. The working class now sells its labour for compensation but there are increasing income gaps in society. An aspect of this is growing inequality within cities (Paul, 2010). Workers, or the working class, do not have a political sensibility that empowers them to challenge legal institutions if they are not protecting workers. Yet workers are joining together to claim economic entitlements from an individual rights perspective (Duong, 2001). The market economy carries with it an ideology of individualism and opportunism that complicates relationships between employers and workers and increases the potential for conflict between them (Nguyen et al., 2000).

The Constitution says that State power belongs to the people as represented by coalitions of workers, farmers and intellectuals.[20] This principle was carried forward from the time of the Workers' Party establishment in 1951.[21] In the Fourth Congress, in 1978, the Party was renamed the Communist Party of Vietnam (CPV) and it was stated in its Charter that the Communist Party belongs to the Vietnamese Working Class (Workers).[22]

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[20] Article 2 of Constitution, 2013: the Nation is owned by its people, the State's power belongs to its people, based on coalitions of workers, peasants and intellectuals [Nước Cộng hòa xã hội chủ nghĩa Việt Nam do Nhân dân làm chủ; tất cả quyền lực nhà nước thuộc về Nhân dân mà nền tảng là liên minh giữa giai cấp công nhân với giai cấp nông dân và đội ngũ trí thức].

[21] 1951 Constitution: "Vietnam Labour Party is the party of the workers and working people" [original text: Đảng Lao động Việt Nam là Đảng của giai cấp công nhân và nhân dân lao động Việt Nam].

[22] CPV Charter of IV Congress: [Đ□ngc□ngs□nVi□t Nam làđ□ngc□agiaic□pcôngnhânVi□t Nam]

4.4 Trade Unions And The State

This section of the Chapter examines the role of unions since Doi Moi, a period during which unions have become relatively independent.[23] The following section of the Chapter considers how and to what extent unions have been enabled to drive changes from within the political system.

4.4.1 VGCL as State organ

Within the CPV's political structure are included: Party, State, Fatherland Front, and other People's Unions and Associations, such as Federation of Trade Unions (VGCL), Youth Union, Women's Union, Farmers' Association, and Veterans' Union. At Party Congress V, in 1982, these structures were strengthened in the party Charter.[24] The Party thus controls, within its decision-making paradigm, all leaders of the government, State agencies and mass organisations and requires them to be party members and to follow CPV protocols. VGCL, to emphasise, is a socio-political organisation as defined in Constitutions from 1946 onwards. The Union is also considered to be a mass organisation that operates as an arm of the CPV, assisting the latter to achieve its political goals. Thus the VGCL is the supreme body of trade unions but works under the umbrella and guidance of the CPV. Although the law refers to the role of trade unions as 'loyal to workers' interests' they are bound under the political system and leadership of the Party (Table 4.3).

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http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=2&leader_topic=77&id=BT2221156003.

[23] Interview # 3 [dated 18/8/2014] .

[24] Charter of CPV states: "the Party takes care of and develops Youth Union, Trade Union, Women's Union and other mass organisations" [Đảng chăm lo xây dựng và củng cố Đoàn Thanh niên, Công đoàn, Hội Phụ nữ và các đoàn thể cách mạng khác của quần chúng, xây dựng Mặt trận Dân tộc thống nhất trên cơ sở liên minh công nông;] read more at http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=2&leader_topic=77&id=BT2221157053

Table 4.3 Trade Union's status in political system

1946-1961: Trade Union renamed as Vietnam General Federation of Labour 1961-1988: Renamed General Confederation of Trade Unions (1961-1988) 1988- present: Renamed Vietnam General Confederation of Labour (VGCL) 2003: Roles include • Socio-political organisation for workers and thus loyal to their interests • Supporting class based aspirations of workers • Membership of the CPV-led Fatherland Front 2008 Trade Union Constitution • VGCL is a socio-political organisation • VGCL is a member of the political system under the leadership of the CPV 2013: • VGCL is the larger socio-political organisation of the workers, intellectuals, civil servants, and voluntary labourers (so called labourers) • VGCL is always loyal to the interests of both workers and nation • VGCL is characterised to be with mass public and class based characters of workers , part of political system and under leadership of the Party

Even though it has its own charter, structure and resources, VGCL is not independent of the Party and the State. It is mandated as being a "linkage between the Party and the people."[25]

When union leaders or politicians talk about the role and position of unions, they mostly confirm and emphasise the importance and significance of the VGCL and its affiliated unions as a socio-political organisation in the political system. Leaders cite examples from early days when the government was just established, as well as examples in recent history to illustrate the indispensible role of unions as a part of the regime, rather than as independent agents outside out it.[26]

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[25]Ref. The Union Resolution.
[26]Noted in several interviews.

4.4.2 CPV pressure on VGCL

It will be clear by now that the VGCL has been recognised as a crucial element of political life, and has been based on the alliance of workers and peasants (farmers)under the leadership of the Communist Party. The Party still nevertheless holds to its Marxist-Leninist political ideology and thus stresses the importance of the working class in national development and in bringing about good outcomes for workers themselves.[27]

The CPV takes reform gradually and faces challenges by bringing in changes to the roles and work methods of its institutions to perpetuate its control over society. As noted, economic liberalisation has meant changes in the role of the State in managing the economy and ownership of the means of production. With concomitant growth in the market economy and a modernising society, the State has reduced its capacity to control the behaviour of the private sector and society at large. These are the factors that Dahl (2000) argued favour democratisation (as per theory of social movements outlined in Chapter 3). Economic structural reform in Vietnam divided enterprises into three main categories: SOEs, private enterprises and FDI-invested enterprises.[28]

The advantage of the old model of SOEs, whereby the CPV could influence management decisions through its membership on management boards, has been lost. Moreover, unions in SOEs are less likely to be neglected by management, as is also the case in some foreign-owned enterprises, since SOEs need to more closely adhere to laws requiring consultation with unions on labour issues. It is much easier in a state-run economy for this requirement to be met, but in a market economy enterprises do not automatically establish unions. Interviewees admit that it is easier to establish unions in SOEs since, even when they are equitised, the Party has greater influence and it is Party policy and part of the law on labour unions that all enterprises must have unions.[29] As a union representative,in the Ministry of Trade and Industry, puts it: “The role of trade unions in joint-ventures and SOEs is limited, not very

[27] Resolution no. 20-NQ-TW: Treat appropriately the relationship between economic development and social equity to take care of working class and solve the problems and urgent concerns of workers.
[28] Accordingly, the Corporate Law in 1987, FDI law first was issued in 1987, Enterprise law in 1999 and amended in 2005.
[29] Interview #U4 and #U10 [dated 13/8/2014] Chair of Long Bien district union organisation; representative of the union organisation at the Ministry of Trade and Industry.

effective.[30]Most of the time unions know about problems but ignore them. They also depend too much on other organisations and leaders [i.e. Party leaders and management]."

Accordingly the role of unions varies according to type of enterprise. In particular, in SOEs after Doi Moi, unions do not play the same pivotal role they did in the period when SOEs dominated the economy; although in some equitised SOEs union representatives are still part of management. In one case a union cadre also had a Party position. An interviewee from Hai Duong Province states that she is the deputy director of the enterprise whilst as the same time being the deputy secretary of the Party and chair of the grassroots union, as well as a member of the city union executive committee. [31] In private enterprises, unions are no longer parts of management and are thus less able to voice to employers the interests and concerns of their employees. In response to this dilemma, the Party authorised unions to establish their own relationships with management. This challenged unions to function as the State's 'eyes' but in so doing potentially fracturing productive relationships with management. Yet the nature of the work of unions at the enterprise level is ideally cooperative. Unions can thus 'harmonise' the interests of state and management. In the private sector, many young workers are not interested in the Party and so its role in enterprises is weakened. Most private enterprises either do not have a union or, if they do exist, they are weak and not very effective. At the same time, if unions do not understand the needs and frustrations of workers and are not close to the masses, and if union leaders tend to cooperate with management, the trust of workers will be lost (Saxonberg and Ngo, 2015). In FDI enterprises, capital and human resources are mostly controlled by managers on behalf of owners. Many FDIs do not encourage unions (notably Korean and Japanese enterprises). A former head of a grass-roots union at a joint-stock company partially owned by a Japanese company became secretary of the Party organisation at the enterprise-level but had to leave the union in order to do so.[32] Despite the fact that many 'wild-cat' strikes occurred mainly in FDIs because of low wages and poor working conditions (see Chapter 6), instead of encouraging unions to stand up to protect workers the Party followed a pro-FDI policy

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[30]Interview #U4 [dated 8/8/2014].
[31] Interview #U17 [dated 21/8/2014].
[32] Interview #U4 [dated 8/8/2014].

that does not want to create contrary policies to foreign investors by encouraging unions; strikes are seen as threats to a stable economy (as described in Chapter 2).

The CPV faces challenges from the wider society. Increasing demands in support of the rights and interests of workers, in the workers' struggle after Doi Moi and the process of privatisation, have created a dilemma for the State as to how to control society; especially in relation to workers' struggles in the form of strikes and other labour conflicts in enterprises that lie outside the public sphere and are thus beyond the direct control of the State. Conflicts between members of the working class and entrepreneurs, notably manifest in strikes, are intensified when unjust practices cannot be resolved by economic measures. At the same time union-based and other collective mechanisms, or an effective organisational capacity of unions, are in question as to their being able to provide sufficient protection for decent work conditions, to represent and organise workers to claim for social justice. These phenomena pose challenges for the State to re-evaluate the way that justice is achieved and to meet its obligations to respond to rights-based claims of workers. The dynamic of workers demanding economic and social justice could lead to a proposition of political change in a larger society than just the workplace.

To cope with these various challenges, the Party has shifted its orientation and placed new pressures on the VGCL and trade union system as a whole to change. The Party has opened up space for unions to be more autonomous in responding to societal needs i.e. work force and union institutional reforms.

First, while the Party cannot control all forces comprising and needs of society there has been a clear tendency to guide mandates to unions to act to respond to societal needs.[33]Notably, the Party tends to delegate the task of representing the interests and rights of workers, although there are no clear policies on how unions should work under such delegated tasks.[34] To cope with societal pressures, the State

[33]Regarding this point, the argument of Engelstad (2004), as mentioned in Chapter 3, referring to the Vietnam case, notes that the CPV cannot directly accommodate the working class in its rights claims, and so delegates this task to the VGCL.

[34] Speech by Dr Hoang Ngoc Thanh, Vice President of VGCL, on Evaluation of Decree http://dddn.com.vn/chinh-tri-xa-hoi/khang-dinh-su-menh-cua-giai-cap-cong-nhan-20130426040018499.htm.In assessing Decree 20-NQ/TW, in response to the Party, the VGCL drew the conclusion that: "the Party only delegates to the Union care for the lives of workers, without proper Party policy [being set as guidance]."

and the CPV may consider solutions that work out a smooth transition to accommodating interests of the new working class by adopting more democratic processes, such as by enhancing legitimate democracy at work as well as by empowering unions to act independently in support of workers. Nevertheless, the Party cannot directly control the non-state sphere on economic issues in enterprises, including labour contracts, since these are matters for business owners and managers. So instead of the State attempting to resolve conflicts, part of the solution has been delegation to unions to manage within the workforce. In this model labour conflicts should ideally be solved at the enterprise level and unions are instructed to maintain a balance between the interests of management and workers. The CPV has changed the role of unions to being more one of mediation: between social groups and between economic interests (of different economic sectors). The VGCL was mandated to be the "linkage between the Party and the people". On the one hand it has to act under State mandate to keep "political and economic stability and investment attraction" by persuading workers not to strike. On the other hand it must represent workers fearful of losing their jobs. Unions are clearly not empowered to act solely in the interests of workers. During wild cat strikes, as will be shown below, it is often unions that persuade workers to return to work rather than organising further strikes or bargaining aggressively on behalf of workers. This could be read as implying that both the Party and society at large recognise the VGCL system as an element of semi-civil society (Saxonberg and Ngo, 2015).

Second, the CPV has called on the VGCL to reform itself, including by "acting more forcefully and independently."[35]The Party openly pressures the VGCL to act more independently in actively defending workers' interests.[36]The Party is also pressuring unions to recruit more members.[37] In contrast to orthodox communist

[35]As noted, Nguyen Van Linh was the ex- Secretary General of the CPV right after the DoiMoidecision at VIth Party Congress. He was in the role from 1987 to 1991. As a progressive reformist, he brought in concepts of institutional freedom and extensive reforms.

[36]Resolution No. 22 (2008) stated that unions must better represent and protect "the legitimate rights and interests of employees [whilst recognizing] the fact that the influence of the Party in SOEs is different to what it is in private firms."In 2013, the General Secretary of the CPV, Trong, statedthat the VGCL needs to act better to "represent and protect the rights of labourers" (speech to the IX Party Congress, July 28, 2013).

[37] Ref. Resolution 20/NQ/TW dated 28/1/2008 Central Committee Congress 6th – term X on continuance of building workers class in the time of industrialisation and modernisation. By General

regimes of the past and present, the Party now allows that union leaders need not be Party members.[38]To achieve this, the VGCL must try to organise people and change its working manner at the enterprise level (Saxonberg and Ngo, 2015).The Party demands changes in union methods to recruit members because it faces a paradox in needing to recruit more Party members into unions[39] whilst at the same time allowing the VGCL to develop its organisation with an enhanced degree of autonomy so as to be able to attract members and thus ensure its survival. But the control of the Party over the VGCL, and its affiliate unions, by means of membership is not strictly conditional. Union members need not be CPV members and this provides an opportunity for union leaders from outside the Party political system. Instead, the Party only pressures local unions to recruit some new members for the Party so that at least one person from each local union will eventually join it.[40] VGCL has undertaken major reforms grounded in its mandates, law related to unions[41] and union work, institutional changes in structure and how it works (details are given in Section 4.3.3 and in Chapter 5.

There are, however, several major constraints and reasons why trade unions in Vietnam cannot become fully independent. Whilst the Party wants unions to support the overall goals of its ideology and economic liberalisation policies, it still attempts to limit unions' capacity to act fully independently and maintain harmony in society.[42]Under Marxist-Leninist ideology, referred as the guiding political principle,

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Secretary, NongDucManh. It says: in all enterprises there must be party cells, trade unions, youth unions. [*trongcácdoanhnghiệpđềucótổchứccơsởđảng, côngđoàn, ĐoànThanhniênCộngsảnHồChí Minh vàHộiLiênhiệpThanhniênViệt Nam]*.

[38]In a speech by Nguyen Van Linh, he stated that leading union cadres do not have to be Party members and he urged unions to act more forcefully and independently of the Party and of managements. However, this view of its leader was not fully reflected in the Party's resolution pressing unions to recruit party members in all economic enterprises.

[39]Recruiting members thus became a mandate and a special programme of VGCL in the 5 years since congress.

[40] Union members who werealso Party members numbered 61,544 in 2008, 78,672 in 2009, 69,941 in 2010, 84,163 in 2011 and 72, 794 by Nov 2012. Source: VGCL, Report to the XI Congress. 2013.

[41] For example, the 2013 Trade Union law has new provisions to ensure that union representativesorganise workers' meetings periodically in enterprises – in order to hearfrom workers and provide the basis for negotiations with management.

[42] Resolution 20/NQ/TW it states: "to increase the leadership of the Party and role of Trade Union and other mass organisations in development of working class" [original text: *Tăngcườngsựlãnhđạocủa Đảng, pháthuyvaitròcủatổchứccôngđoànvàcáctổchứcchínhtrị - xãhộikháctrongxâydựnggiaicấpcôngnhân]*.

the term 'harmony' seems to be mostly pragmatic; an adjunct to improving economic performance, rather than an attempt to replace Marxist-Leninism with the Confucian ideal of an 'harmonious society' (as Chinese Communist leaders have done). Instead of providing wholesale leeway for unions to protect workers' rights by organising collective bargaining and strikes, the Party has continued to stress the need for unions to develop mechanisms to achieve 'harmonious' labour relations, in which labour, capital and the State collaborate to achieve their various goals and where unions act as mediators between employees and employers.[43] This theme of 'harmonious relations'emerged strongly in interviews. It is taken to mean that union leaders should 'harmonise' the interests of workers with those of management and the Party,averred a local union official from the Dong Nai province.[44] Unions should co-operate with the Party in educating workers on Party policies and goals, whilst at the same time defending workers' rights and interests. As a manager in the Department of Policy and Law for the Hanoi Union puts it: "unions should support the Party in political teaching and tasks, but also protect workers' rights and interests by (a) participating in the adjustment of the labour law (insurance policy, wage); (b) providing legal consultation to workers; and (c) running the labour newspapers, which should give workers a voice."[45] The chair of the union at a joint stock company in the Hai Duong province states: "we communicate and educate the workers on the guidelines and policies of the Vietnam Communist Party."[46]

In sum, pressure from the CPV, applied through the channel of membership development of the Party and VGCL itself, through which they can keep influence over societal actors, has been strong. However, pressure from workers calling on the Party's concern for a stable labour force - through better fulfillment of rights and interests and equality of rights and interests - is increasing. The Party

[43] Refs. Party Resolution No. 20/NQ-TW 28/1/2008, and Party Resolution No. 22 dated 5/6/2008. Resolution 20 of CPV states: "To perfect the cooperation mechanism between state, enterprise management and trade unions to resolve labour conflicts and build harmonious labour relations, stability, and progress" [*hoànthiệncơchếphốihợpgiữaNhànước, chủdoanhnghiệp, côngđoànđểgiảiquyếttranhchấplaođộngvàxâydựngquanhệlaođộnghàihoà, ổnđịnh, tiếnbộ] Read more at* http://dangcongsan.vn/cpv/Modules/Preview/PrintPreview.aspx?co_id=30397&cn_id=216133.

[44] Interview #U20 [dated 25/2/2014].
[45]Interview #U8 [dated 12/8/2014].
[46]Interview #U15 [dated 21/8/2014].

therefore requires unions to become more innovative and responsive in meeting members' needs, and society's needs more generally. At the same time, unions are exhorted to ensure a strong membership base. The CPV delegated powers to the VGCL to work within its sphere and to innovate to fulfill its mandate. In other words the control space of the Party may not fully bear on every aspect of the work of the VGCL and there may be more space within which it is authorized to act. Whilst unions still feel bound by the general direction of Party policy they do lobby the Party and State continuously for changes and reforms to policies that affect employees. The 'statist' VGCL is thus moving away from being wholly dependent on the State to being more responsive to the demands of workers by providing more legal advice and by joining collective bargaining processes. These trends may indicate stronger political representation of trade unions into an embryonic democratisation process.

4.4.3 VGCL's changing role vis-à-vis the State

At the peak of DoiMoi's implementation in 1988, at the Congress of the Vietnam Workers' Union, the name of the organisation was changed to Vietnam General Confederation of Labour (VGCL). The change of name indicated that the organisation was not only for factory workers but for all people who work for wages in all sectors. So trade unions were to be established in all organisations, entities, and business sectors.

Vietnam's Constitution has been amended over time to reflect changes in the role of the VGCL needed in the face of economic liberalisation. The most recent of these was in the 2013 Constitution. In relation to the Vietnam Trade Union it says:

Vietnam Trade Union [VGCL] is the socio-political organisation of the worker class and workers, established on the basis of voluntary membership for workers to take care of and protect the legitimate rights and interests of workers; participate in state management, socio-economic management; participate in supervision, inspection, assessment of state organs, units, organisations and enterprises on issues related to rights and duties of workers; disseminate information and mobilise

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workers to study, to improve their capacity and professionalism and to comply with the laws and nation building and national protection.[47]

The 1992 Constitution referred to the Union's role in Article 10.[48] Compared to the 1992 Constitution, in the 2012 Constitution, the VGCL was mandated to protect the "legitimate rights and interests of workers." This reflects the need to have more of a focus on labour rights and implies that the CPV supports rights struggles of workers.

The Party and State have, however, set out different views and expectations of the VGCL system over time. The Party has urged the building of more capacity in these organisations and their reform.[49]Table 4.4summarises the Party's and the State's set of rules on trade unions and the VGCL.

[47]Government of VietnamConstitution 2012.http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=171264.http://www.na.gov.vn/htx/English/C1479/#CRRnGQulv8M9.

[48] 1992 Constitution Article 10: " The Vietnam Confederation of Trade Unions, as the socio-political organisation of the working class and working people, together with State bodies and economic and social organisations, cares for and protects the interests of workers, public employees and other working people; takes part in the inspection and supervision of the activities of State bodies and economic organisations; educates cadres, workers, public employees and other working people in the building and defence of their homeland"

[Translation] 2012 Constitution, Article 10: The trade union, being the socio-political organisation of the working class and the toiling people, joins State organs, economic and social bodies in looking after and safeguarding the rights and interests of cadres, workers, employees and other labouring people; it participates in State administration and social management, in the control and supervision of the activity of State organs and economic bodies; educate cadres, workers, employees and other labouring people to work well for national construction and defence

[49] Resolution 20/NQ/TW it states: "Strongly renovate the content and method of operations of trade unions at all levels. Research how to bring trade union representatives into standing committees of the Party in industrial zones where there are many workers [original text: Đổimớimạnhmẽnội dung, phươngthứchoạtđộngcủatổchứccôngđoàncáccấp.
Nghiêncứuviệcquyđịnhcơcấuđạidiệncôngđoànvàothườngvụcấpuỷ ở nhữngnơicónhiềukhucôngnghiệp, đôngcôngnhân].

Table4.4 Changing state rulings on the role of trade unions

2008	Resolution No. 20 NQ/TW, 2008 of Central Committee of CPV ***Continue to develop Vietnamese worker class in industrialisation and modernisation*** - To harmonise the interests between workers and employers and the State and society - A party cell should be established in all enterprises; trade unions to mobilise more members to be party members - Develop effective mechanisms for conflict resolution to promote harmonious labour relations - Strengthen the Party's leading role in guiding trade unions in development of workers class - Trade unions to be innovative, reforming in method and approach - Trade unions to protect rights and interests of youth and workers when violated
2008	Instruction no 22- CT/TW dated 5/6/2008 – Central Committee Secretary ***Strengthening harmonious labour relations in enterprises*** - To ensure harmonious labour relations is both urgent and a long term objective to ensure political stability, investment attraction, economic development
1996	Instruction no. 07-CT-TW dated 23 November 1996 of the Politburo Re. Development Party Cells and people's mass organisationsin private and 'foreign invested' companies - Tri-partite cooperation mechanisms should be strengthened by means of collective bargaining - To ensure harmonious labour relations as an urgency and longterm objective to ensure political stability, investment attraction, economic development.

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From the summary in Table 4.4, of mandates since 1996,it could be inferred that there has been no fundamental change in the regulated roles of the VGCL

within Vietnam's political system following the Congress of Labour Unions in 1996, up to the present day. There is still only one trade union system, led by the VGCL, and VGCL is still a socio-political organisation. However, as stated in the Party's resolutions, the new trend of unions acting towards workers and for workers interests is established. Unions can act to harmonise relations between workers and managements. VGCL is called to make innovative reforms to protect workers' rights and interests by participating in tri-partite dialogues and collective bargaining. These calls indicate the changing relationship between the State/CPV and the VGCL enabling the VGCL to act with greater autonomy.

4.4 External Factors Driving Change

This section of the chapter recapitulates the key impacts of economic liberalisation in Vietnam that influence the way trade unions act. The idea and practice of union rights adds to and clarifies material, incorporated in Chapter 2 that dealt with economic liberalisation in Vietnam in general. Economic relations in the market economy have caught Vietnamese unions between two main types of pressure, besides pressure from the State that was discussed in this chapter. A notable consequence of economic liberalisation has been rising social tensions and unrest beyond the capacity of the State and the Party to manage; instead the VGCL has to face it. Workers do not have political sensitivities that empower them to challenge legal institutions if they do not protect them. The market economy entails individualism and opportunism that complicates the relationship between employers and workers and increases conflict between them (Nguyen et al., 2000). As a result, ever more working class members have joined together to claim economic entitlements from an individual rights perspective (Duong, 2001). Since workers are aware what they should do and what unions cannot do for them, they choose strikes, even if these are wild cat.[50] The task of unions in representing workers' interests and protecting their rights is not easy, given increasing challenges from workers and management. At the same time unions must show support for the State in promulgating legal and institutional mechanisms.Unions

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[50] How and why wildcat strikes occurred, and whether they signal a workers' movement/s in leading to democratisation will be considered in Chapter 7.

have a limited role and lack the independence to effectively represent workers since they are still operating as arms of State. Nevertheless the demands of workers (including union members) increase in claiming rights and interests thus forcing unions to be innovative**.**

First, it may be noted that the market economy creates new economic relations. A corporatist system is formed and increasingly influenced by the new wealth of entrepreneurs and business owners. Labour markets are deregulated in ways that give more space for businesses to negotiate on labour contracts with individual employees. Under a market economy and within the sphere of capitalist-worker relations, wages are maintained at low levels compared with the cost of living, even in foreign invested factories.

Second, one source of pressure is from workers who demand more for themselves, including respect for rights and justice. For many years, until systems of minimum wage setting and wage negotiations mediated by unions were in place, employees related directly to employers whom they expected to meet their demands on wages without having real power and instrumental means for wage negotiation. The State did not impose wage policies, since they saw wages as being determined in the economic sphere. This was the prevailing view until the Labour Law of 2012 was gazetted.[51]Low wages (insufficient to cover living costs for most workers) became a common reason for labour discontent. There was accordingly increasing unrest amongst rural and urban workers as indexed by large numbers of strikes for higher wages and better working conditions (Paul, 2010).[52] Ultimately, workers expect and demand unions within the work place to protect them.

Third, under the market economy, there are increasing demands by employees in terms of fulfilling their rights and interests in the field of social justice. Stronger emerging calls from workers for job security were made during the economic shocks of 1997 and 2008, notably in the form of strikes. Workers were laid-off in many private firms, including FDI-financed ones, and this resulted in large flows of

[51]After Vietnammarketised its economy in 1986, over the ensuing 10 years there was no regulation on minimum wages. In 1997, the minimum wage only applied to the public sector. The situation changed with Labour Code, 2013 (Art. 91).

[52] Read further in Chapter 6.

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workers back to their homes. This in turn created burdens in what were typically poor rural economies. In parallel, new dimensions of urban poverty were identified: very low incomes, poor coverage by health insurance and social security, poor housing quality, poor access to local services (clean water and sanitation, electricity), weak social inclusion, and poor physical safety. The burden of recognising the interests and rights of workers was laid on the shoulders of the VGCL by the CPV.[53] At the same time, the union lacked sufficient power, instruments and resources.

4.5 Conclusion

Communist regimes have become more complicated to define in the era of economic liberalisation. Under more 'hardline' Stalinist regimes, mass organisations did in fact tend to act as mere 'transmission belts' for Party-State policies (Prava and Ruble, 1986). This meant that they could hardly be considered to be part of 'civil society', no matter how they were officially defined. Some researchers suggest that unions have gained much more autonomy in Vietnam than is the norm in Communist regimes (Clarke et al., 2007). Vietnamese unions can thus be construed as examples of semi-civil society. As such they face different dynamics to those faced by civil society organisations or those that belong to the Party-State apparatus under more orthodox Marxist-Leninist regimes. Rather than being mainly transmission belts from the top-down, from the Party to the workers, unions act more as go-betweens linking workers, the Party and management. Unions still feel bound by the general direction of Party policy but at the same time they lobby the Party and State continuously for changes and reforms in policies that concern employees (Saxonberg and Ngo, 2015). The focus on the VGCL and its myriad reporting unions concerns their right to organise themselves and their ability to support workers in their claims against employers. This contrasts with the notion of unions being simply transmission belts for mobilising support for Party-State policies or supporting management.

Economic liberalisation has had both positive and negative impacts on workers in terms of ensuring their rights and interests and more generally access to social justice. Economic relations in the market economy have, however, caught

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[53]Ibid, Chapter 3.

unions 'between a rock and a hard place'. They operate under conflicting and sometimes irreconcilable pressures from the State, from workers and from enterprises. Vietnamese unions face conflicting demands from the Party-State. They face pressure to establish more unions, recruit more members and support their members' interests more strongly, whilst still being loyal to Party policy. Thus, Vietnam has moved far from the totalitarian model, in which everyone must be a member of a union, since unions now face the opposite problem of needing to establish unions in more enterprises and of needing to recruit more members. According to the law, membership in unions is voluntary and no evidence has been found in the present study, or in any of the literature reviewed, of unofficial pressure for workers to join unions. In addition, unions actually face open pressure from Party and State leaders to become more independent and to support workers' interests more directly and effectively. Yet they must still cooperate with the Party at national and local levels. Since unions – in contrast to other mass organisations – are officially socio-political organisations, they also have the right and obligation to present their views on many proposed laws and this gives them some influence over policymaking.

It is interesting to note that although unions do seem to be becoming more independent of the Party, when union leaders or politicians talk about the role and position of unions, they mostly confirm and emphasise their importance and significance as socio-political organisations within the political system. They cite examples from earlier times when the[54]current system of government had just been established, as well as examples,from recent history, to illustrate the indispensible role of unions as a part of the regime, rather than independent agents operating outside out it.

This chapter has argued that the VGCL and its affiliate unions, although belonging to the political structure under the CPV, in fact have more room now to act on behalf of members, as allowed for by the CPV. There is arguably a politically sanctioned re-positioning of unions as elements of semi-civil society. Only 'semi civil' because, akin to union organisations of the Party-State apparatus under more orthodox Marxist-Leninist regimes, unions in Vietnam still play the role of transmission belts between CPV and workers. Nevertheless, unions are now expected to mediate between

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[54] Noted in several interviews.

workers, the Party-State and management. Thus, the relationships have become more ‘horizontal’ than ‘vertical’. Unions, however, still feel bound by the general direction of Party policy, whilst at the same time they lobby the Party and State continuously for changes and reforms in policies that concern employees. What is also clear is that the institutional relationships between unions, at different levels in the VGCL hierarchy, and the State are mutually constituted and have driven changes of attitude, law, policy and practice that have enabled and/or mandated an enhanced capacity of unions and State to better protect the rights of workers under Doi Moi. To the extent that there has been a widening of political space then institutional settings have been the basis.

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CHAPTER V
TRADE UNIONS TODAY

5.1 Introduction

Chapter 4 addressed the political background and ideologies of, and relationships between, the State and the VGCL. It was shown that unions are not fully autonomous but have been forced to change by the State itself. The VGCL system needs support from the State but it also needs to strengthen its capacity and to find ways to balance the interests of State and businesses whilst at the same time responding to members' needs. In addition to State pressures and mandates discussed in Chapter 4, trade unions in Vietnam also have to deal with enterprise managements. Due to transformations in the public and SOE sectors, whereby communist ideology no longer maintains strong control, unions have less power in decision making and bargaining with management, and their role in the private sector is ambiguous. The question is thus, to reiterate, how do trade unions struggle for their survival and become more autonomous from the State even when they remain State-sanctioned? In order to survive, if they adopt a relatively docile approach to their roles, would this not act against State ideology?

This chapter focuses on changing union approaches to dealing with challenges and pressures arising from the new economic order, as delineated in Chapters 1 and 4. The essential questions are: (1) to what extent and by what means have trade unions in Vietnam become more autonomous, both from the State (as discussed in Chapter 4) and from management; (2) how have unions responded to the demands of their members The chapter concludes by reflecting on theories and empirical studies outlined in Chapter 1 in order to assess the extent to which the Vietnam experience is in conformance or else divergent. The conclusion also recapitulates the international experiences detailed in Chapter 3in order to assess the union system in Vietnam compares and contrasts with international experiences. It should be emphasised that the purpose of these comparisons is to reinforce an

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argument that Vietnam is unique when it comes to unions and regime change. It is not a goal of the thesis to present a comparative study in any general sense.

This chapter is based on interviews with 20 trade union officials aimed at gauging their perspectives on their changing methods and approaches and how unions are changing their capacity, through institutional and individual efforts.

At this point it is appropriate to refer back to the introduction to Chapter 1thataddresses terminology and the relationship between different types of unions. First and foremost, it needs to be emphasised, by way of reminder, that there is only one Trade Union organisation(i.e. the VGCL) and it has branches at all provincial and district levels.[1] Ministries at national level and their agencies and Business Corporations also have trade unions. Industrial zones located at province territory have trade unions. Individual business enterprises have unions. Each of the latter operates independently in discharging their responsibilities but they are ultimately responsible to the VGCL through its provincial and local offices (see Fig. 5.2).[2] There are no substantive distinctions between unions operating in different types of businesses or public sector agencies. Detailed terminology is given below in section 5.2.1.

The next section of the chapter identifies changes to laws governing the role of the VGCL system, namely laws covering trade unions and the Labour Code. Institutional changes are then identified. These cover the structure of the VGCL, its mandate, functions and strategies. Changes from *within* the VGCL are next considered. They include leadership, capacity and membership. Finally, changes in union practices are analysed, namely: changes in relationships with the State; changes in relationships with members; and changes in relationships with management.

5.2 Legal Changes

An initial landmark of Doi Moi was recognition of the need to establish labour legislation, including re-defining the role of trade unions. The goal was to ensure their effectiveness in representing workers' interests, in what were becoming

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[1]Vietnam has 63 provinces and thus 63 Provincial Federations of Labour. There are 708 districts withabout the same number of trade union district branches.

[2]By May 2012, there were 113,000 grass-roots units and enterprise trade unions. 27,700 new tunionswere established between 2008 and May 2012. (VGCL. Report to XI Congress, 2013).

radically different relationships with employers, whilst at the same time ensuring that the State retained effective control of the entire system of unions led by the VGCL.

The two key bodies of law bearing on the role of unions are the Labour Law and the Trade Union Law. Amendments to these two laws have been made over time. Reviews and changes in the law, with reference to normative documents, are noted in Box 5.1.Legal changes are now analysed in conjunction with the views and perspectives of informants on law in practice.

5.2.1 Law on trade unions

A landmark of Doi Moi, 1986 to1987, was reform of labour legislation and the role of trade unions. Trade unions had been seen as "schools of socialism for workers" (Trade Union Law, 1990). Amendments after 1990 removed much of the direct State control over the VGCL that henceforth needed only to inform appropriate government bodies that an organisation (i.e. enterprise-level union) had been recognised.

The Trade Union law of 1990 articulated the role of unions as follows:

- Protecting the interests of workers in their work environment. This includes such activities as supervising the allocation of welfare benefits, visiting the sick, and arranging parties for children.
- Participating in managing assets and property assigned by the government to SOEs.
- Encouraging and motivating workers to raise productivity.
- Educating members in socialist ideology and awareness by such measures as organising artistic and sporting competitions.

The Trade Union law of 2012, which came into effect on 1 January 2013,more explicitly aligned the union role and mandate with labour rights. Article 10 of the law states:

- Represent, protect legitimate rights and interests of workers.
- Participate in state administration and socio-economic management.
- Develop harmonious labour relations between workers and managers.
- Submit draft laws to National Assembly, advice and recommendations on policy making.

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- Supervise and monitor activities of enterprises and other employerorganisations.
- Educate and train workers.
- Develop union units and membership.

Trade Union laws have, over time, continued to recognise only one State Trade Union (VGCL). Vietnam unions originally, according to the 1990 Law on Trade Unions, had four basic functions, all of which pertain to responsibility for protecting the legal rights of employees. The law at that time did not define labour rights as human rights, since the laws were made following State ideology that embodied restricted conceptions of individual human rights. The 1990 law focused mainly on state welfare interests and the organising of leisure activities for workers. Current laws even explicitly use the word 'rights' in affirming the rights of workers, in addition to using the term 'interests', and thus change the functions of trade unions. The laws emphasise the role of unions in representing and protecting the rights of workers. This gives unions an official imprimatur to confront enterprise managementsin defending workers' rights. The current Labour Law and Trade Union Law (2013) require that unions take part in labour relations. According to new rules (ref. Decree 43/2013/ND-CP) there is now a clearer separation of roles and powers between different layers of unions within the one overarching system led by the VGCL. With the powers conferred by this decree, the VGCL and its affiliated union offices/branches at Provincial and District level can guide and train enterprise level unions in skills to protect and defend rights, including collective bargaining and organising strikes (Art. 12, Decree 43-ND/CP). The new law and rules empower grass roots enterprises with clearer roles in the following respects (Arts 3 to 12 of Decree 43-ND/CP):

- Counselling workers on contract issues
- Representing workers in negotiation and bargaining and monitoring collective bargaining agreements, including monitoring wage payments
- Representing workers in dialogues with employers
- Participating in conflict solving between employees and employers
- Making complaints on behalf of employees when their rights and interests are violated
- Representing employees (union members), including litigating on

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behalf of employees when their rights and interests are violated

- Organise strikes in the legal way

Most of these roles pertaining to dealing with employers are delegated to grass-roots enterprise units. On the one hand they can deal with situations more spontaneously and become closer to workers and have room to negotiate. On other hand, enterprise unions are challenged to effectively handle issues in conjunction with employers without the support of higher-level unions.

The 2013 Law on Trade Unions facilitates the VGCL and its affiliates acting more autonomously because it enables greater financial independence (from government).The VGCL is now authorized to raise and hold financial resources centrally, thus giving it greater power to implement its mandate. The Law allows for the imposition of a 2% levy based on the total payroll of an employer. Ownership of assets of trade unions also appears to have been centralised under the new law on the VGCL – the old Law provided that such ownership was vested in individual unions. As noted, the Law on Trade Unions allows for the imposition of a 2% levy on employers based on total payroll.[3] When the rule was introduced there was a distinction between foreign invested companies and Vietnamese private companies and organisations.[4]Since union membership is, however, voluntary it is difficult to collect sufficient fees when many workers are not union members. Companies also took the opportunity not to establish unions or to delay unionization so as to avoid paying the trade union fees. The 2013 law makes employers responsible to pay union

[3]258/HD-TLĐ- Regulations regarding trade union roles in alignment with the amended laws;1803/HD-TLĐ- all members of trade unions shall contribute 1% of salary. 200/2013/NĐ-CP- Members of trade unions shall contribute trade union fees equal to 1% of salary ; 200/2013/NĐ-CP - Regarding rights and responsibilities of trade unions in state management, social - economic management; 191/2013/NĐ-CP - New regulations on deductions for paying union fee; 43/2013/NĐ-CP - The rights and obligations of the trade union in the enterprises . Before 2012 Trade Union Law: Although the former Law contained no such levy, a 2% fee was introduced for local Vietnamese companies under Joint-Circular 119/2004, dated 8 December 2004, of the Ministry of Finance (MOF) and the VCGL and Circular 17/2009 of the MOF dated 22 January 2009 (Circular 17). Circular 17 introduced a 1% fee for foreign invested enterprises.

[4]Although the former Law contained no allowance for union membership fees, a 2% (of wages) membership fee was introduced and is applicable to entities 'involved in the organisation and activities' of unions. Before DoiMoi, in SOEs, VGCL controlled the use of fees. These were decided upon by the management board and deducted from profits.

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levies whether there is a union or not. Unions are authorised to raise two per cent of an enterprise's wage bill; half must be contributed by workers and half by management. Through this measure a financial base for unions enables them to become more independent. Financial independence enables greater independence in enacting mandated roles and a capacity to work with less fear of an adverse reaction by the State. With available and sufficient fees, there are more full-time union officials in enterprises and their salaries are paid from the union's membership fund. Being paid by the union system, "officials are not fearful of arguing with managers", as was averred by a senior union leader.[5] However, whilst the current mechanism allows collection of fees (which applies for all companies) there remainproblems in implementation. Unions have to fund many activities but not all enterprise unions have separate accounts and need to ask for approval from higher-level unions in order to implement action plans. "We have the budget but that professional union cadre reports to the provincial union because there isn't a position for a specialised cadre in the company's personnel."[6]

The legal status of grass roots/enterprise unions is clearly stated, even in organising strikes.[7] Seen as a whole, however, the new Law introduces stronger mechanisms for the organisation and activities of unions at enterprise level in organizing strikes but does not explicitly spell out the role of trade unions in relation to the labour movement. The new Law did not introduce any substantial changes to workers' status. The new Law makes no reference to the former Law that referred to workers' roles as 'masters of production', along with the Trade Union constitutions before Doi Moi.

The new Law does, however, accept the need to address workers' rights struggles in terms of demanding their legitimate rights and interests. There is a subtle change in policy orientation and the role of trade unions in collective bargaining, as a key labour right, which was limited in the 1992 Trade Union Law. However, to date, only the VGCL is assigned to legally organise strikes or to bargain on rights or to take

[5]Interview # 10 [dated 13/8/2014].
[6]Interview #3 [dated 14/8/2014].
[7] See more in Decree 43/2013/NĐ-CP of the Government dated 10/5/2013 on rights of trade unions in representing and defending legitimate rights and interests of workers. Read at http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=28544.

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legal action. Despite the efforts and commitment by many actors, Vietnam has yet to ratify the ILO convention on freedom of association and collective bargaining.

Current Trade Union law provides a mechanism to protect union cadres/representatives (Article 25, 2012 Trade Union Law). Employers cannot fire union representatives, when they are in term, since they are elected by workers. Under the 2013 Trade Union law, even though enterprises are forbidden to fire union representatives, as interviewees pointed out, management can still make it difficult for union representatives by, for example, giving them unpleasant or uninteresting work assignments.[8] So even though there is law in place to better protect unions, there needs to be a strong mechanism and a certain level of support from higher level unions to guarantee full confidence of unions at the grassroots level to defend their members' rights without fear. Prompt support from higher levels could empower enterprise trade unions to deal with conflicts and protect workers onsite and more directly.

5.2.2 Labour Code

The Labour Code of Vietnam, approved by the ninth term of the National Assembly, on 23 June 1994, came into effect on 1st January 1995. The code institutionalised the CPV's new direction after 1986 regarding labour relations and management. It covers issues such as employment, apprenticeships, labour contracts, collective bargaining agreements (CBAs), wages, working time, rest time, labour discipline and material responsibility, occupational health and safety (OHS), specific provisions on female workers, children/adolescents and other types of labour, social insurance, unions, settlement of labour disputes, State management of labour and inspections, and the handling of violations of labour legislation. The Code regulates relationships between workers and employers and directly related social matters (such as housing, health services and education). It applies to all workers, organisations and individuals using contracted labour in all economic sectors and under all forms of ownership. It also applies to apprentices, domestic workers, and a number of other job categories, with the exception of workers doing outwork (Articles 1-2 and 137). For some years, however, if only anecdotally the code was mainly conformed to by SOEs rather than in the private sector per se. Only when Decree 233, which regulates labour

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[8]Noted ininterview K.

in foreign owned companies, was adjusted in 1995, were more unified wage systems and minimum wages established. Disputes over changes in the wage-setting system have occurred in many equitised SOEs and these demonstrate the role of factory-level unions in meditating and explaining the new rules.

The 1995 Labour Code included the optimistic goal of a trade union or interim union, or preliminary workers' council, being formed within six months of an enterprise being established.

The Labour Code further formalised the role of unions. It declared that if any employer had more than 10 employees s/he must register a 'labour regulation' with the Provincial Labour Office and must contact local union executives about its activities.

The revised Labour Code of 2006 comprehensively amended Chapter 14 that deals with dispute resolution. The amendment reflected the fact that, with the increase in foreign investment and flourishing domestic private enterprises, violations of labour laws had resulted in an increasing number of wild cats trikes, especially in 2005 and 2006, and that the law regulating labour disputes had proved inadequate. The 2006 amendments required businesses to take responsibility for safeguarding workers' rights and working conditions, as well as ensuring non-discrimination, collective bargaining and the like. The Code focused on two matters: arrangements for social security and mechanisms for enforcement. The first included how to ensure good working conditions, a decent income and effective social protection. The Code tried to ensure this by providing detailed regulations on health and safety (OHS), working time, minimum wages and social insurance. The second aspect refers to institutions dealing with Code violations and labour disputes, the legal framework for collective action and union work.

The revised Labour Code of 2012 aimed to further clarify the role of unions in protecting labour rights, protection of union rights, including a collective bargaining mechanism and rules for the organisation of strikes. The Code states that: "the collective negotiation of the scope of sector is the representative of the sector Executive Committee of the Trade union" (Art. 69). The role of the union in labour disputes is defined in Article 195 and grass roots unions are authorised to organise

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strikes in Articles 209/10).[9] In all versions of the Labour Code, labour regulations and labour rights are well articulated but none provides for freedom of association and the formation of unions separate from the VGCL system. Although the current Labour Code is a strong instrument to support unionisation, success depends on the extent of campaigns to persuade owners and to inform workers about union roles and the benefits of joining unions.

In sum, despite these caveats it seems, overall, that legal changes have given the VGCL a mandate for a new and expanded role in upraising the notion of labour rights. The laws create stronger mechanisms for unions to act to respond to workers rights, including collective bargaining and organising strikes in the process of protecting and defending those rights. Another mechanism to strengthen capacity and power of unions is the raising of financial resources from membership fees that unions can collect and use with a more liberal agenda. The change in law, followed by changes in mandates, mechanisms, and functions, opens space for trade unions to act independently of government control and, as a corollary, greater independence for unions at grass-roots level unions (as described in Section 5.2). The question is, to what extent grass-roots unions are capable of acting and how much support or leverage they get from higher-level unions or the VGCL itself to enact their new roles.

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[9]Labour Code 2012: The main revisions to the 2006 Code cover labour contracts, wages and minimum wages, health and safety, policy for female workers, collective bargaining, responsibility of higher level trade unions and protection of trade union representatives.
Chapter V Section 2. Collective Negotiation And Chapter Xiv- Session 2 Authority And Order Of Personal Labour Dispute Settlement
Article 69. Representative of collective negotiation
1. Representative of collective negotiation is defined as follows:
a) For the labour collective in collective negotiation, the scope of enterprise is the representative organisation of the labour collective at the grassroots level; the collective negotiation of the scope of sector is the representative of the sector Executive Committee of the Trade union;
Article 72. Responsibilities of the trade unions, representative organisations of the employers and the state management agencies on labour in collective negotiation.
1. Organizing the training of the collective negotiation skills for the persons participating in the collective negotiation.
2. Participating in the meeting of collective negotiation upon the request from either collective negotiation party.
3. Providing and exchanging information relating to the collective negotiation
Articles 195 – role of TU in labour dispute
1. The State management agencies on labour shall be responsible for co-ordinating with the trade union organisation, the representative organisation of the employer to make guidance and support and assist the parties in the settlement of labour disputes.
Art. 199: Trade union is a member of the Labour Arbitration Council

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If grass-roots union representatives are capable and democratically elected then there is more chance for unions to act autonomously on the side of workers.

Table 5.1: Key legal frameworks governing trade unions

- Labour codes (1994, amendment in 2002, 2006 and 2007 and 2012); Revised Labour Law on labour dispute approved by the National Assembly on 29/11/2005 (taking effect on 1/6/2006)
- Decree 63/2005/ND-CP in medical insurance (2005);
- Law on Gender Equity approved by the National Assembly on 29/11/2006 (taking effect on 1/7/2007)
- Law on Social Insurance, approved by the National Assembly on 29/6/2006 (taking effect on 1/1/2007),
- Decree 135/2007/ND-CP dated 16-8-2007 on administrative punishment in social insurance, 2/10/2007
- Health insurance law (2008);
- Trade Union law 1990, 2012 amended effective from 1 Jan 2013
- ILO basic conventions that Vietnam ratified: C100, C111, C182, C138, C29, C81, C138, C122
- Other ILO conventions: C6, C14, C27, C45, C60, C116, C120, C123, C124, C155, C182
- Other ILO conventions: C6, C14, C27, C45, C60, C116, C120, C123, C124, C155, C182

5.3 Institutional Changes

Following the legal changes noted above, the VGCL has transformed itself with respect to its internal rules and in its approach to its role. This section of the chapter examines institutional changes that have occurred from within the VGCL and its trade union system, namely in structure, mandate and functions. Also analysed is how the VGCL has made changes to enable it to adopt new roles and mandates in relation to strategy, leadership and membership. To anticipate, it could be argued that there has been no real change in VCGL's status as it remains a socio-political organisation within the one-party state system but it has changed its modus operandi since the mandates established for it at the Congress of Labour Unions in 1988. Against this it will be shown that there is evidence that within the union system,

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unions at different levels have become less centralised and thus more independent in operation.

5.3.1 Structure

The VGCL's formal structure has changed greatly since DoiMoi, with the establishment of professional branches and the augmentation of district and industrial zone unions. In the structure, grass-roots level unions are recognised. Furthermore, the VGCL recognises the role of enterprise unions in its structure and their mandate to work directly with workers.

By law and their constitutions, Vietnamese unions operate at four levels, namely central, provincial, district (also above-grass root and enterprise level) and enterprise, as described in Table 5.2:

- VGCL is the highest level and national super-body of all trade unions.
- National-level, sector unions work within government ministries and with companies under the management of ministries. 'Horizontally', there are also large numbers of unions within major industries, such as coal, electricity, railways, transportation, health, education, etc. (mostly current and former SOEs).
- Provincial/City labour federations report to VGCL and manage district level and EPZ unions.
- 'Above-grassroots' unions include local sector unions, district labour federations, EPZ unions, corporation-level unions.
- Grassroots unions, including professional union cadres and non-professional union cadres.

Figure 1.1introduced two further distinctions that need to be explained at this point in the thesis: 'Công đoàn' (Trade Union) and 'Liên đoàn Lao động' (Labour Union). The only difference is that the term 'Labour Union' is used to denote district level unions and higher, whilst 'Trade Union' is used for enterprise level unions and in public offices and other social organisations. 'Công đoàn cơ sở' refers to unions at enterprise level, or local unions. 'Grassroots union', "Công đoàn cấp trên cơ sở," refers to unions at commune or district level. The Trade Union Constitution of 2008 added one more category to this list, the so-called professional unions 'Nghiep Doan.' Unions in Vietnam had not been profession-based as they are in some other countries,

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although some professions do form professional associations.

In sum, whilst the structure of unions has changed since DoiMoi the structure of the VGCL has not changed greatly. At this central level new functions, such as labour relations and policies dealing with labour disputes and wage mechanisms, have been added to the list of responsibilities. At lower levels, VCGL has established a multitude of establishments in professional branches, and district-level and industrial zones trade unions.

5.3.2 Mandate

On balance it could be argued that there has been no major change in terms of democratising unions but there have been fundamental changes in the mandates of the VGCL in the current VGCL constitution compared the Congress of Labour Unions in 1988 (see Table 5.3). Along with changes in the legal framework, VGCL's government-mandated constitutions have gradually shifted the role of unions. Their mandate is now more clearly identified as working to protect the rights and interests of workers and to play a role in representing and negotiating for better workplace agreements embodying the rights and interests of workers. Unions have established themselves independently from government activities and approval, and are permitted to join international trade union organisations. In particular, legal changes and membership fees enable grass-roots unions to be more independent, since the salaries of union representatives can be partly funded by union fees, instead of being paid solely by management.

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Table 5.2: VGCL constitutions and mandates

1988	New ideological basis set for renovation of trade union organisation. Official name changed to Vietnam Confederation of Labour Union (VGCL) replacing General Federation Trade Union of Vietnam
1993 Term VIII	• Taking on renovation of the organisation and activities of trade unions * Protection of workers interests
1998 Term XII	• Developing working class in industrialization period in quantity and quality • Strengthen capacity of trade union cadres • Participate in making of socio-economic development plans • Participate in law making and policy development for workers * **Protect legitimate rights and interests of workers** (new mandate since this term)
2003 Term IX	• Represent and protect legitimate rights and interests of workers (added with requirement for renovate working methods in organising and development of trade unions units. • Participate in state management, socio-economic activities • Participate in monitoring, supervising activities of state agencies, economic entities • Educate workers on the rights to master the nation and citizens' duties. • Develop membership in all economic sectors • Improve capacity of trade union cadres

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Table 5.2: VGCL constitutions and mandates (cont.)

2008 Term X	• Represent and protect legitimate rights and interests of workers • Participate in state management, socio-economic activities • Participate in monitoring, supervising activities of state agencies, economic entities • Educate workers on the rights to master the nation towards socialism and conduct citizens' duties. • **Develop harmonious labour relations (**this changes radically the trade union's activities of representing and protecting legitimate rights and interests of workers)
2013 Term XI	• Represent and protect legitimate rights and interests of workers • Participate in state management, socio-economic activities • Participate in monitoring, supervising activities of state agencies, economic entities • Raise awareness and mobilise workers to comply with the law, contribute and protect the nation • Develop harmonious labour relations

One of the important tasks of trade unions is to care for and protect their members. The mandate of unions immediately after Doi Moi did not, however, mention protection of workers' rights but rather focussed on renovation of the organisation in line with economic reforms. The VGCL Constitution of 1998 did, however, emphasise the 'protection of workers' rights.' The 2012 Trade union law further emphasised this mandate.[10] Regarding the functioning of this role, there are still certain limitations because the constraints of capacity, mind-set and mechanism for union cadres, especially at grass-roots level, to negotiate are restricted. Union

[10]Ref. Article 10 of the Trade Union law 2012. Accordingly, Decree 43/2013/NĐ-CP guides the implementation of the role of trade unions in representing and protecting the legitimate rights of workers. See further in:

http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=167411.

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officials offered different views on this. An official in the Ministry of Trade,[11] for example, said that cadres cannot explicitly protect workers when their rights are violated because "they are paid by employers so they fear to lose their job when they organise strikes or otherwise act to protect workers against employees' interests." On the other hand, cadres at enterprise level seem happy with a role for unions as defenders of the rights of workers according the law. One official said this, in discussing the role of unions in organising strikes:

> It would be very good if we paid more attention to employers' rights, and I found a very interesting point in the new Labour Law i.e. the amendment on strikes. Previously, employers only allowed workers to take days off, but now they are allowed to close down if strikes cause financial losses and have other adverse effects on business. That has been a good move in protecting employers.[12]

As noted, since its Constitution of 2008, VGCL added a new mandate for trade unions to maintain harmonious relationships. This mandate was introduced due to the needs for stability of business operations and trust in labour relations after the thousands of strikes[13]that occurred during 2004-2008. It is worth pausing to reflect on the notion of 'harmonious labour relations.' Although there may be sub-texts to this form of wording it is probably reasonable to take the phrase at face value. The CPV recognises that unstable relationships between employees and employers, as represented for example by strikes, are not conducive to investment and economic growth. Strikeswere even viewed by the CPV as threats to public and national security.[14]Some union officials are, however, supportive of this new mandate that aims to harmonize labour relations. A trade union leader at VGCL noted, for example:

[11]Interview # 4 [dated 8/8/2014]
[12] Interview # 3 [dated 14/8/2014].
[13]As noted, strikes in Vietnam are still considered to be illegal because they are not organised by trade unions and thus not inline with strike organizing procedure by law.
[14]Since 2006, there have been cases (e.g. Nguyen Van Dai, TrầnKhảiThanhThuỷ, LêThịCôngNhân, Nguyen Hong Hai) considered to be opposing government because they called for the establishment of independent trade unions and stood for workers' rights, including the right to strike. Some organisers were convicted of crimes against 'national security' under provisions in criminal law, such as Article 79 "opposing the people's administration," Article 258, "abusing democratic freedoms to infringe upon the interests of the state," and Article 88, "conducting propaganda against the state."

"Marxist ideology is not so heavy in practice anymore and there exist exploitation and social divisions in the market economy. But to solve it, we need to maintain harmonious labour relations." Such leaders see the need for unions to transform themselves so as to be effective mediators between businesses, government and workers in support of the market economy. This new mandate can help the VGCL to distance itself from the Party and State ideology in response to the needs of workers in the market economy. Explicit though in State support for the VGCL is a concern that workers are well treated by employers and if this is the case then industrial unrest will be minimised.

5.3.3 Functions

It will be clear by now that the VGCL has an important position in Vietnamese society (the workforce) and the State political structure. As such the VGCL serves a dual function that implies a potential weakening of its capacity to serve both mandates. For the VGCL, protecting workers' rights is only one amongst many objectives, which include "stabilising production and business, seeing to the rights and the benefits of both sides in labour relations and of the State."[15]

Figure 1.1shows that there is one trade union system but that unions are decentralised by branches and units, under the top leadership of VGCL. Unions in sectors and ministries have interests and policies to promote industrial production. These unions are also assigned to develop membership within ministries and their organs. The focus is mostly on the interests of State officials as well as on implementation within ministries of union policy and plans i.e. State companies and other corporations falling under the supervision of the Minister. Even in the same industrial sector, a Ministry's union does not necessarily involve itself or connect with other unions in companies (both private sector and FDI) that register and are located in cities and provinces regarding conflict resolution or strike organisation. Rather, these unit or enterprise unions operate under direct guidance of provincial, district or industrial zone unions.

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At provincial level, there are federations of labour (Liên đoàn lao động tỉnh thành phố) and at district level the peak body is called *Công đoàn cấp trên trực*

[15] Communist Party of Vietnam, Decision 5A/NQ-BCH 7/7/2005.

tiếp cơ sở. These are branches and administrative units of VGCL. There are full-time union cadres with the tasks of: (i) developing membership in enterprises and other employment units; (ii) monitoring compliance by employers with labour law, insurance, working conditions, including health and safety; (iii) provision of legal advice to union leaders. Provincial and big city unions are more in charge of implementing policies related to legal aid, dissemination of information about laws, harmonious labour relations, gender issues, housing, kindergartens etc. They also defend the interests and rights of workers, develop membership through establishment of new union units, organise national movements at local and enterprise level and do other ideological work or attempt to solve various social problems.

Unions at district and industrial zone levels are now delegated to guide 'grass roots' unions to implement tasks, develop skills for union cadres, provide advice to enterprise management and solve conflicts. Unions at district level differ in their roles from a ministry's union. One cadre avers that a district union can function better than a ministry union because district unions are not involved in production (i.e. business). However, enterprise level unions still expect higher-level unions to function more effectively with stronger linkages and better capacity to support enterprise unions. One union leader in a joint venture company considered that the roles of unions at industrial zone level and district level are quite limited.[16]The higher-level union cannot create incentives and engender purposefulness for enterprise-level unions, he argued.

At enterprise level, by law and regulation, union leaders typically have multiple functions: (i) representing workers at unit and factory level in rights claims; (ii) defending workers' rights by filing complaints with employers and initiating court cases; (iii) organising strikes as a collective right; (iv) participating in tripartite dialogues with employers, workers and government. However, most union leaders at enterprise level are working on a dual status basis: as a paid employee and as a union representative. These dual roles limit the capacity of leaders to be more innovative and active; a matter that will be analysed below (Section 5.3). The position and power of enterprise trade unions after Doi Moi changed because, in the process of restructuring, union officials became paid employees of enterprises, contracted and appointed by

[16]Interview #16 [dated 21/8/2014].

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employers instead of being State workers, as in SOEs. Currently, in most cases, enterprise union members are no longer in management teams, unlike the situation in SOEs. They may therefore not have the power to negotiate on management issues related to workers. In factories, the capacity of unions has been increasingly challenged because they have to deal directly with issues in work places working with both management and workers. In one sense, companies have resisted unions. The work relationship between this level and the enterprise level can be problematic since enterprises are not encouraged by management to establish unions or to recruit more members. In another sense, there are more conflicts at factory level, especially around wages, working conditions, bad treatment by management etc. Workers furthermore demand that unions resolve their claims around wages, working hours and working conditions.

Because in many companies and organisations trade union representatives are paid by employers, unions at enterprise level cannot easily have strong and independent voices. This limits them when they have to negotiate on behalf of workers' rights and interests, even critical when rights are violated systematically and no grievance mechanism. Enterprise unions thus face a dilemma in persuading management to implement good policies for workers in responding to workers' demands. In reality, many cadres have been unable to resolve the dilemma in fulfilling their mandates.[17] In many cases union cadres are dependent on management. This inevitably means that it is more difficult for cadres to negotiate with management on behalf of workers. This also limits union representatives at enterprise level in representing workers based on their needs and demands. One interviewee said that since she is the Chairperson of the union and also a (senior) member of the company's management board, she cannot act in the interests of workers alone.[18]

Despite limitations on unions in many enterprises, because companies pay salaries of union staff as employees, there are cases where union cadres make their own plans, as agreed to by members and management. This happens more in the private sector, including joint venture companies, where cadres are capable of both working and defending workers' interests before management. In an interview at Long

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[17] To understand how this dilemma is resolved in practice would require detailed case studies of dispute resolution, work that lay beyond the scope of the thesis.
[18] Interview #1 [dated 13/8/2014].

Hai JSC it was stated that the Board of Directors does not interfere with the union's activities so that it is independent in making decisions.[19]The cases referred to above indicate that the power of unions at enterprise level depends on how enterprises choose to operate and how individual leaders apply the mechanisms provided by the law. In some cases, leaders choose to work within the line of management whilst some create an independent mechanism and even have themselves elected and paid for from trade union fees (see s.5.3.2).

Despite these constraints, several factors, including legal changes, empower unions to function more autonomously at grassroots level. First, as noted above, trade union law mandates them to represent workers in collective bargaining.[20]The mechanism requires management to listen to the voice of workers through the union in periodic meetings. Enterprise level unions are mandated to organise workers meetings and annual rounds of collective bargaining. Union representatives at enterprise level are becoming more professional. Conflicts can still nevertheless occur because accompany manager did not consult with workers but required a union leader to sign an agreement. This occurs even when both management and union leaders sit on management boards and/or are CPV members.

Secondly, as provided for by law and clearer regulations, unions are authorised as legal entities to organise strikes.[21] It has, however, not been possible to identify strikes led by unions (Chapter 7). Union officials seem to accept strikes as the law provides but they are still hesitant to organise them. Instead, VGCL instructs its branches to find other ways for protection, including dialogues. A senior VGCL official said this:

> Trade Unions should dialogue with management, and orient for workers. If a conflict is not solved, only then they should organise a strike. Dialogue is a better way to resolve conflicts. Therefore, we developed the current labour law that there bi quarterly dialogues within enterprises or dialogues

[19]Interview #15 [dated 21/8/2015].

[20] Even under the 1994 labour regulation, collective agreements were required to be developed and signed off by the enterprise director and union leaders. But there was no clear mechanism on how to do it.

[21]Ref. Trade Union law 2012 and Labour Code 2012.

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resulting from adhoc requests.[22]

Nevertheless, through dialogues or negotiation, trade unions are empowered and have become more confident in confronting management (as shown in Section 5.4.3). This is an important step to making them more confident in organising strikes when they are demanded by workers unable to negotiate resolution of issues.

Thirdly, it should be noted that union representatives, at enterprise level, are elected by workers. This suggests that they independent and have more authority in bargaining with management because they have workers' support. Under the old model, there was a nomination process to ensure that union leaders had the trust of workers. Union leaders were often Party members and thus only appointed with the approval of Party committees at enterprise level. The new law has defined a new role for grass-roots unions that requires them to be more democratic in electing union representatives; including not relying on party membership as a criterion. As union cadres at grass roots and higher levels (district) deal with more disputes, they are expected by members to have the capacity to handle tensions and to organise strikes when necessary.

To conclude this section, with all of these changes, trade unions in Vietnam have clearly become more orientated to protection of rights and interests of workers. Although VGCL remains an important organisation under the CPV, it now functions in different ways in order to cope with changing economic, workforce and social structures, and changing social expectations that require better defence of labour rights and interests. In their dual roles, whether elected or appointed, union leaders in enterprises need to be able to transform themselves so as to be capable of dealing with the demands of both workers and management.

5.3.4 Strategies

Although the role of trade unions at higher levels does not seem to have changed much over the years, since the VGCL has had changes in mandate, they also have had to transform with new coping strategies and working methods. Especially in

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[22] Interview#6 [dated 12/8/2014].

the practice of unions at lower levels, the changes have been radical. In the current term, priorities and strategies of the VGCL[23] are:

- To raise awareness among workers and union staff about legal mechanisms and polices directly related to their rights.
- To improve the protection of rights through dissemination of laws and legal aid, so as to make employees aware of their rights and to help them defend them.
- To develop models for grass-roots and professional unions, so that they can organise themselves and operate in appropriate ways within enterprises, especially in the private sector, but also for informal workers.
- To monitor implementation of policies related to the workers, in particular in matters of salary, CBA, labour contracts, policies related to workers during restructuring of SOEs, social insurance, medical insurance and the policies for female workers.

The VGCL nevertheless retains its traditional mandate: "to take care of workers in both their working and private lives" The organisation's broader goal is to improve the socio-economic situation of Vietnam's citizens. In doing so, unions encourage employees to work well so as increase their productivity. Therefore, the Party and trade unions take on many types of campaigns and propaganda in industries and in factories such as 'do not give birth to a third child,' 'fulfill all targets,' such as those related to 'workplace culture', 'be a good person, do good deeds', 'be a good worker', etc." These phrases/exhortations may seem odd to western readers. In the Vietnamese context, however they are probably best read as rather naïve hangovers from past approaches to political communication. Perhaps they signify an effort by the State to cajole workers into quiescent support of the new economic regime. On the other hand they may simply be read as calls to good citizenship.

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[23] Represented in decisions and action programmes such as the Decision 5A/NQ-BCH dated 7/7/2005 about strengthening law related tasks of the LU in the new situation, Decision 04/NQ-DCT 3/4/2006 about strengthening the dissemination and education work of LU in the new situation, and Action programme of VietnamTU to implement decisions of the 10th congress of the Communist Party (Paper 1245/TLD dated 1/8/2006)

5.4 Change From Within

The power of unions depends not only on the roles they play in political and social structures and the political system. Their success also depends on the extent to which they can extend their roles and better empower themselves within the framework that governs their behaviour. Organisational changes are required - related to leadership, financial and capacity to act based on influencing power over political regime and their membership- if unions are to build their power and, if they wish, to push boundaries to change power relations or to otherwise enhance their reputation in society.

5.4.1 Leadership

The top leadership of VGCL continues to be important and plays a key role in the Party. At the CPV congress after national reunion in 1978, Nguyen Van Linh became Secretary General of the CPV and Chairman of VGCL. He was succeeded in 1983 by Nguyen Duc Thuan who was a member of the Central Committee of CPV. In 1988 Nguyen Van Tu took over, to be followed by Cu Thi Hau in 1998 and by Dang Ngoc Tung in 2008. From Nguyen Van Linh up to the present many leaders have been from the south of the country. They are thought to have more liberal mindsets about reforms.[24]

However, even with progressive attitudes towards reform, VGCL leaders remainCPV members - they hold dual leadership positions. On the one hand, their positions are within the regime and confer strong power and support in the political system. On other hand, they are VGCL leaders, elected by trade union members. Althoughin fact Vietnam has gradually moved away from its orthodox regime and manner of government inasmuch as union leaders do not now need to be Party members.[25]

The cumulative effects of this process have been loss of trade unions at enterprise level and the undermining of the concept of the workers state (Evans, 2004).

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[24]Although this research does not focus on analyzing leadership with in-depth interviews of individual leaders of trade unions over time, the indication from VGCL's leadership from the South and their mindset strongly suggest momentum for reform involving institutionalchanges of VGCL and trade union systems.

[25] As noted in the speech of ex-General Secretary of CPV, Nguyen Van Linh

The raising of capital in the process of privatization has been a strong contingent trend. In the early period of the modern Vietnamese state, the state and workers held 80-100% of the shares in SOEs. This made workers feel that they were the 'real owners', as per Party leader Do Muoi's characterisation of "workers as masters". As Doi Moi unfolded, the proportion of shares in companies owned by workers dropped. In 2001 the figure was only 35% (CIEM 2002).[26] As a result the power of directors and management increased together with stronger influences by other shareholders. However, similarly to more orthodox regimes, the union is required to be loyal to the Party. This remains a dilemma for trade unions.

Vietnamese unions differ from both traditional communist unions and unions in democratic countries in that they are much more dependent on management. Even when the enterprise union leader is a blue-collar worker rather than a manager, their salaries are usually paid by the enterprises Most of trade union officials at the enterprises are paid by enterprises so they are bound by being loyal to the employers, instead of standing up for rights and interests of workers. Due to the special situation in which the local union leaders are paid by the enterprises, so if they criticize management too much, they risk losing their jobs. This is the major cause that prevents the unions from being as tough as they could be in defending workers' rights and interests (Nguyen, 2001).Of course, in capitalist democracies, enterprise-level union officials still might have some of their salary paid by their enterprise, but local union leaders in capitalist democracies rarely come from management and often at least part of their salary is paid for by the national union (at least covering the part of their time that is devoted to union work). From this viewpoint, some union representatives when interviewed still want to be company employees. They expressed that if they became professionals, receiving salaries from the trade union system, one is likely to be seen differently from other workers and be regarded as an outsider. In many cases, union leaders at enterprise level fear that when they stand up to voice a grievance or to make demands on the side of workers they lack independence from management as paid employers. In addition to the hesitance by union representatives themselves, as many noted, management is often unwilling to

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[26]Central Institute of Economic Management(CIEM, 2002 Report).

encourage the link and such support from higher-level unions. There is a fear that if cadres are professional and fulltime, they will report to provincial or district TUs and will not belong to enterprises; or else only problematic enterprises with labour disputes are seen as needing permanent professional union cadres.

There are nevertheless some changes in practices that allow unions to operate with less control by the Party. As of now, the Party only pressures local unions to recruit new members for the Party so that at least one person from each local union will eventually join the Party. Changes have been made due to enterprise settings required by a free market economy, whereby private and foreign invested companies are not willing to establish both the party cells and unions within their management, nor letting Party members and trade unions into management, union leaders face difficulties in playing a leadership role. There are even cases of conflicting roles where individuals are both union and Party members. One interviewee from Hai Duong province[27]stated that she is the deputy director of the enterprise, whilst at the same time being the deputy secretary of the Party and chair of the grassroots union, as well as a member of the city TU executive committee. Another former head of a grassroots union at a joint-stock company partially owned by a Japanese firm became secretary of the Party organisation at the enterprise-level but had to leave the union in order to do so. The separation of union cadres from enterprise management under the SOE model means that officials are no longer required to be party members and this has given cadres more confidence to voice up and raise issues on behalf of members.

Because of privatisation in enterprises, as result of which many union representatives are no longer in management or CPV members, even when the VGCL retains the role of top-down guidance to lower levels in the system, it is not easy to guide unions at enterprise level. Nominations of union leaders are often made by management (many come from human resources departments). In fact, the heads of enterprise unions are often managers. So they are more loyal to management and only conduct activities as per guidance or agreement of management(Clarke et al., 2007). By this practice, it seems VGCL has to struggle with guiding at enterprise level.

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[27]Interview #U17 [dated 21/8/2014].

5.4.2Capacity

As analysed above, legal changes and changes in the mandates and functions of VGCL and trade union system do not guarantee how it functions. The transformation and strengths of unions are not based solely on whether they are more or less backed up by the Party, by law and by practice. They also need the capacity to act effectively. One interviewee noted that: "VGCL focussed heavily on capacity building for higher level cadres, but not grass roots and enterprise officials. Therefore the capacity is not the same – it makes it difficult to make changes in trade union approaches."[28] The success of reforms depends on the capacity of trade union leaders to exercise new functions, such as negotiating with management, protecting and defending rights, organizing strikes, etc., which will be further analysed in Section 5.5. This section analyses positive changes and challenges to the capacity of unions.

Changes in capacity to deliver and respond to members by unions come from changes in attitude and awareness about new roles. The second phase of renovation of VGCL, from about 2003, witnessed positive changes in cadres' attitude to operating in the new economic setting.[29]

Although VGCL established a large-scale programme in capacity building, it does not seem that there are enough opportunities for union cadres at grassroots level to benefit by improving their leadership skills.

Union cadres are fully aware that they need to respond to members' needs. They need capabilities to do that by being close to members. A union representative at a foreign invested factory put it thus: "we must be dedicated to the collective good, and we must understand workers' needs and wants. We must gain trust from the workers, so when we say something, they respect and listen to what we say."[30] Being close to workers allows them to work in a more united and collective manner before management. But this change indicates empowerment of union representatives in many other enterprises and enables their members to understand what they can do.

As a matter of fact, changes in attitude and capacity of union cadres were more obviously seen at the grass roots/enterprise level and in foreign invested and private sectorswhere union leaders are more confident to voice issues to management.

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[28] Interview #U2 [dated 8/8/2014].
[29] Interview #U4 [dated 8/8/2014].
[30]Interview #U16 [dated 21/8/2014].

A senior union official at the Ministry of Trade indicated states: "In joint venture companies, Trade Union officials may dare to raise their voice."[31] Trade union leaders, for example, in many cases dare to ask for salary raises, decreased working hours, better benefits, meals, hygiene and safety, etc. They refer to the law and negotiate with management before any conflicts occur. This indicates more trade unions, especially in private companies, work on behalf of workers, albeit in a moderate way through dialogue and negotiations.

Increase in trade union capacity can also be viewed in terms of changes in competence and confidence in dealing with management to protect and defend the rights of union members and workers. One ministry-level union official revealed that:

Regarding its quality, the capability/competency of Trade Union cadres at grass-roots level is low and limited; it does not meet with the demands of Doi Moi. The roles of Trade Unions in joint ventures and state owned enterprises are limited. Most of the time the unions know about the problems and yet they still ignore them. They also depend much on higher organisations and leaders.[32]

As many interviewees noted, even when they are union leaders in enterprises, or part of management teams, he/she cannot act for the interests of workers alone. They need to work 'in committee' as this is how unions are organised at enterprise level. Because of limited personal capacity, and lack of training provided by VGCL, union leaders often seek support of higher-level cadres when they have to deal with major conflicts at work. Unions in private companies have not been so effective so there have been many strikes. Unions are typically seen as passive and unresponsive to changes, especially to strikes and labour disputes.

There are several reasons for the limited capacity to act of cadres at enterprise level. First, they lack confidence in negotiating with management because they are not professionally trained to be union leaders. Interviews confirm that this is perceived as a barrier to effective functioning: "Since we are not professional union cadres, we don't have much professional knowledge."[33] Second, cadres feel they are not fully independent of management. Moreover, union representatives do not think that union leadership can be a profession holding fully independent status. Third,

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[31] Interview #U4 [dated 8/8/2014].
[32] Interview #U4 [dated 8/8/2014].
[33] Interview #U16 [dated 21/8/2014].

unions at enterprise level lack prompt support from higher-level unions, especially in case of disputes happening on the ground. "And as far as I know, the VGCL, based on a report from a provincial union, decides that they would only assign a specialized union official to companies that don't do union work properly, or let labour disputes happen." Lower-level unions depend on higher levels, in a centralised and bureaucratic manner. Interviews showed that many local union officials are not so responsive and active. Although they rely for guidance on higher-level unions in activities and planning, they commented that the guidance is typically bureaucratic. As a cadre in Hai Duong industrial zone puts it: [34] "My higher union is the city union. They send us the main tasks by documents so we implement those tasks by the month, the quarter or the year. We combine those tasks with our specific conditions to implement union activities." Especially in equitised companies, this practice is common. In many ways, it limits cadres' capacity to deal with complaints and disputes promptly. Fourth, the mechanism to protect trade union representatives as provided by law is not fully enforced. As a union official put it: "union cadres at enterprise level can hardly protect anyone now because, in the case of a worker being fired, even VGCL cannot intervene".[35] A union representative in an enterprise in Hai Duong Province, for example, said this:[36]

> I know the law very well. But we cannot be too intense/confrontational; instead we have to find the right words to keep balance/harmony, even when we know that employers are violating the law, because they pay our salaries. Even if we get the city or province's union, or an inspector or the Department of Labour, involved, we cannot accuse the employer of being wrong. The most that can be done is to make the employer pay compensation.

Other interviewees supported this viewpoint.[37]Some union representatives in business enterprises, whilst noting their awareness of this provision, fear that the

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[34] Interview #U15 [dated 21/8/2014].
[35] Interview #U2 [dated 8/8/2014].
[36] Interview #U16 [dated 21/8/2014].
[37] Interview #U5 [dated 13/8/2014]

law is not enforced properly to protect them. Lack of a protection mechanism for officialsrenders them dependent, or partly dependent, on management and thus limits theirwillingness to stand up on behalf of workers. Fear indicates lack of confidence in confronting management. Rarely has there been a case wherea union representative has taken a case beyond the confines of the factory, let alone led a strike, even when demanded to do so by workers (see further in Chapter 7).

5.4.3Membership

Increasing union membership is one of the resources for re-empowering the labour movement and enhancing union capacity (Lévesque and Murray, 2002). Facilitating and encouraging academic research on trade union recruitment techniques, organisational changes and outcomes with regard to the composition of membership is undoubtedly worthwhile for assessing the 'political geography of union organising' (Herod 1998). The growth and diversification of Vietnam's economy and labour force have entrained substantial changes in the mind-set of workers in terms of the meaning and value of unions. Urban workers have become more aware of their rights and more confident in negotiating directly with employers. Factory workers can choose to work where wages and conditions are better. Unions thus become nominal organisations whose purpose is not very clear to workers who are accordingly not eager to join.Increased membership is conventionally a first step towards a better understanding of "the link between union structure, practices and effectiveness" (Fiorito and Jarley, 2010, p.78). This argument leads to analysis below as to how the VGCL has addressed the challenge of maintaining membership after Doi Moi with less Party control over the business sphere in a more open market economy.

The situation under DoiMoi, and the resultant flourishing and diversification of the economy and concomitant changing demand for labour, has created new challenges for trade unions in terms of membership recruitment. As is the case in other countries, VGCL and itstrade union system are facing challenges in recruiting new members by stimulating interest and trust from workers. As one senior cadre, in an equitised company, puts it: "Recruitment in the past was very easy, but TU members now are a bit different. Privatised SOEs are used to the presence of the

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TU. But in private companies, recruitment is quite difficult."[38] As a matter of fact, the CPV is still demanding that trade unions recruit members.[39]VGCL set a mandate and target for recruiting members.[40]This is a high priority and serious attention to it is demanded of union officials at all levels. A VGCL leader holds the view that "membership development is important and an objective of trade unions."[41]

From the point of view of workers, union membership is generally unattractive. One reason is that workers have little understanding of what unions can do for them. A union representative at a joint venture company said:

> Many employees haven't recognised the strengths of the union, therefore they haven't joined. In my opinion, the weakness is the coordination between the higher-level union and the managers or authority of the companies. They (the leaders of companies) still see the union only as a nuisance.[42]

The fact is that many workers, in interviews, enunciated a lack of interest in unions because they feel that unions have not been protecting their legitimate rights when these have been violated by employers. One chairperson at a Ministry of Construction Trade Union said that: "recruiting union members voluntarily will become more difficult because workers do not think unions are necessary and cannot protect them."[43]When workers want union representatives to stand up and organise strikes in order to claim their entitlements or secure fair shares for members, unions are seen as passive and unresponsive to such demands. Interviews with union representatives at factory level confirm this point.

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[38] Interview #U12 [dated 14/8/2014].

[39]Resolution 20/NQ/TW, 2008: "We need more means to strengthen and develop party members in private enterprises, and FDIs". [Có nhiều hình thức tăng cường và phát triển đảng viên tại các doanh nghiệp của tư nhân và doanh nghiệp có vốn đầu tư nước ngoài, làm nòng cốt xây dựng tổ chức cơ sở đảng, công đoàn, Đoàn Thanh niên Cộng sản Hồ Chí Minh vàHội Liên hiệpThanh niên Việt Nam]

[40]Between 2008 and May 2012, approximately 3 million new members were recruited out of a total union membershipof 7.7 mil. This result exceeded target: 562,921 in 2008, 580,715 in 2009, 638,908 in 2010, and 813, 376 in 2011 (VGCL. Report to XI Congress, 2013).

[41]Interview # U6 [dated 12/8/2014].

[42]Interview #U3 [dated 14/8/2014].

[43]Interview # U5 [dated 13/8/2014].

The VGCL especially faces difficulties in attracting workers to join because union membership is voluntary. Given Vietnam's socialist orientation, it is interesting to note that membership of a trade union is not compulsory for Vietnamese workers – employers are only obliged to facilitate the formation of a union within their companies if so requested by their employees. However, workers have no opportunities to form their own unions. Under Vietnamese law, as noted above, the right to establish unions separate from the VGCL framework, is not recognised.

Another reason that workers do not want to join unions is resistance to union fees.[44] Whilst workers see no significant role for unions, either in protection of rights or in solving conflicts, they do not see fees being used on their behalf.

There are challenges for VGCL to maintain and recruit members in the context of private sector growth where union membership is not mandated by law. Even though the VGCL has been effective in changing the law that requires all enterprises to set up trade union units, they also face the increasing demand of workers to be more effective, so that workers are willing to become members. Thus, in order to provide strong safeguards for the trade union system, thelabourlaw and trade union law, require all enterprises to have trade unions established although workers can choose not to join them. Whilst interviews reveal no evidence of unofficial pressure for people to join unions, difficulties in setting up new unions, and getting workers to agree to requesting establishment of a union, were reported.

Legal guaranteesare clearly not the solution to ensuring that unionism thrives. Unions need to reform themselves to meet the demands of workers. A senior VGCL leader points out that: “the challenge in membership development is to meet demands from workers. Pursuit of higher levels of membership demands union officials in good numbers and competence. Chairs of unions should be able to lead. Representatives especially need to have the capacity to solve conflicts and

[44]Under the 2012 Trade Union law, the fee is now regulated to be 2% of wages that the company is responsible to pay. But the fee is normally sent up into the VGCL system. The enterprise level union can only retain 30-40%, depending on numbers of members. There have been heated debates as to how fees should be used by VGCL during the law making process in 2015. Many legislators did not agree with the use of fees being paid into VGCL compared with the expected role VGCL to protect rights of workers that is viewed as not being effective (e.g. View of Mr Huynh Nghia from Da Nang). See further:http://www.vasep.com.vn/Tin-Tuc/50_19367/Kinh-phi-cong-doan-tu-dau-lam-gi.htm [accessed on 30 August 2014].

problems."[45] This indicates that VGCL needs to have a strategy for change and to build capacity and skills for trade union cadres, perhaps by allowing strong candidates to be elected by choice of workers rather than appointing them by a decentralised system of human resources. Also indicated is that VGCL at all levels has had to make changes to its work practices,as is analysed next.

5.5 Changes In Practice

The rules promulgated by the State to frame the trade union system, which were analysed in Chapter 4, have morphed unions into taking on two new roles: as mediators between state and other actors, such as workers and businesses, and as advisors on state policies with regard to labour issues and representing their members. The call for renovation in working methods may have taken time to 'kick in' and VGCL has taken initiatives to gain more status with the state and more bargaining power with enterprise management (the management). At the same time, it is crucial for VGCL to become attractive to and to gain the trust of current and future members. The following section analyses why and how unions s have made changes in their relationships with the State, management and members.

5.5.1 Relationships with State

As noted, the VGCL is mandated a number of important tasks, including participating in state management and policy-making, implementation of state policies, and supervising state agents and economic entities.

The State delegates the implementation of policies to the VGCL. While policies affecting the welfare of citizens, notably wages, working and living conditions, should be the State's responsibility, instead, trade unions are left to battle it out with management.[46] At the same time, unions are faced with increasing demands

[45]Interview #U6 [dated 12/8/2014].

[46] Ref. Mr Hoang Ngoc Thanh,who quotes an evaluation report of Decree 20: "the State needs consistent policies on the working class to deal with emerging issues e.g. wages, health care, housing etc." [Nhà nước cần xây dựng, ban hành cơ chế, chính sách cụ thể hóa những quan điểm, chủ trương lớn của Đảng về GCCN. Trước mắt, cần ban hành chính sách đồng bộ, khả thi tập trung giải quyết những vấn đề bức xúc, cấp bách hiện nay đối với công nhân như: Tiền lương, thu nhập, chăm sóc sức

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by workers to support their claims. In many case, the State wishes the union to negotiate the provision of non-wage services, such as, health care, housing, kindergarten, cultural activities with the management, which becomes more burden for trade unions especially at enterprise level. While the responsibility of ensuring welfare policy for workers lies with the state, the VGCL and the Insurance Agency now share the responsibility of implementing the law on Social Insurance. These organisations were in fact actively involved in constructing Social Insurance Law and Minimum Wage Law. When it comes to needed policies, especially in the field of social security, such as housing for workers, VGCL also promotes and recommends for social housing policy.[47] A notable success of this policy comes into a legal binding document on housing for the workers.[48]

VGCL has become active in lobbying for policies that favour its position and mandate. Since the trade union system is a socio-political organisation, like other mass organisations it is favoured in such advocacy. The Head of the Women's Affairs Department of the Hanoi Labour Union averred that unions have a special position amongst the mass organisations, in as much as "our members have the power to directly affect the policies of the government. Members of other organisations don't have direct influence."

As a result of privatisation,a significant change in the 2002 legislation finally eliminated the fiction of 'workers as masters of production', a fiction that had been at the heart of labour relations. However, some enterprises have become entirely private because their stocks are purchased by a small number of individuals. Since members of boards of directors are determined by percentage of shares owned, a union

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khoẻ, nhà ở, nhà gửi trẻ, thiết chế văn hoá...;thường xuyên thanh tra, kiểmtra, xử lý kịp thời các hành vi vi phạm pháp luật về lao động và công đoàn, xâm phạm quyền lợi CNVCLĐ].

[47] According to the government survey, numbers of migrant workers in industrial zones will be approximately 7.2 million by 2020. This implies a huge need for low cost houses or apartments.

[48] Resolution 18/NQ-CP dated 20/04/2009 of the Government on housing for students and workers in industrial zones. Read more at http://www.xaydung.gov.vn/web/guest/home/-/legal/2pBh/vi_VN/18/29577/37. Also Government Decision no. 66/2009/QĐ-TTg about the development of workers in industrial zones. Read at : http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=12202 [accessed on 1/10/2014].

As a result, the Government decided to allocate VND30.000 bn on credit to construct houses for the poor and workers.

cannot be aboard member according to the Enterprise code.[49] VGCL was then influential in the development of a policy to sell shares to employees.[50] A notable case was where the VGCL persuaded the Government to sell 40% of shares to workers when SOEs were equitised. The Union also wanted to protect workers from risks of being laid off, as a VGCL leader in policy department shares.[51]On the economic and production side, under the Doi Moi policy, equitisation started on a pilot basis in 1992.[52]

When it comes to influencing policies, the VGCL has an advisory mandate to the Party and the Government and union officials. As such, it has influenced law and decision-making processes by building more weight for its advisory position from below. Although policy advocacy comes mainly from VGCL at national level, VGCL has changed more to work from the bottom-up in policy advocacy and recently provincial unions have actively participated in law making. Grass-roots unions, in particular in enterprises, which are still under the supervision of the State and the Party, and/or strictly follow the Party's guidance policies, are seen to have been unable to influence policies. When VGCL made recommendations to legislators, such as on Trade Union and Labour Code law amendments in 2012, they consulted local-level unions and members before proposals were submitted to the government and National Assembly. A Dong Nai province union official points out that the local union there participated in policy making by providing feedback from union members on the Labour Code amendment in 2012, discussing issues around a social insurance mechanism and by participating in tripartite dialogues. VGCL also advocated for a Policy for Women Labourers to be provided in the Labour Code. This is because unions engage with a part of the economy. Thus, union "members are directly involved in developing policies, or are leaders themselves." Another union cadre

[49] Chairperson of VGCL Dang Ngoc Tung shares the view that privatisation is a good policy, because many state enterprises improve after privatisation.Sourced from Newspaper: Saigongiaiphong, November 12, 2009, page 2 [read 19 September 2014]. "Issues for equitised companies" ["Nhữngvấnđềđặtratừcácdoanhnghiệpcổphầnhóa"] MrĐặngNgọcTùng, Chair of VGCL: Trade Union representative need to be in the board. [Côngđoànnêncó"chân" tronghộiđồngquảntrị].

[50] Ref. Decree 64/ND/CP dated 19 June 2002.

[51]VGCL requested a policy on selling shares to workers and employees. In 2011, the Union proposed that when SOEs are privatised, some of the stock should be set aside for workers (Nhi, 2011). The government eventually accepted this proposal (*Government Decree No 59/2011/NĐ-CP and Decree*189/2013/NĐ-CP).

[52] Ref. Decision 202-HDBT, June 1992.

(representing employees at the Ministry of Trade and Industry)[53]notes that the VGCL has had great influence in getting a list finalised for different types of occupationally related illnesses. The Head of the Women's Affairs Department of the Hanoi Labour Union claimed that her organisation's biggest success in influencing policies was their ability to eventually get the government to increase maternity leave to six months after the government had shortened it to four months in 1994.

One of the senior official at VGCL said[54] tried to influence a variety of policies affecting workers, ranging from how to privatise enterprises to increasing the minimum wage. The policy on minimum wages and the mechanism to negotiate on wages with the business sector was at that time vague. Unions had far less power to negotiate on behalf of workers than is the case now. In those earlier times the VGCL did nevertheless advocate for a statutory minimum wage, after promulgation of Party Resolution 20 in 2008 that regulates the minimum wage.[55] Today the VGCL acts as core member in the National Wage Council. It thus actively participates in wage negotiation and can influence policy by having a firm position from which to negotiate with State and the management.[56]At grassroots and enterprise level, however the CPV's Youth Union and trade union voices are not strong enough to influence the implementation of Party policies where these directly affect workers.

Another way that the VGCL works to influence law and policy making is to reference international cooperation and international laws. At interview a VGCL leader noted[57] that the VGCL has established strong priorities in its agenda to change the law. Cooperation with international partners –such as ILO, UNDP, Norwegian Government - help the union to argue for laws to be more relevant to workers rights. Learning from trade unions around the world, the VGCL advises lawmakers on mechanisms to protect union staff, wage systems and collective bargaining mechanisms. The same official added that the two most successful pieces of work that the union had achieved during the previous five years had been "to influence law making and to better represent workers". She further noted the importance of advice

[53]Interview #U4 [dated 8/8/2014]
[54] Interview #U6 [dated 12/8/2014]
[55]Read more at http://dddn.com.vn/chinh-tri-xa-hoi/khang-dinh-su-menh-cua-giai-cap-cong-nhan-20130426040018499.htm [accessed on 1/10/2014].
[56]Interview # U6 [dated 12/8/2014].
[57] Interview # U7 [dated 13/8/2014].

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from trade unions of other countries to the effect that: "The Trade Union should transform as per the role of other countries' trade unions, to be independent. Trade Union should be more professional following international trade union practice." The example of other countries was emphasised as a model for progress, notably Poland's Trade Union that formed a political party and engaged in politics.

Seldom has the VGCL stood up to publicly criticise State policy, instead lobbying for policy in favour of their institution's status and members' benefits. However, it was found during processes of Constitutional amendment and Trade Union law amendment in 2012, that some political views were expressed to demand the right of the Trade Union to petition the state – as it has been mandated to "supervise and monitor the implementation of policies by state agencies as a socio-political organisation." Some argue that the newly amended constitution should empower trade unions to be even more independent in order to fulfill its mandate of protecting the rights of workers.[58]

In sum, as the VGCL often faces difficulties in fulfilling its delegated mandate, trade unions are opting to change their working methods. At the highest level the VGCL plays the role of lobbying and advocacy for the interests of workers. Despite the stress on unions supporting the Party's goals, the VGCL now engages in much more open lobbying to change policies than unions did under the orthodox Marxist-Leninist model, in which unions acted purely as transmission belts from the top-down, in order to induce workers to follow Party policies. By influencingState and CPV law making and advocating for new policies, VGCL's relationship with the State has changed in response to State demands of the VGCL and recognition of its role in protecting rights, as analysed in Chapter 4. Therefore, the VGCL has taken firm steps to confirm its position, to ensure that laws and policies favour workers. At the same time it has strengthened its role in the political system and society at large. By

[58]This debate was sourced from media. (Title Vn: **Xácđịnhvịtríquantrọngcủatổchứccôngđoàn** Title Eng: Identify the important position/status of TUs Author: VinhHai; Newspaper: Lao Dong, March 1, 2013, no 44/2013 (9366), page 4.Dr. Pham Ngoc Ky proposed that Article 10 should identify the TU's rights to participate in the state's management activities. According to Dr. Ky, this idea is very clear and need not add any more rights because it already includes TU's interest in policies and supervision of those policies as an independent agent.

gaining more power, provided and protected by law, the VGCL and trade union system continue to become more autonomous from the State, under the rule of law.

5.5.2 Relationships with workers

As noted, the VGCL is mandated to "represent and protect legitimate rights and interests of workers". This task cannot be fulfilled if VGCL does not renovate the way it works with members. Challenges come from society and from increasing demands of workers in to deal with increasing numbers of problems at work that demand rights and equity. There are several key reasons for VGCL's changing attitude towards its members. First there are increasing challenges posed by economic liberalisation, marketisation and equitisation along with increased conflicts between managers and workers. Unions and the Party are concerned about instability and resulting diminished attractiveness to investors. On the one hand the Party requires trade unions to become more innovative and responsive in meeting the needs of its members, and society more generally. On the other hand, workers demand more of trade unions in representing them in bargaining with management. Wild–cat strikes in many parts of Vietnam between 2004 and 2008 indicated that workers did not trust trade unions to solve problems. They rather chose to strike, even though this action is illegal. Faced with this dilemma, being 'caught between two stools', the statist labour union is moving away from being wholly dependent on the State and is responding to the demands of workers by providing more legal advice, and by joining collective bargaining processes; all of which may signal stronger political representation in a peaceful democratisation process.[59] Unions are expected not only to represent employees but also to play an important role, on behalf of the state, in facilitating the participation of workers in economic and social life of the working class so they can 'own their own lives.'

The CPV instructs sets targets for VGCL on increases to numbers of members. This is not easy task. The VGCL had accordingly to change its methods of recruitment. On the one hand, they have to make unions more attractive. On the other

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[59] The 2013 Trade Union law has a new provision to enable union representatives to organiseperiodic workers' meetingsin enterprises – in order to be close to and hear from workers and thus form the basis for negotiation with management.

hand, union leaders have to gain trust by enabling democratic voting by workers. The VGCL sets goals and strategy to recruit members. Membership targets are set at every VGCL congress and membership development is one of the key mandates of VGCL throughout the whole union system.[60] To achieve this goal, VGCL implemented a programme to recruit new members, considering this goal a mission of unions as a whole, as well as identifying concrete tasks and goals for unions at different levels. Central and provincial unions, and those in large enterprises, assessed current number of union members and registered them with VGCL. Although statistics may not be entirely accurate, in 2012 there were "more than seven million trade union members in Vietnam".[61] However, the same source puts the total Vietnamese workforce at only 9.5 million; a figure for workers who work for enterprises and, as such, excludes most agricultural workers (who often form local cooperatives).

As noted above, there are legal and institutional constraints on the VGCL in recruiting members. Enterprises are required to establish unions but joining unions is voluntary. On the one hand, the establishment of new unions at local levels has had difficulties because not all local authorities support unions in enterprises since companies and investors may not like unions. There is also resistance from employers as well as workers, since joining unions means more surveillance for employers and a portion of workers' salary is automatically deducted towards membership fees.[62] Workers recognize little or insignificant benefit resulting from membership. Employers are not interested in establishing unions because they are worried that enterprises cannot meet the legal regulations for employees. Meanwhile the recent economic crisis (the 2008 Global Financial Crisis, whose effects are still felt in

[60] Membership targets are set at every VGCL congress and membership development is one of the key mandates of theVGCL throughout the whole union system. The 10th VGCL Congress in 2008 set as a goal for the period 2008-2013 the recruitment of 1,857,289 new members and the establishment of 13,691 local unions. As it happened, more than 3 million new members were recruited and the percentage of new members coming from FDI enterprises noticeably increased as a proportion of the total (2008: 69.1%; 2009: 74.4%, 2010: 77.8%, 2011: 81.1%). ref. Newspaper: Lao Dong & Cong Doan, No 517+518 (Feb, 2013), page 8, 9, ISSN: 0866-7578) Title Eng: Five years implementing the resolution of the VN TU Congress X regarding recruitment of members and establishment of local TUs. Author: Nguyễn Văn Ngàng – Vice chairperson of VGCL.

[61] Ibid. See footnote 207.

[62] If there is a trade union cell, a business has to pay 1% of fees plus 1% from workers' contributions. Therefore, many employers try to avoid unions.

Vietnam) resulted in many companies and factories closing down. The turnover rate of workers and their mobility between factories also make union members more fickle. For a long time, many local authorities have tried to 'open the door' to foreign investment with incentive policies; accordingly authorities do not adequately enforce establishment of unions as required by law. Unions at provincial level thus have a challenging task to persuade investors and workers to set up new union cells. According to Nguyen Van Thanh – Chairperson of Ha Tinh Province's union - there are over 3000 enterprises in the province but very few unions work effectively. Some unions have become more innovative in getting allies to recruit members and to set up new union units. The fact is that many provinces have tried to encourage investment by ignoring union policy when companies newly register. Thus provincial unions have had to convince local authorities to support companies in complying with the law. Ha Tinh union, for example, advised the provincial People's Committee to issue an instruction on implementing Decree No. 96/2006/ND-CP, as per government instructing Article 153 of the Labour code concerning interim union executive boards in enterprises. Notably, the District union advised the provincial committee of the Party about issuing an instruction under 38/CT-TU on strengthening leadership in recruiting new members and developing local unions.[63]

Challenges also come from the VGCL with its limited capacity, including recruiting members. Enterprise union representatives[64] at interviews confirm that recruiting voluntary members will become even more difficult because workers do not think unions are necessary and cannot protect them. The VGCL now spends more resources in skill development for its cadres and leaders to recruit members, by persuading newly established companies to agree to the establishment of union cells and to encourage newly recruited workers to become members. The VGCL also aims to develop skills to recruit on the part of all trade union cadres with a strong and clear action plan for recruitment at all levels. With this determination, over the past five years, unions at all levels in Vietnam have invested substantial resources into

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[63] Ref. Lao Dong, March 13, 2013, 54/2013 (9376), page 4. Title Eng: Ha Tinh province TU exceeds the target of new TU members. Author: Viet Thang. Lao Dong Newspaper.[accessed 1/2/2014].

[64] Interview #U1 [dated 13/8/2014].

communications/propaganda and encouragement so that workers will join unions and establish unions, especially in non-state enterprises and FDI enterprises.

Most importantly, success lies in the hands of union leaders at grass-roots levels. Therefore, they have to learn and be guided with various techniques to maintain and increase memberships. Traditionally trade union representatives at grass roots level are guided to gain more trust from members.Unions deliver social activities and support in order to gain trust from workers. In the case of the Noi Bai Industrial Zone, for example, based on interviews with union representative[65], the company gave some 20 million VND in cash to support poor workers in a programme called 'The Trade Union Home'. The same interviewee reveals that the company now try to make trade union leaders as an employee feeling good and their work is very meaningful.Union leaders now persuade employees newly joining the workforce to become union members. Most workers do not know much about union mandates; what unions can do at enterprise level for them. Interviews with union cadres at factory level reveal these techniques. When a new employee is hired, they are asked to fill out a profile with the question: "Would you like to join the grassroots union if you are hired?" Union cadres then explain the benefits that union membership will confer. There are many benefits, workers are told: for these benefits workers only contribute a small fee from their wages. Union leaders and committees also work more directly and promptly with workers on their matters and learn how to provide legal advice. Matters concerning contracts and wages can be shared and explained by enterprise unions before conflicts arise. The chair of a union at a joint stock company in the Hai Duong Province states that: "we organise activities and pay visits to our members. If there is any concern over the implementation of workers' right and benefits, we shall communicate this problem to the company's managers. In addition, we support our members in training and legal consultation."

Nevertheless, despite the strong desire of the VGCL to set targets, policies and methods of recruitment, obtaining the trust of workers is not easy. On this, changes in enterprise-level practices were radical. At enterprise level, the election of union leaders has made the process more democratic. Leaders or union committee

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[65]Interview # U3 [dated 14/8/2014].

members [66] are elected by secret vote for two years and for five years in higher-level unions. One union leader at private enterprise level said: "since the Chair of the Trade Union is elected, if s/he does not function well to protect the interests and rights of workers, they will not be elected for another next term." This point is also supported in interviews with senior union cadres at ministry level.[67]As the chair of the union in a private company in Hai Duong City puts it:

> I had a chance to attend the Workers' conference of this company and I know that before holding the Workers' conference, the union pays visits to units to listen to and collect employee's concerns. Then they make a list of employees' concerns to bring out in the Workers' Conference and then propose to the board of directors. Then the board of directors responded to each concern.[68]

Although as provided by law, workers still do not have the choice to set up their own unions recognized by the State and the VGCL. However, workers can choose their representatives by election, depending on qualities and capacities. This practice evolves in the way that union leaders at enterprise level can have greater leeway to act and a more democratic environment within which to operate. Also this practice indicates elements of participation and democracy at work.

These are important steps at enterprise level that allow workers to consider seriously their participation in decision-making processes. Workers become more empowered to participate and raise demands and complaints through the union or directly to the human resources manager. Interviews revealed that the election process is definitely allowing participation of workers. There is an annual workers convention, where workers discuss concerns and propose ideas/ recommendations to employers in an open and democratic environment. The role and tasks of the VGCL executive board

[66]At factory level there is a union committee, headed by a chairperson elected by a Workers' Assembly for a fixed term. There are also union representatives nominated by workers at production unit level who comprise the factory union committee.

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[67]Interview #U4 [dated 8/8/2014].

[68]Interview #U16 [dated 21/8/2014].

are discussed in the review conference only. The annual workers convention is held to discuss every issue between workers and employers only.[69] Debates take place here. It is where the employers listen. All resolutions, such as production goals, emulation commitments, production strategy for the next year, etc. are initiated and recommended and workers' concerns are resolved as well at this convention.

In sum, in common with trade unions around the world facing decreasing membership numbers, the VGCL and its trade union branches have made efforts to maintain and develop membership as this is seen as being crucial to their survival. Of course the VGCL has support from the CPV to act as an official organisation to represent workers. But in the changing situation in Vietnam after Doi Moi and industrialisation, the VGCL opted to change in its approach towards members, in terms of the way cadres and representatives work with members and recruit new members. Instead of delivering services and welfare as was its traditional role, the VGCL has enhanced its direct involvement with workers, by giving legal advice and dealing more with workplace conflicts. It has even opted to be more democratic in giving workers the opportunity to elect their leaders. In reality, however, such democratic practices have not been embraced in all factories and other workplaces. But such practices may continue to develop in the market economy provided that CPV members can be convinced that they are worthwhile and not a threat to Party hegemony.

5.5.3 Relationships with management

As shown in the previous section of the Chapter, it is clear that the VGCL and its trade union system have changed their ways of working with the CPV and their members. Unions also have to meet the demands of workers in their rights claims. In this section evidence is presented of the VGCL shaping to change its approach to working with management.

As mentioned, political will and the legal framework enable unions to be more independent in negotiating with management (e.g. sufficient resources to have a

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[69] Interview #U12 [dated 14/8/2014].

professional union person not employed by management, protection mechanism for union leaders if they face threats of job loss by the management). As previously mentioned, in Chapter 4, General Secretary Nguyen Van Linh, at the 1998 Vietnam Workers' Union Congress, urged the organisation to be more forcefully independent of management. Political will influences the mind-set and awareness of many union leaders at enterprise level to expect independence from the management. As one puts it: "Actually, if we could be independent, as stated in the law, then our opinions could be much more influential, and our rights could be enforced much better."[70] The awareness of being independent is stronger amongst union representatives. In practice, at enterprise level unions, to be independent, depends on the personal capacity of leaders. Some representatives have convinced managements that they should have autonomy in using union funds and that such funds may be used for paying salaries of union representatives.[71] If they become active and effective, they will be able to develop plans and organize workers and to retain control of union funds so as to be able to implement plans.

Priorto changes in the law and political will empowering enterprise unions, the practice was that management chose union representatives to ensure that they be close and under control of management – this is still so in many cases. In SOEs, the trade union is part of management by statutory charter of the company. Some interviewees could claim that this is an advantage since they perceive that if they are part of management, they will be better able to persuade management to recognise the interests of workers. Since they have better relations with management, they know better how the enterprise functions and they have more knowledge about economic matters and better negotiating skills. As one former chair of a union at a foreign, joint venture company states: "The most important point is that union cadres have to hold a firm position within the company as a manager, that he has reputation with the key leaders; he has to be an important person." The chair of the union of a foreign-owned enterprise in Hanoi adds that it is good when the union leader is a manager (or from the human resources department) because that person is competent and has credibility

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[70]Interview # U3 [dated 14/8/2014] and #U16 [dated 21/8/2014].
[71]As it stands now, by regulation, companies with over 500 employees have professional union cadres whose salary is paid from union funds.

with owners.[72] The head of the union at the Women's Affair Department of the Construction Industry Ministry adds:

> If the union chairman is not on the Board of Directors of a company, then it is impossible to bring your voice to the table when they discuss business activities. Also if you are a chairperson and you do not have a good level of understanding of the business, you cannot participate in the discussion amongst managers. So the union cadres must have very good knowledge of the law, and especially skills and methodologies, because even if you understand but don't know how to gather worker together and collect their feedback and concerns to bring them forward to the managers, then you don't fulfil the role.[73]

In the period of economic liberalisation, even though there is no longer a practice of unions being represented in management, interview findings show that many union leaders, even they are elected, may choose to be part of management or close to management (especially human resources departments). Another way is that someone from management be nominated as trade union leader at enterprise level. Many trade union representatives from previous generations support at interview that the dual role of being both a union leader in an enterprise and holding a management position is beneficial. Further to this perspective, interviewees shared that unions in Vietnam have the role of harmonizing relations between the Party, enterprises and workers. As the chair of the union in a footwear company based in Hanoi puts it:

> So the union must follow the principle of harmonious relations… I am the Deputy Director, and also the union Chairwoman. The benefit of being in two roles is that you can harmonize both sides, but you can't speak only from the union side, you must consider the problems faced by the enterprise, so sometimes you can't really speak out on behalf of workers.[74]

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[72]Interview #U3 [dated 14/8/2014].
[73]Interview #U5 [dated 13/8/2014].
[74]Interview #U1 [dated 13/8/2014].

To balance the interests of management and workers, enterpriseunions thus play more the roles of co-ordination and mediation rather than confrontation.When union representatives themselves belong to management this obviously presents problems in their capacity to act independently of management and to fully represent workers' interests. The practice of working with management, as captured in interviews, shows that unions are limited in playing a full role in protecting and representing workers as unions do in a western context. Of course the situation in democracies is not simply one of 'them versus us'. Unions and management gain benefits from working collaboratively too.

As mentioned, in practice, many union representatives are not confident in confronting management. The fact is that again, while they are paid by the management, whether they are part of management or not, they cannot not stand strongly to protect workers' rights when those rights are violated by management. Many interviewees admitted that enterprise-level union officials often felt intimidated and afraid of pushing too hard for changes out of fear of being fired, since they are dependent on the enterprise for their salaries and employment. Thus, the head of Women's Affairs Department of the Hanoi Labour Union admits that enterprise-level union leaders are sometimes afraid of being fired if they confront management too much. Even when they know that the law protects them from being fired by management, it is not so convincing. As the union chair in a foreign-owned enterprise in Hai Duong Province put it: "The boss can get angry with me, but he wouldn't dare to get angry with a professional cadre who is not paid by his company." These are significant reasons why union representatives may opt to 'harmonise' with management in some situations. Challenges for union leaders are posed when they are asked to act to "protect the rights of workers," or to "be innovative in their working manner," as instructed by the Party and in the face of demands by members.

As well as feeling constrained in being fully independent of management, many union leaders lack the capacity to bargain effectively on behalf of members. An interviewee from Long Hai Company, a joint venture company in Hai Duong, reveals

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that: "if there are any problems beyond the capability of our grassroots union, we will ask for advice from the higher union level, not the BOD of this company."[75]

In order to gain more power when dealing with management, union representatives often seek help from higher-level unions, normally the district branch. At interview a union leader ina joint venture company said: "If there are any problems beyond the capability of our grass-roots union, we will ask for advice from the higher union, not the Board of Director of this company."[76] Thus, higher-level union organisations (at the city, provincial or national level) must support and 'guide'enterprise union leaders. In fact, in some interviews union leaders at enterprise level affirm that because they feel weak, they turn to the district union level leadership for support in order to increase their influence over management.[77] Higher-level unions seem to back up enterprise unions by using 'the stick' to confront management when there are problems. A union leader at a joint venture company noted that higher-level unions "support us, give us guidance on working methods as well as on how to persuade employers." When conflicts take place, enterprise/local unions may not work directly with employers to address the issue but instead take the case to a higher union. This higher union then works with authorities and other government agents to find a solution. Generally, union cadres need the support and back-up of higher-level unions in order to make them more independent from enterprise management.

There are examples whereby local unions take advantage of support from the Party in their area to deal with employers, especially foreign employers. When a union wants to confront an enterprise on behalf of its workers, they need to ask for help from the Party. The Party will then issue some official documents or instructions and involve other authorities and government organisations to tackle the case, which a union cannot do on its own.

Union leaders commonly choose to work to harmonise interests of employers and workers. They choose to act as intermediaries between the State, workers and management. As a union leader at enterprise level puts it:

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[75] Interview # U16 [dated 21/8/2014].
[76] Interview# U3 [dated 14/8/2014].Interview #15 [dated 21/8/2014].
[77] Interview # U12 [dated 14/8/2014].

> The trade union law is to protect the chairperson and the executive committee of the trade union, as well as the workers. I know the law very well. But we cannot be too intense/confrontational; instead we have to find the right words to keep balance/harmony, even when we know that employers are violating the law, because they pay our salaries.[78]

In another interview with an enterprise union representative, it was averred that: "The relationship between grassroots unions and employers is more about co-ordination." Interviewees defend this stance based on the notion of unions having the role of preserving 'harmony' between the Party, management and workers. At interview, a cadre from a district level trade union said: "although the role of cadres is to demand the best benefits for workers - wages, working hours, rest times, over-time payments, maternity leave, cultural activities - they typically choose a way to moderate demands in order to persuade employers."[79]

From the findings, it is clear that enterprise union leaders feel hampered by not enjoying greater independence from management. Even when new legal mechanisms gave autonomy to unions, such as using union funds to pay union representatives and protection from being fired, there have not been radical changes in the relationship between management and union leaders at enterprise level. There are capacity constraints on the part of union leaders, including skills in negotiating with management, and in organising workers. However, there are indications that union leaders are trying to bring up issues and negotiate to balance interests. When the interests of all parties are met there will be no conflicts and unions will gain trust from workers. With such practices, union representatives also could develop themselves into responding to the demand of workers. Although not within the scope of the research underpinning this thesis, it would be worthwhile for a further study to examine the outcomes of cases to see the extent to which the union's dual role inhibits optimal representation of workers' rights.

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[78] Interview # U15 [dated 21/8/2014].
[79] Interview #U13 [dated 14/8/2014].

5.6 Conclusion

Chapter 5 has addressed the extent to which the changing mandates and practices of Vietnam's trade unions, as enabled by new legal frameworks may be read as an expansion of political space. In particular, the roles of various actors in the formal arenas of the State are recognised as sources of institutional change.

It has been shown that there are commonalities and contrasts between the Vietnam experience and that of western states in the current era, referring to the context in Chapter 3. Both face an economic environment that has required them to adapt and re-define their roles. In western economies, of course, unions are essentially free to do as they like (within the law). The VGCL, in contrast, is constrained in its adaptation to what the CPV will allow. So in Vietnam it is actually the State which is adapting itself to the requirements of economic change and the VGCL is following suite; with the caveat that the VGCL is strongly positioned to advocate for policy change because of its status as an arm of government. Unions in Vietnam and western economies face a common set of specific challenges: demonstrating their relevance to workers in the face of declining membership numbers; expanding their power bases by engaging with regional and international partners; and engaging to mutual benefit with workers' movements. The cases of former communist states in Eastern Europe ought to be of direct relevance to an interpretation of the Vietnam case. The political transformation of those states certainly involved unions and workers' movements more generally. However, unlike the Vietnam case, conditions in those states were conducive to political pressures and mass movements to drive the collapse of communist regimes. Needless to say, this is hardly the case in Vietnam.

The essential contrast between the VGCL and unions in western states is that the VGCL is an arm of government. Flowing from this is an on-going tension between representing the State and representing workers. Based on the evidence collected from documents and interviews it is not possible to say whether this situation has led to a systematic bias one way or the other. It can, however, be noted that the CPV evinces a strong concern for workers' welfare that befits the socialist philosophy of the State. Nevertheless, the dynamics unleashed by liberalisation of the economy have made it much more difficult for the government to directly ensure that workers interests are met. Apart from anything else, unions in Vietnam have limited capacity to

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finance their activities so their cadres, especially at enterprise level, have limited capacity to discharge their responsibilities to bargain with employers. An important issue here is the dilemma that cadres at enterprise level experience in actualising their roles. Although their salaries may be funded partially from union levies they actually depend for their livelihoods primarily on wages. This is also the case in unions around the world but it might reasonably be assumed that in western economies the rule of law provides much stronger protection for union officials as they go about their work.

A second set of considerations addresses the extent to which the Vietnam experience may be read as an expansion of political space in the direction of democratisation. The theories glossed in Chapter 1 provide a benchmark against which to address these considerations. Broadly speaking it is obvious that Vietnam's economic transformation has brought about marked shifts in governance, especially in relation to the role of the VGCL. As noted, however, in no way can these changes be read as a 'big picture' unleashing of pressures to change the system of government. The CPV has retained a firm grip on power, not least because the VGCL remains an arm of government and also because the government has been flexible and prescient in engineering change in the VGCL's role.

Despite this reality, it is possible to identify the widening of political space in a localised and incremental sense. The extent to which this argument holds water depends on how political space is defined. In fact all sorts of things might be cited, including: a widened remit from the State to enable the VGCL to support workers and to argue for policy change; decentralisation of union management and growth in numbers of unions; training for cadres to give them greater capacity to act independently (or quasi-independently) of the State; recognition that because they represent such a large and economically essential part of the population unions have power in themselves. Limited as these trends are in the context of a wider debate about democratisation, they do perhaps signify greater capacity for social action outside of the tight constraints of a centralised one-party state. It might also be conjectured that in loosening constraints people will be empowered to more independent action and thought.

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Overall, there is no sense that the VGCL has done anything to expand political space in the wider society. So far in Vietnam, the zeitgeist is ‘all stops out for growth;’ while many people are getting better off, especially the middle class, there is no discernible threshold of interest in regime change. But it could be assumed that concomitant with economic growth, the working class is becoming politically mature and, endowed with choice, may begin to demand political change so that workers can enjoy greater equity and basic rights than is the case under the current regime. Accordingly, Chapters 6 and 7 will explore the extent to which there is social pressure, especially from workers, to encourage the VGCL to engage in widening political space.

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CHAPTER VI
HUMAN RIGHTS AND WORKERS'RIGHTS IN VIETNAM

6.1 Introduction

The concept of 'workers rights' as a category of 'human rights' has evolved alongside the Vietnamese State's ideological transition from the Marxist-Leninist principle that individual human rights do not exist under socialism. As Vietnam has integrated with the United Nations and other international human rights commitments, labour rights have been captured more in laws and in practice. Nevertheless, whilst the State may support economic and social rights, such as decent wages and working conditions, it does not yet recognise the right to free assembly, formation of trade unions outside the VGCL framework, or the right to conduct peaceful demonstrations as per international human rights standards. Workers' rights claims, even by means of strikes, have however challenged the perceptions of the State, trade unions and workers as to the ways in which rights claims may evolve.The term 'workers' movement,' from the time of political reunion in 1975 up to the early 1990s, has been identified with the State's promotion of economic production but a rights perspective was not part of the picture. Economic liberalisation, as noted, engendered unrest amongst workers, especially those in factories. Workers struggles in support of their interests and rights were notably embodied in wild cat strikes after Doi Moi. These strikes have occurred, and continue to occur at an increasing rate (see below Fig. 6.1), due to the absence of effective and timely mechanisms to resolve grievances. As such workers, operating outside of the union system, have effectively pressed government to support legal changes to 4recognise rights and to ensure that they are upheld

As a matter of definition, the terms 'workers' rights' and 'labour rights'are interchangeable. In international human rights treaties, the term, 'rights of workers', is used. In ILO conventions, the term 'labour rights' is used.

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This chapter focuses on economic liberalisation and the struggle for workers' rights and workers' movements through strikes. The chapter responds to several interrelated questions. How are workers' rights perceived by different stakeholders, including the State, unions and workers? Why are workers restive? What rights do they claim? In the case of strikes, have workers been empowered as a result? The chapter thus paints a picture of workers' rights struggles and their transformation in content and methods since Doi Moi. The chapter is based on 30 interviews with workers in different types of factories. Interviews aimed at capturing workers' views on their rights and interests and their perspectives on why they should strike, or not. It was not possible to identify workers who actually led strikes but case studies of strikes and other workers' protests can be drawn from news reports. The chapter also draws on secondary sources including media coverage of strikes.

6.2 Human Rights

6.2.1 Before DoiMoi

Whilst the concept of individual human rights was alien to the ideology of communism the concept of human rights in Vietnam was heavily influenced by the Chinese political-moral system, under which Confucian values stressed social duties, hierarchies and obligations. For decades, understandings of human rights have been bound up with contested political positions (Gammeltoft and Hernø, 2000).

Human rights and democracy were intrinsic to nationalist elites that were exposed to democratic norms and institutions in the West. During the anti-colonisation period, accepting democratic norms became an important tactic in nationalist struggles for independence. Similarly to other countries in Southeast Asia in the period, Ho Chi Minh in Vietnam made the Declaration for Independence in 1945, with a quotation from the American Declaration of Independence (1776).[1]

Ho Chi Minh incorporated human rights into his 1946 Constitution. Although this first Constitution gave birth to a (self-proclaimed) new republic and

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[1]Government of Vietnam, 1946 Constitution. The constitution states a set of human rights in Chapter II. Read at http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=536.

supposedly democratic nation, the western idea of human rights remained (and remains) controversial in Vietnam over the period of heavy Marxist-Leninist ideology of controlling individuals and society. When Vietnam initiated DoiMoi, political conservatives wanted to attract funds and technology but feared that pressures for political freedom, human rights, the emergence of civil society and wider conceptions of governance would undermine CPV dominance (Dinh, 2000).

During the revolutionary period workers, under communist rhetoric, were a core force under the leadership of their unions (although, as noted earlier, in reality rural workers and peasants were actually the primary driver of anti-French and later anti-American action). Alongside the growth and maturation of the CPV, workers became better organised with clear political ideas. From the earliest days of workers' movements in Vietnam until the country united in 1975, the rights claims of workers were not different from the rights claims of the nation as whole, namely freedom, peace and unity.

During the period from 1975 until DoiMoi in 1986,workers, as 'masters of production', were strong enough to garner to themselves equal shares of State welfare benefits as well as attaining stronger voices at work. The role of the trade union in this period, acting on behalf of the State, was to distribute welfare, including ensuring fair wages in an equity-driven distributive system. Workers were empowered through their trade union whose leaders were members of factory management boards as a safeguard for benefits and status. Accordingly, workers did not openly complain or claim more than what they had received and there were only a few cases of strikes or public complaints by workers in this period. Of course there is no way of knowing whether workers were really more content with their situations then. Indeed it is possible that they were more afraid to strike then because the regime was more repressive before the reforms commenced.

6.1.2 After DoiMoi

Since DoiMoi human rights have been elevated in the national policy agenda. Although economic pressures have been powerful, the State has actually engaged in human rights discourses. The Government of Vietnam has also entered into many human rights commitments (Table 6.1). Vietnam, for example, acceded to UN

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human rights instruments (ICCPR, IECSCR) in 1982 and other core conventions.[2]From1994 to date, the government has committed to ratifying a numbers of ILO conventions whereby labour rights as human rights have become more recognised and received attention by being adopted into domestic laws.[3]

The next generation of legal change with regards to human rights was when Vietnam embraced global economic integration, via WTO accession in 2005, and needed to meet requirements for WTO membership. Human rights really come to the fore, driving changes in many domestic laws. By complying with WTO rules, Vietnam also needed to implement human rights commitments. All of these moves called for domestic reforms in managing work forces and workers' rights.

2008 saw the first Universal Periodical Review submitted by Vietnam to the UN. With strong political will on the part of Vietnam's leadership on international relations, the nation became a non-standing member of the UN Human Rights Council in November 2013, for the term 2014-2017, and Chair of the ASEAN General Secretariat, for the term 2013-2017. Pressure to adopt and retain commitments to human rights increased. Top political leaders publicly asserted Vietnam's commitments to human rights.[4]Vietnam has accordingly amended its Constitution to include a separate chapter on Human Rights and Basic Rights and Duties of Citizens; effective in 2013.[5]Following from constitutional change and treaties, the Economic Development Plan, 2011-2020, the Government's policies to orient national development, requires that the State create conditions to ensure that human rights are respected.[6]

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2 To date, Vietnam has ratified 13 UN conventions. Read more at http://www1.umn.edu/humanrts/research/ratification-vietnam.html [accessed on 20/10/2014]

[3] To date, Vietnam has ratified 21 ILO conventions. Read more: ILO.org at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004. Accordingly, labour law, trade union law, insurance law were amended regarding labour conditions, gender, health and safety at work conditions, collective bargaining etc. were introduced.

[4]Read more at: http://vietnamnet.vn/vn/chinh-tri/202481/thu-tuong--dan-chu-la-xu-the-khong-the-dao-nguoc.html **"**Chúngtôi tin rằngnhânquyền, tự do, dânchủlàxuhướngkhôngthểđảongượcvàlàđòihỏikháchquancủaxãhộiloàingười. VN khôngphảingoạilệ, khôngđứngngoàixuthếnày" –ThủtướngNguyễnTấnDũng .

[5]Ref. Government of Vietnam.2013 Constitution. Chapter 2.

[6]Ref. Socio-Economic Development Plan, 2011 – 2020that " aims to ensure human rights and citizen rightsfor overall development"[original text: Phảibảođảm quyền con người, quyền công dân và các điều kiện để mọi người được phát triển toàn diện.] Read more at: http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=989&id=BT531160686[accessed on 18 October, 2014].

Recently, another window for human rights to be promoted is the negotiation of the Trans-Pacific Partnership (TPP) since Vietnam feels the need to engage ever more deeply with the global economy. In the negotiations Vietnam has opted to adjust domestic legislation and systems to explicitly recognise human rights.[7] One of the conditions imposed by the TPP is recognition of rights to freedom of association and free trade unions. These are still, however, to trigger change in domestic laws. In an interview with one official from VGCL[8], he stressed the critical nature of internal debates on the condition of independent unions posed by TPP. Vietnam may not insist in keeping one single trade union system. The Government may have to accept there are more than one union but will need to know how to enable different unions register and manage them.

Table 6.1 Commitments and requirements by international and regional rules affecting Vietnam

UN Human Rights Mechanism and Human Rights Council	Vietnam has ratified 13 UN human rights conventions, including ICCPR and IECSCR in 1987. Vietnam became a non-standing members of Human Rights Council in 2012 Vietnam, in its UPR reports of 2008 and 2013 made commitments to recognising human rights Vietnam has made report on IECSR in 1993 and only in 2014. Constitution of Vietnam was amended in 2012 to incorporate a human rights chapter

[7] TPP imposes conditions for labour standards.It requires state commitments on labour rights protection and mechanisms. In Vietnam's case, the USAimposes requirements on legal changes and acceptance of freedom of association and free unions.

[8] Interview #U22 [dated 29/4/2015]. Although there is no official document on whether the Party agrees to have independent unions because of the conditions of TPP, this interview reveals that union leaders were consulted by the Party on the situation as to how the VGCL will fare if other trade unions come to exist in Vietnam.

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Table 6.1 Commitments and requirements by international and regional rules affecting Vietnam (cont.)

ILO	Vietnam is an active participant and adheres to ILO framework. Between 1980 and 1985 and since 1992 Vietnam ratified 17 ILO conventions, including Convention No. 188 and five of the eight fundamental conventions. Vietnam has not, however, ratified the ILO convention on freedom of association and collective bargaining and related human rights conventions. Vietnam ratified the Equal Remuneration Convention in 1997 and the Convention concerning Occupational Safety and Health and the Working Environment in 1994
WTO	Membership of WTO since 2005. Vietnam sits on the ILO Governing Body as a party to bilateral and multilateral trade and investment agreements – some of these have provisions dealing with labour matters and thus fuller application of international labour and human rights standards
TPP	In negotiations over the Trans-Pacific Partnership (TPP), which aims to provide market access for Made-in-America goods and services, Vietnam will need to commit to strong and enforceable labour and environmental standards, including independent trade union as part of free association, and groundbreaking new rules on SOEs, a robust and balanced intellectual property rights framework, and support for a thriving digital economy.

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Table 6.1 Commitments and requirements by international and regional rules affecting Vietnam (cont.)

ASEAN	ASEAN Declaration 1965: member nations committed to appraise the value of harmony and consensus. ASEAN Human Rights Declaration, 2012,declares "respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance; recognizing freedom of peaceful assembly, right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed, the right to an adequate standard of living for himself or herself and his or her family."[9] Vietnam representative became the ASEAN Secretary General in 2012

There are recommendations as to how to improve the commitment of Vietnam in practice. Many human rights were encoded in the text but not fulfilled in reality. For example, regarding civil rights in connection with labour rights, whilst Vietnam does not yet accept the recommendation of a plurality of trade unions, the Government accepted that a law on free association be made in 2015. The Labour Code does not authorize freedom of association and trade unions may not be established outside the VGCL framework. Under the 2013 Law on Trade Unions (12/2012/QH13), foreigners are prohibited from establishing or joining trade unions.In 2010, several young labour activists were condemned to harsh prison terms simply for seeking to protect workers' rights and demanding the right to form independent trade unions. Although legal in some circumstances the right to strike is severely restricted.

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[9]Ref. http://www.asean.org/news/item/declaration-of-asean-concord-ii-bali-concord-ii

http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration

Strikes in state-owned firms, public services and sectors considered important to the national economy and defence are banned. Decree 41, adopted in 2013, proscribes strikes in six major sectors, including national security. The Prime Minister can terminate any strikes perceived to be "detrimental to the national economy or public safety". Under Decree11/2008, if a strike is ruled illegal, workers must pay compensation to their employers for "losses and damages". In 2011, 95% of the strikes were deemed to be illegal.[10]

6.3 Workers' Rights

The Constitution of Vietnam, 2012, recognises the right to work (Art. 35) - including choice of work, equal and safe working conditions, fair pay and adequate rest time - but does not define workers' rights as such. Article 25 of the Constitution recognises the right to assembly and association, and the right to demonstration.[11] It does not, however, recognise explicitly the right to strike. Article 34 of the Constitution affirms citizens' right to social security. This is inline with human rights standards and, as such, Vietnam is making an effort to fulfill its commitment on several social and economic rights, including rights to housing and social security.[12]The legal framework - including Labour Code, 2012, Trade Union Law and Civil Code - neither pushes for workers' rights as human rights nor embodies mechanisms to protect human rights within public and private spheres. In particular, there is no legislation supporting freedom of association and formation of unions

[10]Citing joint report of International Federation of Human Rights and Vietnam, and Vietnam Committee on Human Rights in Universal Periodic review of Vietnam. 17. June, 2013.Read more at:https://www.fidh.org/IMG/pdf/joint_upr_sumbission_on_vietnam_final_version.pdf [accessed on 30/6/2015].

[11]The article states: [Điều 25 Công dân có quyền tự do ngôn luận, tự do báochí, tiếp cận thông tin, hội họp, lập hội, biểu tình. Việc thực hiện các quyền này do pháp luật quy định]. Read further at: http://www.chinhphu.vn/portal/page/portal/chinhphu/NuocCHXHCNVietNam/ThongTinTongHop?categoryId=920&articleId=10053009 [accessed on 30/11/2014].

[12]Related to workers, Vietnam accepted UPR Recommendations:No.1 (by Malaysia), No.37 (by Iran), No. 52 (by Korea), No. 55 (by Algeria), No. 56 (byTurkey), and No. 70 (by Côte d'Ivoire) – UN Document A/HRC/12/11. Vietnam has also received recommendations from UN human rights mechanisms on the ratification of the International Convention on the Protection of the rights of migrant workers and their family members (CERD(2012) - CERD/C/VNM/CO/10-14 para.20; CEDAW (2007)-CEDAW/C/VNM/CO/6 para.33; CRC(2012) - CRC/C/VNM/CO/3-4. para.80), the ILO Convention No. 189 (2011) on the working conditions of domestic workers (CRC (2012), CRC/C/VNM/CO/3-4. para.80) but so far no clear agenda to participate in these conventions was published.

outside the VGCL framework (the same applies to Trade Union Law which, as noted in Chapter 5,recognises only one Trade Union). In domestic law, collective bargaining, as a key workers' right, has been limited to the hands of unions, the only recognised organisations through which workers can organise strikes or any bargaining on their rights. The right to strike has, however, been given to the VGCL in its mandate to organise strike in the 2012 Labour Code. Nevertheless, a fear of human rights practices - especially freedom of association and freedom to form trade unions outside the VGCL system - remains in public policies.

The concept of worker rights in Vietnam is not clearly and closely aligned with international standards on human rights as codified in ILO conventions. Vietnam has not, in particular, ratified the ILO convention on freedom of association and collective bargaining (ILO convention 87 and 98), together with related human rights. In domestic law, collective bargaining, as a key to worker rights, has been limited to unions, the only recognized organisations through which workers can take strike action or deploy other methods of bargaining for rights.

This section of the chapter examines the concept of worker rights, including the rights to work, unionise, and strike as part of freedom of assembly and association and the right to participate in workplace meetings and to claim rights to housing and social security. As noted, some rights are recognised in the legal framework and some are not. Whatever the case may be, most of the rights concern the role of trade unions. Table 6.2 summarises rights of workers that Vietnam ratified under international laws and adopts into domestic laws. In this section, analysis of each rights is included which indicated that by law, Vietnam recognise most of rights of workers in its Constitution and laws. However, in section 6.3, more cases and analysis on how rights are exercised are explicated.

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Table 6.2: Human rights and workers' rights in international law and Vietnam law

Rights	Conventions	Status of Vietnam	Adoption in domestic laws
Right to work	IECSCR (art 6,7) ILO convention Nos 168 and 122 ILO convention 187 (on occupational health and safety)	Ratified, 1987 Ratified Ratified 2014	Vietnam Constitution (art 35) Labour Code (art 5)
Right to unionise (s part of right to association)	Article 22.of ICCPR. Article 8 of ICESCR ILO convention 87 and 98	Ratified, 1987 Not ratified	Constitution Art 19 Labour Code 2012 (art 5) Law on trade unions (art 5)
Rights to strike (as part of right to peaceful assembly)	Article 8 of ICESCR	Ratified, 1987	Constitution 2012 Labour Code 2012 (art 5)
Right to participation	ILO Convention 144 (tripartite consultation)	Ratified 2008	Labour Code 2012 (art 4, 5, 7) Trade Union law (art 22)
Right to housing	ICESCR art 11	Ratified, 1987	N/A
Right to social security	ICSRCR art 9	Ratified, 1987	Law on Social Security Labour Code 2012 (art 5)

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6.3.1 Right to work

The right to work includes payment of decent wages. As prescribed in UDHR (Art. 23): "the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." The right to work is recognised in IECSR and ILO convention No. 168 and No. 122. Vietnam has obligations to the right to decent work in Article 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Vietnam is also a member of 20 ILO Conventions concerning various labour issues.[13]This right is understood as not only being met in terms of contracts between employers and workers but also requires state commitment to ensure mechanisms to obviate violations of rights.

The right to work in Vietnam has evolved to incorporate more than wages and other benefits. Workers need a 'decent living', more broadly defined. However, wages in Vietnam's market economy are determined in contractual agreements between employers and employees. Only in 1993 did the state establish minimum wage but since then it has always been below living costs. As noted, many labour conflicts and strikes occurred, mostly after 2004, in support of wages and benefits. Workers are now more aware of health and safety issues and have struggled to demand the right to healthy workplaces. Electronics factories, for example, pay relatively well but workers face health hazards from toxic chemicals that cause cancer and other types of occupational health problems. Samsung is an example of how concerns and demands of workers have evolved to recognise the importance of unions in protecting workers' rights.[14]

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[13]Read more at:http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004 [accessed 30/6/2015].

[14]Ngo Huong. Samsung in Vietnam.In*Labour Rights in High Tech Electronics*. Asia Monitoring Resource Centre. 2013. Read more at:http://www.amrc.org.hk/sites/default/files/Labour%20Rights%20in%20High%20Tech%20Electronics%20-%20AMRC.pdf.
Further media coverage:http://congdoancongthuong.org.vn/tin-tuc/t891/co-mot-chu-tich-cong-doan-nhu-the.html .

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6.3.2 Right to participation

The right to participate, including voting for and criticising trade union representatives, is stated in law. But in practice this right has been little exercised and depends on the volition of union leaders.

The right to participation changed in form when the working class was no longer seen to be the 'master of production,' as had been the case before Doi Moi. Under the old system, the distribution of wages and welfare benefits in SOEs was managed by trade unions represented in management. Since Doi Moi, company directors have decided wages and bonuses, often without workers being consulted. This has introduced inequalities and a potential source of conflicts. Dismissal of workers is, moreover, in the hands of management, instead going through workers' council meetings as was the case in SOEs before Doi Moi. These shifts in the relationship between workers and managers have fundamentally changed the way in which workers participate in decision-making.

Notwithstanding the changes noted in the previous paragraph there are now processes providing for greater transparency and inclusiveness in decision-making. Indeed the VGCL itself has made an effort to make itself more democratic internally in the process of collective bargaining as required by the current Labour Code. To prepare for the Trade Union Congress, for example, VGCL informs all members to collect their ideas and concerns on future policies. Interviews with workers' groups and individuals confirm that direct dialogue and hearings exist at enterprise level. Interviewees mention that, at enterprise level, workers' meetings are often held. There are issues to be agreed upon, including working methods, targets, wage system, and welfare policies that are committed to by workers and employers. A union cadre at district level also shared his excitement because under the newly amended Trade Union law there is now a mechanism to organise periodic dialogue when workers have a chance to raise issues directly with managers. Unions at enterprise level have the role of organising these dialogues. Interviews with workers in FDIs confirmed that they can now "debate in these workers meetings. Workers can also question union cadres if they cannot fulfill their commitment."[15]

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[15]Interview #U16 [dated 21/8/2014].

6.3.3 Right to unionise

The right to form a union is within the meaning of the right to free association as stated in UDHR Art. 23(4): "Everyone has the right to form and to join trade unions for the protection of their interests." This right is also recognised in Article 22.of ICCPR. Article 8 of ICESCR also asserts the right of everyone to set up and join unions by choice.

So far, as noted above, Vietnam insists on only one trade union system under the guidance of CPV although there are many trade unions at enterprises and lower level they all belong to one federation (called VGCL).[16]The ideas that workers can join a union of their choice, and that unions can be independent of the state, are not welcome. The Government has, however, committed to regional and international standards on human rights and other economic platforms that influence the concepts of labour rights and human rights generally. The second universal human rights periodical report (UPR) recently recommended freedom of association and legal frameworks to support this.[17]Vietnam has committed to supporting decent working conditions by ratifying a number ofILO conventions. It is still, however, not a member of any ILO Conventions concerning trade unions, or the Convention on Freedom of Association and Collective Bargaining.

As noted, the Labour Code allows workers to establish and join unions according to the Trade Union Law (Art. 189 Labour Code 2012). The right to unionise and to be a union member is a right that concerns all workers. The law means that workers(but not all persons working in Vietnam)[18]have the choice to join or not to join a trade union. If no union is established, workers have the option of requesting that one be established – one that is registered under the VGCL. While the VGCL is not sufficiently independent to fully represent workers there is no recognition of a plurality of trade unions in Vietnam under the law.[19]The right to unionise does not

[16] In both law and practice, unions not registered under VGCL are not recognised.
[17]UPR Vietnam 2013: Vietnam does not accept recommendations on free unions and association. http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/VNM/E_C-12_VNM_CO_2-4_18915_E.doc.
[18]The prevailing Trade Union Law- Article 1 - makes it impossible for self-employed workers to freely establish a union,. Moreoverforeign workers can neither establish nor join a union.
[19] Under the current UPR process,initiated in2013, Vietnam does not accept the recommendation on a plurality of trade unions. This issue is also a trigger for Vietnam in its IECSR review in 2015.

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therefore exist within the terms of UDHR and ILO conventions.[20] Foreign workers, moreover, cannot join trade unions. Nor are workers in the informal sector well recognised.[21] As well, there are constraints in the 'collective bargaining rights' mechanism due to the limited capacity of unions to represent workers and bargain with management (as analysed in Chapter 5). The practices of collective bargaining and dialogues with enterprise managers do, however, recognise that union members and workers should be allowed to protect their rights, even before a court of law, when their rights are violated (Art. 10 and Art. 18, Trade Union Law 2012).

6.3.4 Right to strike

The right to strike falls within the meaning of right to assembly and right to peaceful demonstration as per human rights norms and standards. The right to strike in support of workers' unmet claims is normal in western-style market economies. In legal terms, the right to strike is as basic as the right to work. The right can be expressed collectively, as a group right, to demand rights from employers on behalf of other individuals.

The concept of labour rights has become better defined in legal documents and in CPV guidelines (Directive 22-CT/TW). Linked to the role of unions, the guidance called for a new role and increased capacity of trade unions including "to protect workers' rights, to represent workers' legitimate rights" in the period of industrialisation and modernisation. The State also called for action in solving labour conflicts (such as coded in Ordinance no. 48 – L/CTN dated 20 April 1996).[22]

[20] There are several notable cases (e.g. Le Thi Cong Nhan, Le Cong Dinh) who were considered opponents of the Government because they called for the establishment of independent tradeunions. Some were convicted for crimes against 'national security' under provisions in criminal laws such as:Article 79, "opposing the people's administration," Article 258, "abusing democratic freedoms to infringe upon the interests of the state," and Article 88, "conducting propaganda against the state."

[21] Vietnam stakeholder report on UPR 2014: http://www.gparvietnam.vn/bao-cao-chinh-thuc-upr-2014-tieng-anh_p222.aspx.

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[22] Ref. Instruction of the President No. 48-L/CTN dated 20-4-1996 on procedure to resolve labour conflicts. [PhápLệnhcủaChủtịchnướcsố 48-L/CTN ngày 20-4-1996 côngbốPháplệnhThủtụcgiảiquyếtcáctranhchấplaođộng].

The terms 'protest' (bieu tinh) and 'strike' (dinh cong) have been used in different periods. 'Protest' and 'strike' were used more during workers' movements of the revolutionary period and were associated with the national freedom movement. The term strike (dinh cong) is attached to rights claims of workers.[23]Strikes are, of course, temporary work stoppages by a group in order to demand that their interests be met and their rights upheld. When their demands can be met, strikers are willing to come back to work under workplace agreements. The term 'work protest' (bai cong) refers to major disruptive activities in an area. Many groups are involved and many strikes, or series of strikes, in many factories. 'Bai cong' are organised systematically.[24]The term work stoppage (lan cong) was also used from time to time to denote workers delaying or slowing down work or otherwise not fulfilling their duties as agreed in contracts or work rules, to show their discontent to employers.

The right to strike was only stated in the 1994 Labour Code in an ordinance to guide resolution of labour conflicts. Although a strike mechanism was not articulated, the 2006 Labour Code elaborated thus:[25] "a strike is the voluntary and organised work stoppage of a collective of workers in order to solve collective labour disputes." But this law is limited because it does not allow for the resolution of conflicts through strikes on the grounds of rights violations. Strikes are only recognised when there are conflicts between collectives of workers and employers[26]The amended Labour Code 2015(Art. 5) and Trade Union Law of 2012 (Art. 5)recognised the right to strike on the basis of rights. In reality, 90 percent of strikes have occurred due to violations of labour laws by employers i.e. legal and

[23]Ref. Art. 172 of Labour Code (amended in 2006) which states: "Strikes are temporary work stoppages, voluntary and collective actions of workers to deal with collective labour conflicts."

[24]In Lenin's book, *About Strikes*, he says: "Strikes are the rebellion of workers when they are exploited by capitalists, treated harshly or sacked. Strikes are a form of fight of many workers to negotiate with the employers on wagesleading to liberalise themselves." ["Bãicôngchínhlàsựphảnkhángcủangườilaođộngkhibịgiaicấptưsảnbóclộttànnhẫnhoặcbịsathải, bãicônglàcuộcđấutranhcủanhiềungườilaođộngđểmặccảvớibọnchủvềtiềncôngbằngcáchđậpphámáymóc, phácáccôngxưởng, dầndầndẫnđếncuộcđấutranhtoàndiệncủagiaicấpcôngnhânđểtựgiảiphóngmình"]. According to the Vietnam Encyclopedia: Economic, political strikes are stoppages in part or in whole production process by collective group … as the means of struggle of workers against factory owners, plantations and mines and capitalists and government in order to demand for economic, professions and political entitlements".

[25]Ref. Chapter XIV, Art. 172, 1994Labour Code.

[26] Ref. Art. 157,Labour Code, 2006 and Labour Code, 2012. Read further at:http://chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=163542 [accessed on 30/8/2014].

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economic rights of workers.[27] All strikes have been peaceful, with no violence or demolition of machines (Vu, 2011).

The State and CPV view strikes as a serious issue and in some cases harmful to public and national security.[28]In reality, they have not instructed VGCL to limit or suppress strikes (as further described in chapter 7) although there have been requests that strikes be stopped.[29]Debate in the National Assembly has been, from time to time, strong on the matter of how labour rights can be protected whilst acknowledging the State's need to maintain public security. A politician supporting labour rights said that 80 percent of strikes were unlawful "so we need to make the procedure and mechanism more realistic."[30]MP Nguyen Thi Thu Hong, in one debate in the National Assembly said: "The law on strikes needs to protect labour rights. Why is the current law made only to protect legality and security, instead of the right to strike?"[31]

The fact that an MP criticized the law shows that there is some amount of pluralism developing in the political system.

In response to strikes, the CPV saw that enterprise managements were failing to comply with the law and to respect the rights and interests of workers. The CPV thus issued a Directive to guide the building of 'harmonious labour

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[27]Ref.http://vietbao.vn/An-ninh-Phap-luat/Phai-dam-bao-quyen-duoc-dinh-cong-cua-nguoi-lao-dong/40142417/218/ [accessed on 30/8/2014].

[28] Directive 22-CT/TW of the CentralCommittee of the CPV states: "To consider the development of harmonious labour relations, stability and progress in the company is both anurgent and long term objective, to stabilize polity and society, and to attract investment, economic development, job creation and improvement of the lives of workerslabour." ["Coinội dung xâydựngquanhệlaođộnghàihoà, ổnđịnhvàtiếnbộtrong DN lànhiệmvụvừacấpbách, vừalâudàiđểthựchiệnchođượcmụctiêuổnđịnhchínhtrị, xãhội, đẩymạnhthuhútđầutư, pháttriểnkinhtế, tạoviệclàm, từngbướcnângcaođờisốngvậtchấtvàtinhthầncho NLĐ"]. The case of demonstration escalated from a strike against Chinese investment in VungAng was viewed with alarm by the state which considered interveningwith force. Read more at: http://www.rfa.org/vietnamese/in_depth/vung-an-riot-05152014070536.html[accessed 30/8/2014].

[29] There are some concurrent cases where the Party strongly instructed the Trade Union to maintain security and stop strikes through strong advice to workers. There have been cases where workers supported the nationalist movement in 2012, notably the case in Binh Duong, when workers went on public demonstration against China to show the wish for national sovereignty.

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[30]Law and Society, 25/9/2012.[BaoPhapLuatvaXa Hoi] Mr Bui SyLoi, at:http://phapluatxahoi.vn/phap-luat/95-cac-cuoc-dinh-cong-khong-dung-luat-38006[read 22/10/2014].

[31] Ref.: http://vietbao.vn/An-ninh-Phap-luat/Phai-dam-bao-quyen-duoc-dinh-cong-cua-nguoi-lao-dong/40142417/218/

relations'.[32]To respond to strikes on the ground of wages, the Ministry of Labour's policy is to increase the minimum wage.[33] The government adjusted the wage system by imposing policy on wages for workers. [34] [35] Currently, the minimum-wage negotiation process is conducted at the national level and involves three main stakeholders, including the Ministry of Labour on behalf of the State administration, VGCL on behalf of workers and VCCI on behalf of enterprises. Decision-making power still seems, however, to lie in the hands of business representatives, provided that they propose reasonable minimum wage scenarios.[36]It seems that strikes still happen despite wage increases.

As noted, the new Labour Code of 2012 does recognise that strikes may be valid, not on the basis of rights claims, but on the basis of labour conflicts – which mainly result from violations of individual labour contracts, and collective labour agreements resulting from collective bargaining and negotiation between employers and employees. The recent Labour Code and Trade Union Law, 2012, do however empower unions at enterprise level to organise strikes. The Labour Code regulates the procedure for strikes. It focuses on the leading role of trade unions at grass-roots level and higher-level trade unions (district level) in organizing strikes with the agreement, by vote, of union members.[37]Whilst legalizing strikes, the government still fears them and limits the exercise of the right through unions.

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[32]Ref. Directive 22-CT/TW of the CentralCommittee of the CPV on enhancement of leadership and guidance on harmonious labour relations [Chỉthịsố 22-CT/TW ngày 5/6/2008 của Ban Bíthurvềtăngcườngcôngtáclãnhđạo, chỉđạoviệcxâydựngquanhệlaođộnghàihòa, ổnđịnhvàtiếnbộtrongdoanhnghiệp].http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=279&leader_topic=&id=BT27111239336.
http://www.molisa.gov.vn/vi/Pages/chitiettin.aspx?IDNews=21375

[33] The 2013 decision on minimum wages for 2014 ranged from 85USD to 110 USD per month. In 2012 the range was 74 USD to 105 per month (Decree 103/2012/ND-CP), in 2011 (decree70/2011/ND-CP65USD – 95 USD per month depending on different regions. Minimum wages were also adjusted in 2006, 2008, 2010.

[34]The minimum wage was adjusted 13 times after 1993.Further reading:PhapLuat online (10/9/2011). ĐặngĐức San, Director General of Policy, Department of MOLISA, stated that 80% of strikes based on wage claims were not appropriate but that it is necessary to adjust wage policies. Read more at:http://plo.vn/chinh-tri/80-cac-cuoc-dinh-cong-do-tien-luong-thap-106008.html [accessed 24/10/2014].

[36]Ministry of Labour (MOLISA) Portal. The National Wage Council has 15 members, including VGCL to represent workers' rights and entitlements, VCCI to represent employers and MOLISA to represent State organs to negotiate on the minimum wage for 2015. Read more at:http://molisa.gov.vn/vi/Pages/chitiettin.aspx?IDNews=21534

[37] Art. 173 of theLabour Code, 2006 and Art .81 of Ordinance on labour conflicts resolution: right to strike, requires 1/3 of workers (as whole factory collective strikes) of 50% of workers in a unit (as unit

Although strikes outside of the VGCL system ate illegal, authorities tolerate them as reflecting valid grievances of workers who lead impoverished lives because of low wages and because enterprises violate labour laws and State authorities are not capable of enforcing compliance. Strikes are even sympathised with by some members of the National Assembly.[38] Supporting voices say strikes are natural in the market economy when rights are violated and when workers need to demand their interests and rights. The law must recognise this with simpler mechanisms for dispute resolution. Advocates call for state authority to protect workers' rights in line with the laws.

Strikes have, therefore, typically occurred that did not follow the law and official procedure. There have been cases where government has intervened to stop strikes. These interventions are typically justified on grounds of public security or when threats to foreign investment are perceived. Repression of strikes is rare, although in some cases force has been used to stop strikes or curtail worker unrest.[39] Even when workers have raised normal demands on rights, such as payment of wages when enterprises did not pay (as in the case of Hanoi Metal Co.) or demanded wage increases (as in the case of Wonderful Co.), force has been used, although these cases were not reported in domestic news and there might be secret police in the workforce. The reasons for strikes vary but they are nevertheless seen as normal outcomes of workplace conflicts and many other reasons on the ground of equity and rights. In Ho Chi Minh City, for example, strikes between 1995 and 2004mainly focused on interests and legitimate rights. As one official said:[40] "strikes not only occur because

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strike) to agree by vote. The labour law only recognisesa legal strike when it isorganised by a grass-roots/enterprise trade union which is responsible for all procedures, including the vote for going on strike, leading of strike, and representing workers beforea court.)

[38] Comments of Nguyen Thi Thu Hong, Nguyen DinhXuan on Labour Code Amendment in 2006 reported on 7 June 2006 before NA..http://vietbao.vn/Xa-hoi/Sua-luat-chi-giai-quyet-phan-ngon-cua-dinh-cong/10960819/157/.

[39] The case in Binh Duong, when workers held a public demonstration against China to show the wish for national sovereignty:http://vnexpress.net/tin-tuc/thoi-su/nhieu-ke-kich-dong-cong-nhan-trong-cuoc-bieu-tinh-phan-doi-trung-quoc-2990053.html.The case of Wonderful Co.(Binh Duong), strike on 3/4/2014:police came and stopped the strike with tear gas http://bantinhiephoi.blogspot.com/2014/04/binh-duong-cong-nhan-bieu-tinh-ung-o.html. The case of a strike in Hanoi Metal Co. on 10 Dec 2010.Although the news inside Vietnam did not carry news on police repression of workers. Read at: http://congthuonghn.gov.vn/default.aspx?page=&lang=0&cat=6&content=181 [accessed 15/8/2014]

[40] Reference to speech byNguyen Thi Dan, Head of DOLISA of HCM, 2.3.2006. Sourced from:http://vietbao.vn/Xa-hoi/Lien-khuc-dinh-cong/45186251/157/

enterprises violate the law and labour contracts but they reflect the growth of the private sector workforce and that workers, by means of collective power, can make demands." Subsequently, however, workers also went on strike to demand higher pay than the law and minimum standards provided for. Whatever forms workers' protests take they are viewed as reflections of labour conflicts.

6.2.5 Right to social security and housing

As noted, Vietnam's Constitution, recognises rights to social security (Art. 34) and housing (Art. 22).Housing conditions for low-income workers are often sub-standard. Millions of workers coming from rural areas to industrial zones in the provinces and cities now live in rented housing with poor conditions. As most workers are from rural areas and join the workforce in factories, they need decent housing and other living conditions, including clean water. Although Vietnam is commended by UN human rights mechanism for improving housing availability for the urban poor, including migrant workers, challenges are laid out to meet this demand and needs.[41]

More frequently, recent claims of workers have gone beyond the factory gate to address the need for decent living conditions. The right to decent housing has been raised in joint discussions between local authorities, companies and trade unions. This stresses the need for government to take action to encourage local authorities to use local budgets to invest in low cost housing for workers and also to encourage companies to invest in housing.[42]Unions are further assigned to conduct cultural and

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[41] UPR stakeholders' report 2013. UN Human Rights mechanisms also recommended that Vietnam should ensure recognition of the right to adequate housing - especially in terms of hygiene,safety, health – for the urban poor, especially migrant workers (Report on visit by the Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona in2010 - A/HRC/17/34/Add.1). Beneficiaries of social policy are defined as government staff who do not have a house, families of targeted policies, families of invalid soldiers or sacrificed people, families who contributed to the revolution, families with low income, poor workers who are permanent residents. However, the distribution of housingbenefits is not equal. For instance, a survey on the need for social housing in Hanoi listed housing needs of 35 Central Government agencies with 157,000 staff, and 83 agencies of the city with 36,000 staff registered for purchase of social housing. The survey report set an objective for Hanoi to build, by 2015, 15,500 apartments for government staff, but did not assess or set any objective for other sectors, not to mention migrant workers.

[42]Subsequently, the Government issued the policy on housing for workers (Resolution 18/NQ-CP dated 20/04/2009 of the Government on housing) and allocatedVND30.000 billion for loans to construct low-cost housing for workers.

information sessions at workers homes.[43]Unions at enterprise level confirm that they have to deal with demands and requests on issues of migrant workers and urban workers on housing policies, kindergartens, schools and health care, in addition to traditional activities such as provision of support and assistance during sickness and holidays.

6.2.6 Role of VGCL

The VGCL's Constitution recognises other important rights of union members including: the right to set up and participate in a trade union and the right to request unions to present and propose policies. With regard to labour rights, over the past 10 years, the VGCL's Constitution has been modified to articulate a greater range of rights of for union members. The right to demand assistance covers provision of information and legal aid and to protect the rights and interests of workers in general. Additional rights to participate and to establish trade unions are confirmed in Article 3 of the VGCL Constitution, 2013 (see Table 6.3).

Although it does not explicitly define unions in a plurality mechanism, these legal provisions help to open the opportunity for workers to choose, or not, their union representative at grass roots/enterprise level and, as such, empower union representatives to participate in bargaining with employers and to demand policy changes. However, notably, the most recent VGCL Constitutions seem to give these newly added rights as it empowers workers to choose to set up or not, or to choose their representative to the trade union at enterprise level. The indication is that workers have more power to choose their own union at enterprise level.

In general, VGCL was requested to develop industrial relations programmes and thus ILO's programme on industrial relations was welcomed.

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[43] Decree 164/2013/NĐ-CP, on Decree 29/2008/NĐ-CP dated14.3.2008. Art. 21c, on "Housing development for workers in industrial zones, economic zones." See further news at:http://laodong.com.vn/kinh-te/xay-dung-nha-o-cho-cong-nhan-loay-hoay-tim-loi-ra-260580.bld; and http://www.baomoi.com/Tag/nhà-ở-cho-công-nhân.epi.

Table 6.3 Rights of trade union members under VGCL's Constitutions over time

2003	**Art. 3 .** Trade Union members have right to: *1.* be informed, discuss, propose and vote all trade union activities. Right to self nomiation, nomination and vote the union leader/ committee, criticise union leaders, request to dismiss union leader in case of mistaken *2.* Request Trade Union to protect dignity and legitimate interests and rights *3.* Being provided free legal aid and councelling on labour law and trade union law *4.* Being assisted in vocational training, care during sickness or difficulties. *5.* Join recreatation activities organised by trade unions.
2008	**Art. 3.** Same as 2008 Constitution
2013	Art. 3. Rights of trade union member include. *1.* Right to set up grass root/enterprise trade unions and participate in trade unions' activities *2.* Right to request trade unions to represent, protect their legitimate rights and interests when being violated *3.* Right to be informed, discuss and propose, vote for the trade union activities *4.* Right to be informed on policy of the Party, State law and law related to trade union and workers *5.* Self nominate, nominate and vote for union leader, question union cadres, request for scrutiny of trade unions cadres when they make wrongful acts *6.* Introduce the best qualified candidate to be the Party members *7.* Provide free legal aid and councelling on labour law and trade union law ***8.*** Right to propose to trade unions and head of organisation on policies and policy implementation regarding labour conditions.

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6.4 Rights Struggles

Section 6.2 addressed concepts and views on human rights and workers' rights in Vietnam. This section of the chapter describes and analyses why and how strikes, as a significant and notable form of workers struggle in Vietnam, have manifested themselves. The section also assesses the extent to which such struggles represent evolving rights claims of workers as a form of labour movement, thus arguably signifying a degree of pluralism.

6.4.1 Forms of strikes

Labour discontent has also manifested itself in the form of 'disputes' (tranh chap lao dong), and strikes (the form workers organise to confront enterprise employers by means of work stoppage), with total estimated at c.50000 between 1995 and 2008 (see Fig. 6.1). Disputes can be based on individuals or collectives. The current legal framework acknowledges this and there are mechanisms in place to enable resolution of disputes. Disputes can, moreover, now bypass the workplace reconciliation council, to go to a district level arbitration body – such as a labour administration office, district trade union or lawyers association or experts in industrial law (according to Art. 170 Labour Code 2006).

Disputes in many cases led to strikes. A number of factors explain the high numbers of disputes and strikes. The increasing trend of rural people joining the formal workforce in factories, and also from the informal sector, to augment the labour force in industrial sectors is a major force for conflict. This is due to the sheer numbers involved but also, as emerged anecdotally in interviews, because in-migrants typically are unaware of the working and living conditions that they face in the cities and industrial zones. Employment opportunities in export-oriented factories are mainly concentrated in the lower skill levels of these global supply chains, in casual, temporary, sub-contracted work. The common opinion of workers is that work in the formal manufacturing sector is insecure, wages are low, working conditions poor, and workers less likely to be protected by conventional social insurance systems.

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Figure 6.1 shows that a sharp increase in disputes and strikes occurred in 2006-2008 and again in 2011. Although strike statistics vary in reliability, whether they are from the VGCL or government sources, the dramatic increase from 2003

onwards is clear. There was an especially notable increase from 2005 to 2007. The most recent statistics from VGCL show that strike numbers rose to a peak in 2010.

The year 2005 marked Vietnam's accession to the WTO and accordingly the requirements on labour conditions, including wages, had to be met. Wage adjustments mandated by State policy have typically been insufficient to enable decent living standards to be achieved and to keep up with rising costs of living,[44]a situation reflected in Table 6.1..Before WTO, wages in FDI enterprises were low compared with other sectors, therefore, as result of WTO, the Government required increases in minimum wage and adjustment of wages generally. Most dispute and strikes occurred in FDI firms during 2007-2008 to demand wage increase.[45] In Vietnam, according to VGCL data, between 1995 and 2012 nearly 5,000 strikes occurred, of which about 100 were in SOEs, 1,400 in private companies and about 3,500 cases in FDI companies. None of these strikes was organised by local unions in companies.[46]

The incidence of strikes has been greater in the south than in the north of Vietnam. During the early years after market reform, most strikes took place in the North, but since 1993 most strikes have happened in the South, especially in Ho Chi Minh City, Dong Nai and Song Be. In the early years most strikes took place in SOEs but as the market economy developed, more strikes naturally took place in foreign-owned enterprises and other private businesses. Strikes are typically initiated spontaneously by discontented workers and spread beyond the initial site, especially in the garment, footwear, seafood processing and electronics sectors, sectors that are labour intensive and typically FDIs from Korea, Taiwan and Japan.[47] Half of the strikes between 2004 and 2012 occurred in industrial zones (often in big EPZs and IPZs, such as Thang Long, Bien Hoa, Dong Nai, Vinh Phuc, HaiPhong, Hai Duong).

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[44]The concept of a 'decent wage' is still being developed by the government. ILO has not defined the concept of a living wage. But some debates say: 'A living wage is defined as the wage that can meet the basic needs to maintain a safe, decent standard of living within the community' Gertner (January 15, 2006). "What Is a Living Wage?". *The New York Times*.

[45] According to statistics of the Ministry of Labour and Social Affairs,in 2008 the average income of workers in FDIs was the lowest of all business categories; only 75% compared to private companies and 60% compared to SOEs.

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[46] See Report of a workshop on 05/4/2013 by the Federation of Labor Unions.http://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat/thoi-su/4450/gan-5.000-cuoc-dinh-cong-tu-khi-luat-lao-dong-ra-doi.

[47] Case of DinhVang in HayPhong when 20.000 workers repeatedly went on strike during 2004 and 2008 after workers had become more aware of their rights.

Vietnam's booming private sector has become a breeding ground for disputes and has forced all stakeholders to address the issue. wild cat strikes have occurred at foreign-invested enterprises and private enterprises in Vietnam since 2005. With more than 400 work stoppages and strikes in the private sector during 2010, companies, factories, the government and the VGCL have identified labour disputes and a poor industrial relations system as a major problem. The electronics industry accounted for 8% of strikes in 2010, with 34 cases. Industrial relations are seen as being less tense in the electronics industry since the average salary for workers is higher than the national average salary and the jobs have a higher status than in other industries, such as textiles and food processing. Still, industrial relations are a problem in the electronics sector. According to the VGCL the majority of all strikes in 2010 (8 out of 10) took place in southern Vietnam and concerned disputes over wages. The fact is that there are more industrial zones and larger factories in the south. However, the history of strong workers' movements in the past from the south could also be a factor in there being more strikes there.

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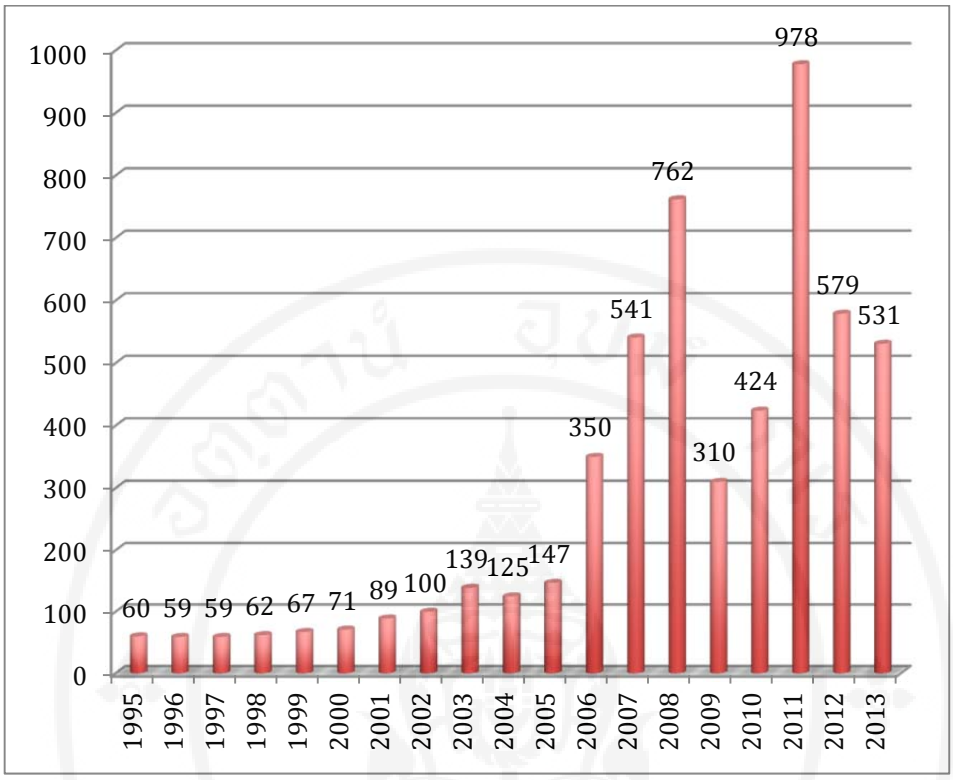

Figure6.1 Labour disputes and strikes in Vietnam, 1995-2013

Source: Vietnam General Federation of Labour / Ministry of Labour, Invalid and Social Affairs

6.4.2 Dynamics of rights struggles

During the 1960s and 1970s, southern workers often marched and protested in public streets. These events usually included workers from different factories and other people from different sectors of society such as students, monks and activists. During 1964, 1968, 1970, 1971, there existed different groups of unions, representing, for example, electricians, bus drivers and factory workers, who simultaneously took strike action and shut down Saigon for a day or more (Kerkvliet, 2006). The tensions were around political issues or sometimes sympathy for workers elsewhere.

Prior to Doi Moi strikes occurred in response to unmet claims - welfare, wages, bonuses etc. - or personal sentiments (e.g. receiving bad treatment and discrimination from management) or on the grounds of lack of access to rights and other security services. Most strikes now are caused by economic demands such as salaries, bonuses and working hours. The resulting sense of unfairness was also a

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factor in strikes. There remain differences in wage scales amongst FDI, private companies.[48] The common demand for wage increases was due to increases in the cost of living. In response to the situation, as noted above, given that many FDI companies have refused to increase wages, the government imposed minimum wages in FDIs.[49] In fact, many FDI companies have often delayed wage adjustments and thus workers have protested.

Most strikes have occurred spontaneously when workers have become stressed and angry with management without solutions being found through dialogues or help of trade unions. Some strikes that occurred in FDIs were because workers become angry and stressed because of bad treatment by managers, who were often foreigners. Some interviews with workers reflect on tough management styles in a Taiwanese company. "The manager told us: 'the rule is to just obey, workers cannot ask for explanations, there is no choice.'" Commonly managers do not allow employees to speak on the job and workers say that they find this stressful. Workers cannot even elect their representative to management, as exemplified by a worker in Patron Vina, a joint venture company. He said that managers teach workers that they "cannot resist, cannot oppose, and cannot raise questions."[50]Workers say that if they are stressed or otherwise unhappy, they only share their feelings within their unit but do not dare to raise them to management because they know that trade union cadres cannot do anything. Workers are aware that "we need to make it a collective voice but individual and group voice do not make it work."[51]Often because workers' demands and stresses were not heard there was no effective communication between employers and workers. Workers stress and language problems occur in many FDI companies because workers cannot speak or explain. It was admitted that in some cases strikes were the last resort and workers do not want to quit their jobs, but rather they wish to

[48]The common demand by strikers between 1990 and 2000 was that employers pay at least minimum wages. In many cases, FDIs did not apply this wage to any but selected employees. The strike at Canon in Hanoi is a case in point. Workers went on strike to demand a fair wage increase when the company decided to increase salaries for unit heads only.Read more at: http://www.thanhnien.com.vn/pages/20120607/cong-nhan-canon-viet-nam-dinh-cong-doi-tang-luong.aspx [accessed 22 Oct 2014].

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[49] FDI was recognised in 1989 but only in 1999 did the Government issue Decision no. 53/1999/QĐ-TTg on minimum wages for workers working in FDIs.

[50] Interview # W4 [dated 22 June 2014].

[51] Interview #W2 [dated 23/6/2014]

put pressure on management to listen to and respond to their demands.[52] Where there is no mechanism for dialogue or bargaining conflicts lead to strikes. Workers interviewed showed their awareness on conflicts and reasons for conflicts that lead to tensions. For example, a trade union official said that: "conflicts increased more on the issues of wages and working conditions." [53]

Another reason why strikes happen is when workers do not get the support of unions or other agencies to get settle conflicts with management. The lack of an effectively functioning industrial relations system is because the VGCL has constraints in bargaining on behalf of workers. When it comes to handling industrial relations and strikes, not only unions at local branches and units play the role in negotiation and solve conflicts. In a sector with little or no dialogue between enterprise management and workers, or if the trade union fails, local governments could play an important role. In some cases, the local government can create a platform where workers and employees can have dialogues. An example of the latter, the case of Wonderful Co., involved 300 workers stopping work on 26.12.2007 in order to ask employers to announce new salary scales and Tet bonus. The workers only went on strike after employers refused and help had been sought from authorities to protect their rights without results.

As noted above, most strikes are assessed as being illegal because they do not follow correct procedures. In any case, the mechanism for organizing strikes has not been easy to implement. The Labour Code of 2012 was an amendment to authorise strikes to be organised by grassroots trade unions. As a result, workers commonly went on strike spontaneously, without entering into a process of negotiation with management, or through the representation of the trade union or their workers' nominated representative. When workers' requests have not been met, they have responded by organizing strikes through their own leaders rather than asking unions - their legal representatives - to resolve conflicts. Nevertheless, before serious or continued conflicts, trade unions always try to act as mediators between workers and management but avoid organising strikes. "It is hard to persuade trade union

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[52] See http://vietbao.vn/Xa-hoi/Vi-sao-cong-nhan-van-dinh-cong-tu-phat/65045538/157/ for information. Title Why strikes are spontaneous. [visaodinhcongtuphat].
[53] Interview # U4 [dated 8/8/2014].

representative to lead strikes."[54] An interview with a trade union representative in the Ministry of Trade and Industry also mentioned the limitation of trade unions in organizing strikes. He cited the situation in Goshi Joint Venture Company where "workers requested the trade union to represent them in demanding higher wages, but the union refused because the company was just set up."[55]In this sense, unionsmay actually be barriers to workers exercising the right to strike.

Strikes may not be organised legally because unions which are the only organisations authorised to organise strikes hesitate to do so even when requested by workers. The case of the strike at Minh Khai Textile Company exemplifies the phenomenon of workers' disappointment at the weakness of enterprise and higher-level trade unions in dealing with labour conflicts. In former SOEs, or today's equitised versions of them, or in the public sector, even in many private companies, union representatives are not confident to take up workers' issues because they are actually paid by the companies. The fact is that whilst the role of organizing strikes has been allotted to union representatives, it is still difficult to realize since unions are not independent of government.

The fact that there is lack of freedom of association for workers is also a major obstacle in protecting workers rights in cases of their rights. The trade union system is state-controlled. This means that workers can only join a VGCL-affiliated union and cannot form and/or join trade unions of their own choice or otherwise freely associate. At the enterprise level, union elections are held as units of the superior union registered under VGCL. Although there are ways for choosing union representatives more democratically if unions cannot function in collective bargaining, failed to negotiate with management, thus strikes occur.

When a strike breaks out, trade unions have often been caught 'on the hop.' Their participation is thus limited to negotiating the ending of strikes. Their mandated role of organizing strikes and defending rights during strikes does not function. Although most enterprises have a union with representatives from various levels - such as from the group and the assembly line - when strikes happened many

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[54]Quotation from media. Mr Nguyen Quang. Deputy Director General of Vietnam Industrial Cement Cooperation.
http://duthaoonline.quochoi.vn/DuThao/Lists/TT_TINLAPPHAP/View_Detail.aspx?ItemID=233
[55]Interview #U2 [dated 8/8/201].Of course the willingness to act comes from a sense of integrity and moral responsibility. It comes from the spirit of being a unionist.

union cadres were ignorant of workers' actions. Workers in many cases do not trust that their trade union representatives can lead and organise a strike so they decide to strike spontaneously. Workers are not satisfied with what union representatives could negotiate with management, or negotiation comes too late. Then workers chose to go on strike rather than wait for strikes to be approved. As a result, workers have chosen to turn their backs on the formal system and instead tried to be heard through informal means such as illegal wild cat strikes. In many enterprises workers demanded elections for new union committees because the current ones did not act on behalf of workers' interests.

6.4.3 Evolution of rights claims

In the first phase of DoiMoi, when there was still a large SOE sector and few FDIs, labour conflicts were raised in the form of complaints but no strikes happened in SOEs. Workers in SOEs could send their complaints to outsiders, often to government authorities, since SOE management was part of the Party and government employees. The new private or joint stock companies, or FDIs, were not attached to the government system so workers had no means of complaint to government. Instead they turned to local trade unions (cong doan), as affiliates of VGCL. As it happened, the first few years after Doi Moi, until the early 1990s, saw more labour conflicts occur than was the case in the ensuing period, 1999-2005; in those days not many strikes were recorded in SOEs or equitised companies. SOE workers carried in their minds and practices the idea of themselves as 'masters of production'; they should accordingly have equal shares in terms of wages (even in the factory, wages were determined by seniority and types of job than based on pieces of products) and distributed welfare. Change in Vietnam's economic structure meant the emergence of two wage systems with different minimum wages for Vietnamese Companies and FDIs.[56] But in reality average incomes in FDIs are lower than in SOEs.[57] The case of a

[56] During the period 1993-1998, wages increased faster than productivity. Since 1993, the minimum wages regulated by the government annually according to price inflation and GDP were: 1993, 120.000đ/month +); 1997, 144.000đ/month +); 1999, 180.000đ/month +); 2001, 210.000đ/month +); 2003, 290.000đ/month +). From 01/10/2005 to 01/10/2006: 350.000đ/month +).From 01/10/2006: 450.000đ/tháng.

[57] National Wage survey 2005: the survey showed averageincomes as follows: SOE workers 2.142.000 đồng/month, private sector,1.303.000đồng/month, FDI-invested businesses, 945.000 đồng/month.

strike in Minh Khai Textile Company in 2005 was based on wages, and was one of the few examples of a strike in an SOE. Workers went on strike to demand that wages and bonuses be set transparently. The complaint was sent to the city trade union inspector with a request for investigation. This happened when the request to explain and defend before the management was not met by the factory's trade union representative.[58] In the practice of strikes, even in the early days, workers demands went beyond enterprise management but were somehow still under the rule of the government. The existence of this phenomenon was confirmed by a union representative in an equitised SOE:[59]

> First, and foremost, workers need a good wage. They want a wage system that favours them. In a company like an SOE being equitised into a private company, there were problems in changing management and production systems. The wage system is based on production units not by seniority. Therefore, workers and managers have to adapt to new working methods and new wage systems. We have to involve workers to make the wage system more understandable and accepted by workers. Otherwise, they continue to complain.

In the early days of workers struggles, during the 1990s, work stoppages were the common way that workers showed their stresses to employers.[60]Stoppages supported demands being made of employers.[61] Most cases involved salaries and bonuses. Especially when the state applied minimum wages and adjusted wages in foreign investment companies, a series of strikes occurred during this period.[62] Many

[58] See Lao Dong, 21 Oct 2005. www. Laodong.com.vn Also ref. Mai ThiMy's working paper. http://khotailieu.com/luan-van-do-an-bao-cao/luat/luat-kinh-te/trinh-bay-mot-vu-dinh-cong-tai-cong-ty-det-minh-khai-ha-noi-nguyen-nhan-thu-tuc-dinh-cong-va-cach-giai-quyet.html[accessed 30/9/2014].
[59]Interview #U14 [dated 21/8/2014].
[60] Cited from media source, read at http://www.baomoi.com/Vu-lan-cong-cua-300-cong-nhan-Cty-TNHH-Wonderful-Co-quan-chuc-nang-hoa-giai-khong-thanh/58/1278219.epi [accessed 30/9/2014].
[61]In the case of Wonderful Co. 300 workers stopped workon 26.12.2007 in order to ask employers to announce new salary scales and Tet bonuses. The workers only went on strike after employers refused and after having asked for help from authorities to protect their rights without results. This is cited from media source at:http://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat/thoi-su/-6856/qua-hang-loat-vu-dinh-cong-o-tp.hcm-luong-thuong-chua-tuong-xung-voi-cong-lao-dong [accessed 30/9/2014].
[62] On 16.11.2007, the Government issued three consecutive Decrees (no 166, 167, 168) that adjusted minimum wages effective on 1.1.2008.

of these cases were directly between employers and workers with little or no union involvement and they were quickly resolved. Longer strikes had yet to become common.

Workers made claims through increasingly frequent strikes and extended their demands from interests to rights. In many cases strikes indicated that workers were organizing themselves to make claims employers. In the case of Taikuang Vina (Bien Hoa), workers demanded wage increases and better quality meals (23/12/2010).[63] They asked for increased salary and allowances and also demanded severance pay, better working conditions for pregnant workers, toxic workplace allowances and Tet bonuses. 8000 workers were involved.[64] The strike, which commenced on 27/11/2007, involved 10000 workers, who withheld their labour for five days of protracted negotiations. In the case of Hue Phong Company in HCMC, there were six strikes from 1997 to 2008.

At interview, a union cadre at district level argues that strikes occur on the basis that workers have increases their demands over rights and interests: [65]

> The majority of strikes and stoppages are related to disputes over interests. Firstly they often complain to demand immediate interests such as allowances and good meals. Then they claim more rights, such as payment for overtime and limits to the number of days they work overtime per week, also they request companies to make these arrangements transparent. Complaints are about rights and benefits concerning a State authority's responsibilities, such as insurance, which are regulated by labour law and insurance law. Other benefits, such as vacations and salary increases, and whether companies comply with the law are not big concerns for workers. Workers these days react to policies regulated by the enterprise more frequently and quickly.

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[63] See http://laodong.com.vn/tranh-chap-lao-dong/hang-ngan-cong-nhan-cty-tae-kwang-vina-dinh-cong-7318.bld for information [accessed 15/7/2014].
[64] See http://www.tinmoi.vn/8000-CN-Cong-ty-TaeKwang-Vina-van-tiep-tuc-dinh-cong-01106912.html for information [accessed 15/7/2014].
[65] Interview #U13 [dated 14/8/2014].

Labour rights have evolved because workers have become more aware of their rights.Interviews with many workers in the course of this study confirm that they are aware of their interests and entitlements. A trade union official at a Taiwanese garment factory in Hai Duong Province confirmed, for example, that "workers now think that their rights include contracts, regulated working hours, wages and insurance, along with welfare benefits, meals and allowances on public holidays for the workers family, recreation activities etc." [66]

Workers are also generally aware of what unions can do and what they should expect of government. In focus group discussions with workers in Hai Duong, when asked about what they think about the role of government, workers responded that they expect the government "to take care of them and guarantee social welfare."[67]It is interesting to note in passing that despite decades of market reform workers retain a paternalist view of the State. To emphasise the point that workers' demands have increased, an interview with a trade union representative in an equitised company shared this:[68]

> Nowadays, workers would be upfront and ask what their rights and benefits are because of the improved awareness of the worker class. The second reason is that policies and the mechanism of the State are more open and provided for workers to know, so workers often ask what responsibilities they take before they sign the labour contract. For example, there is always a labour contract referring to what responsibilities a worker takes, which department s/he is under and where s/he works under labour law. When workers know well about that, they, nowadays, often request to know their benefits such as amount of salary insurances; the vacation policy or leave policy while they only wanted to have a job in the past. The grassroots union often receives all these requests for compliance of the company."

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[66] Interview #U16 [dated 21/8/2014].
[67] Interview worker # W2 in Hai Duong [dated 23/6/2014] (see Appendix 1).
[68]Interview # U12 [dated 14/8/2014].

Not only improved in awareness, workers also can escalate their actions supporting rights claims. When asked about how they claim their rights and interests without going on strike, workers shared that they can ask managers although these requests are often not met; "then we go on to request trade unions and higher level of unions take action."[69]

Strikes occurred as workers became aware of exploitation, with rights claims being made not only on wages but also on other entitlements, such as insurance and working conditions. However, workers first make claims to the management. Then, if their demands are not met, they may involve the State; although as noted, the State tends to delegate the task of implementing State policies on workers to trade unions so that workers do not often make claims directly to state. At interview, a union official at district level observed: "Workers now demand more for their interests and rights, because they are more aware and demand trade union protection more in the sphere of negotiation with employers in relation to wages and working hours. But it seems that there are fewer complaints about state policies".[70]The case of Hue Phong Co. shows a particularly high record in strikes and work stoppages since 1997. The first one, in September 1997, was because the manager (a foreigner) punished workers by making them stand out in the sun. Other reasons for strikes were bad working conditions, such as high over-time requirements, high production quotas, coercion of female workers to not have children and firing female workers without compensation when they became pregnant. In 2006, 2007, 2008 and 2010 strikes carried on for two weeks. Rights claims, 209 of them, also included insurance, something that involves State authorities. Without effective responses from the Department of Labour and the Insurance Authority, workers' rights continued to be violated, and workers lost trust in the company's promises and so continued with strike action. Interviews with workers confirmed this situation existing in other factories. There are many complaints and much unhappiness about management making use of workers' insurance by firing workers at the end of the year to avoid paying Tet bonuses and pushing them onto insurance funds. As a practice, the company deducts insurance from workers' salaries but avoids sending money to the insurance authorities. Even workers reflect, at

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[69] Interview #W 2 in Hai Duong..
[70]Interview #U13 [dated 14/8/2014].

interview: "the management deduct insurance contribution from workers' income even after 5 days of work".[71] In an interview with a unionofficial in a Taiwanese-owned company, where strikes had occurred, he stated that: "workers are fully aware of what rights they should have and that management must no longer reduce their rights."

This means of claiming rights was confirmed in an interview with a trade union official at district level. He stated that:[72]

> Workers now demand more for their interests and rights, because they are more aware and demand trade union protection more in the sphere of negotiation with employers in relation to wages and working hours. But it seems that there are fewer complaints about state policies.

Workers have become stronger in demanding protection from local authorities regarding their rights, especially social insurance. There have been cases where workers decided to strike to call for serious attention from government when companies ignored their claims and continued to violate the law. In the case of Sakura Food Co., in March 2013, workers had asked that the company pay their insurance and when this had not happened workers requested authorities to intervene; yet company management still ignored them. Workers did not give up and explicitly went on strikes to demand that local authorities respond to protect them. In response to workers' request, unions in various industrial zones in the province have however cooperated with authorities and requested compliance by Sakura on three occasions. The company has agreed to pay workers, but in fact it still has not paid sickness benefits, maternity benefits, or severance pay and has not finalized social insurance cards. This situation has gone out of our control. Sakura has repeatedly challenged the law in their violation of employing workers. To protect workers' interests, the authorities need to intervene

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[71] This situation happened a lot through many court cases e.g. Hanul Line (in Long Khanh), Sao Dai Hung co (In KhanhHoa), AnJin co. Ts Ari (VinhPhuc), Da Nang Commercial JSC (Da Nang
[72]Interview #U13 [dated 14/8/2014].

quickly and solve the problem. If this company continues to break the law the provincial People's Committee may revoke their license/operation permit.[73]

Workers can now claim their rights, beyond the enterprise or trade union. There was even a case where workers took court action on their own behalf without the support of a trade union.[74]Cases of trade unions suing companies on insurance matters and non-payment of salaries where trade unions work with a state agent have become more common.[75]This action of unions indicates that they may act on State policies to protect workers even outside the factory gate when possible by targeting companies for workers' grievance instead of claiming on the State.

Strikes are better organised today than they were although not by unions. One indicator is that strikes happen consistently. Another indicator is that they involve planning by one or more groups from within a factory. Workers' leaders ('lanh tu cong nhan') have better skills to persuade and network with production units to enlarge the scope of strikes. They have other workers call for work stoppages. An example is the Canon strike, where all units were informed to strike and other workers were requested to stop work.[76] Strikes are spreading and were stimulated around the area involving workers in several enterprises, especially in some industrial zones. A wave of strikes happened during 2006-2007 in HCMC, Binh Duong and Dong Nai. On one occasion in March 2006, workers from 10 companies went on strike simultaneously.[77] From time to time, the success of one strike in an enterprise might have encouraged workers in other factories to make demands. In one group interview in Hai Duong, workers shared that in their industrial zone, there was one strike in E Company [pseudonym]

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73 Sourced from media . Title Vn: Côngty TNHH thựcphẩm Sakura (KhánhHòa): "Tước" quyềnlợicủacôngnhânlaođộng. Title Eng: Sakura food company (KhanhHoa): Deprive workers of their interests. Author: LuuPhong. Newspaper: Lao Dong, no. 53/2013 (9375), date: March 12, 2013, page 4

74 On the matter of Nhat Hoang seafood company,see http://laodong.com.vn/tranh-chap-lao-dong/nguoi-lao-dong-buoc-phai-rut-lai-don-khoi-kien-256428.bld for information [access 15/7/2014]. In Vinh Phuc province, the provincial trade union worked with State Insurance agent to sue companies and claim social insurance for workers.

75According to the news, between 2010 and 2013, about 4000 companies were sued because of overdue payment of insurance. Sourced from media. Read more at http://kinhdoanh.vnexpress.net/tin-tuc/doanh-nghiep/ninh-doanh-nghiep-de-doi-no-bao-hiem-2989813.html [accessed 30/4/2015].http://phapluattp.vn/ban-doc/quy-bao-hiem-xa-hoi-se-mat-kha-nang-thanh-toan-496071.html[accessed 30/4/2015].

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76 See http://www.rfa.org/vietnamese/in_depth/thous-of-canon-fact-stri-06072012074040.html for information [accessed 15/7/2014].

77See more at http://vietbao.vn/Xa-hoi/Lien-khuc-dinh-cong/45186251/157/ [accessed 15/7/2014]

where workers had been stressed by very low salaries and heavy overtime requirements. The strike was organised by a worker leader who was very confident and able to connect with groups of workers in other production units and at living places. "He had a strong network and was able to keep it secret from the management. Otherwise he would have been fired immediately". In an interview with another worker leader[78], he shared how he mobilised more workers to join strikes by maintaining information flow by "word of mouth" - core groups who stand outside the gates of other factories to stop workers and to share what is happening in the next factory and why they should stop working. By striking, he often said to other workers, their claims will get more attention and they will have a better chance to win in negotiating.

While most strikes in factories are within the business sphere, some strikes have had apolitical dimension. A recent case occurred in the Vung Ang industrial zone in 2013.Workers from surrounding zones showed unrest to Chinese factories by displaying Vietnam's flag against China's invasion of Vietnam's territory in the South China Sea. Workers' reaction in the form of strikes and demonstration, with stimulation from reactionary groups, arguably shows a very limited form of pluralism. Although this kind of strike is not intentionally organised as a struggle for reform of the political regime and has not been led by the VGCL, this form of civic discontent displayed to the government indicates that the workers' sense of their civic rights is becoming stronger and that workers are concerned with more than what relates simply to their right to work. This implies workers could participate more to widen political space.

Another significant case was in April 2015, when some 90,000 workers of Pou Yuen Company (Taiwanese invested company) in Tan Tao industrial zone went on strike. The strike was initiated in Tan Tao industrial zone but expanded to other factories in Tay Ninh province and some areas in Ho Chi Minh city. According to the news, the strike went on for a week. It was the first case of workers striking on such a scale on the issue of insurance, a matter of State policy. Workers demanded change to insurance law and policy to make them fairer and to entitle workers to receive

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[78]Anonymous interview.

unemployment insurance when their contracts are ceased.[79] This case indicates that workers have become more aware of the law and that they know to make changes in law they should claim on the State, not management. The case also shows that claims going beyond the factory gate at such scale got great attention from the State.

6.5 Conclusion

Under Doi Moi, workers' roles and rights have changed radically. From being the revolution's leading force, 'masters of economic production', under socialist rhetoric, workers have become the commonly exploited and vulnerable workforce of today. Their rights expectations have accordingly been transformed into claims and supporting actions. This chapter has analysed labour rightsand practices of rights claims in the current era. Examined as part of this are workers' actions in their different forms, ranging from expressions of discontent, disputes, walking off the job on wild cat strikes to being better organised and represented in legal actions.

Analysis of the evolution of strikes, and claims by workers that their rights be respected, indicates a situation in Vietnam whereby workers exercising labour rights are incrementally widening their political space. The fact that strikes havealways been both wild cat and also widespread reinforces this interpretation. Strikes have sometimes involved thousands of workers and many companies in industrial zones. They have, moreover, occurred because unions are perceived to have made too limited efforts in responding to rights demands via strikes.

Rights claims have escalated partly because of increased worker awareness. Claims were initially mainly for economic benefits, notably wages, allowances and working hours. In some cases claims were made because workers were angered by bad treatment on the part of foreign managers. Later on, however, rights struggles went beyond the factory gate. From time to time workers called on the State to exercise responsibility and even undertook litigation, especially on social rights such as social security and job security issues. Workers concerns about rights

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[79]Read more at:http://www.rfavietnam.com/node/2521. Five days after the strikes occurred, the Government held internal meetings and proposed that the National Assembly amend Article 60 of the Social Insurance Law.

expanded from immediate benefits and interests to more social and safety considerations.

In response to strikes, the CPV and the Government have taken steps to share power and legalise strikes. The CPV took control of strikes with the purpose of maintaining a stable economy and to encourage foreign investment (as noted with the policy for harmonising industrial relations), or even to retain public security (as noted with some prominent cases of arrest of some independent union leaders).[80]However, later on, the Party had to adjust the law to provide a proper mechanism to allow strikes. The policy and implementation of building harmonious labour relations was introduced to provide more room for the VGCL and its affiliated unions to relate constructively to management whilst more effectively representing the claims of workers. Under current laws, the right to strike is better regulated with clearer definitions and mechanisms. VGCL is empowered to lead strikes under certain conditions. These changes to the legal framework on right to strike have also given new powers to trade unions to respond to workers' demands for negotiation with enterprises. In many cases these challenge a State that has been governing for a long time with pro-private sector and investment policies. The role of the VGCL and its affiliated unions in these public expressions of unrest is, however, unclear. Unions have rarely or never actively led rights claims of labour movements.

The rights struggle of workers has attained a higher level of legitimacy with more rights now recognised by the State and in practice. The legal framework has changed to give workers more power to demand concessions, and the capacity to dialogue more democratically with management. Workers can now make demands for dialogues through their direct choice of representative rather than through the respective trade union. The framework also affirms trade unions' role of representation independent of management. The framework provides more room for workers to dialogue directly with management and to indirectly request the union to represent them in bargaining. In practice, workers reflect that this practice of dialogues helps dramatically in solving conflicts and guarantees recognition of rights before any forms of strike occur. Workers are more empowered in demanding their trade union

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[80]For example, the case of Le Thi Cong Nhan and Nguyen Van Dai, who called for independent trade unions in Vietnam and who were arrested in 2007 as dissidents.

representative to represent them. Workers' rights to participation at work have been enhanced. The practice could be interpreted as enhancing democratic norms involving both workers directly and trade unions. From time to time, cases where trade unions represent workers before the court in litigation show that unions stand up to support workers and enter further into the power structure linking capitalists and the state.

The strike approval process is complicated and not just a matter of workers' informing authorities about when and where strikes will occur. Part of the reason is limited capacity of trade unions to organise strikes in support of rights claims. Nevertheless, the fact that the State accepts strikes outside the legal sphere, called 'illegal strikes', is some sort of indication of an opening up of political space. Therefore, rights struggles, in the form of such continuous and large-scale wild cat strikes, may be read as being indicative of the emergence of a labour movement widening the political space.

Notable too, in the history of strikes has been the interaction between unions and the State in precipitating change. Whilst workers have made their voices heard through strikes it is the State and its institutions (in this case the VGCL system) that have responded. The State, once again, has been flexible enough, in its drive to retain power, to recognise that strikes reflect workers' dissatisfaction with their working conditions and that union responses have been inadequate. The State now makes greater demands on unions to the extent of allowing them to organise strikes although, as noted, unions have yet to take advantage of this new freedom.

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CHAPTER VII
TRADE UNIONS AND LABOUR MOVEMENTS IN VIETNAM

7.1 Unionsand Labour Movements

The term ‘labour movement’ refers to a collective organisation of working people,campaigning on its own behalf for better treatment by employers and governments, in particular through the implementation of laws governing labour relations. Trade unions are collective organisations within societies, organised for the purpose of representing the interests of workers and the working class. In many parts of the world unions have emerged from labour movements but the latter do not necessarily work through unions.

Labour movements emerge to pursue rights struggles when the imbalance of power between workers and capitalists is pronounced. Conflicts between these actors may emerge due to lack of democratic processes at work that are perpetuated by business owners and managers. Movements typically arise when there is no alternative means to resolve conflicts in a democratic way within the framework of state-society relations. Rights struggles may also evolve outside the workplace and economic spheres to demand that states recognise rights claims, including claims for basic freedoms, such as those of free association, assembly and speech, social security and other economic rights.

In Vietnam, in the struggle for workers’ rights, changes have taken place in the capacity of unions to protect and defend workers’ rights. So the question arises: if unions are playing a meaningful contemporary role in society and the political realm, to what extent do they exert power to bring about political change (Gaventa, 2006).The close link between labour movements and democratisation in theories, based in the empirical experiences of various nation states, suggests the need to understand how trade unions can opt for effective participation, democratic voting or representation for their members to influence more pluralistic and inclusive political

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agenda by means of labour movements.A focus on ‘democracy at work’ is thus the particular concern of this chapter.

Gainsborough (2002) argued that democratisation in Vietnam was unlikely to occur because of changing class relations, but rather from factions within the State system. In considering the CPV regime he argued that it is more likely to democratize, or at least enable an expansion of political space, as a result of measures initiated from above, rather than via mass uprisings from below. In theory the VGCL can thus be a force pushing for democratisation from within the system. In Vietnam there is nothing like Poland’s Solidarity, but the many wild cat strikes discussed in Chapter 6 may threaten the legitimacy of official unions and pressure them to change their behaviour and practices. In particular, the need is to study how unions can opt for effective participation, including democratic voting or means of representation, for its members to influence more plural and inclusive political agenda.

From Chapter 6, there are clear and substantial indications that workers have organised themselves, at least on a local and ad hoc level, without the assistance of trade unions. Strikes and disputes are indicative of a ‘labour movement’ in operation, however fragmented and limited its goals may be. It is clear, however, that such movements have not pressured for regime change. The more limited question is therefore, how have such movements contributed to strengthening the VGCL system and encouraged it to act independently of government? Furthermore, does unions’ greater willingness and authority to act independently signify a modest movement towards political pluralism? To anticipate, however, what has been observed to date cannot be construed as democratisation in any substantive sense; although various ‘political openings’, as pointed out earlier, do certainly suggest a loosening of State power in incremental ways. In any case, what has definitely been observed is the emergence of ‘democracy at work’ and the increasing power of trade unions at the district level. At the national level, whilst the VGCL remains an arm of the CPV it appears to be gradually losing control over local unions that are closer to the workers

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7.2 Changing Practices

This section of the chapter focuses on how the VGCL, within its capacity to act, can promote, protect, represent and defend the rights of workers. The section is based on literature review, cases covered in Vietnam's media, and interviews with union officials and focus groups with workers. The analysis tests the capacity of the union to act. An assessment is made of how the signs of a labour movement addressed in Chapter 6 have contributed to the changing practices of unions, encouraging them to act more independently of government and to facilitate workers' participation in more democratic ways to influence societal processes. Some of the cases presented in Chapters 4 and 5 are referred to again in this chapter so as to enhance analysis of the relationship between unions and labour movement and to explain how the VGCL and its affiliate unions have evolved in leading and organizing the rights struggles of workers.

7.2.1 Promoting rights

The first and traditional way of promoting rights and interests of workers is that VGCL and its cadres disseminate law and policies, especially those aligned with the CPV's directions. This is the so-called 'transmission belt' model. The Party expects workers to behave in accordance with the law and their civic duties. Unions seem not to intentionally provide knowledge and develop skills to enable workers to claim their rights, instead expecting workers only to "know the law and policies."The chair of the union at a joint stock company in the Hai Duong Province states: "We communicate and educate workers on the guidelines and policies of the CPV." The Union also expects that if workers know the law, then they will follow it, in order to choose different ways to solve conflicts or to attain their legitimate rights and interests instead of going on strike. As the head of the Women's Affairs Department of the Hanoi Union reflected: "education/communication to raise workers' awareness is a part of protection. If workers' awareness is improved, they can protect themselves."

To support recognition of the rights of workers, the VGCL and trade union units have been mandated to provide legal aid directly to workers since 2008. Despite great efforts in disseminating law and policies, labour conflicts and strikes have continued to occur in large numbers (as analysed in Chapter 6.). After their success in

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advocating for changes to the law that recognises rights of workers, VGCL added a new mandate in legal advisory work, as an expanded role rather than the traditional role of delivering welfare to workers (Table.5.3). VGCL and its affiliated branches thus now provide legal advice, typically implemented by provincial and district level unions. In some cases, unions have worked with NGOs to carry out this task.[1]Higher-level unions closely support enterprise-level unions and so reach out to many workers. By providing legal aid, unions have established more direct interaction between workers and union representatives as well as gaining a better understanding of workers' concerns. Lower-level unions may thereby gain more trust from workers. The VGCL and its unions know that this kind of awareness-raising is an empowerment process. They know that if workers understand more about the legal framework and how it applies to them, for example regarding labour contracts, this will help them to negotiate and bargain more effectively with employers. When workers acquire more power, based on their legal knowledge and awareness on their rights, they can make demands themselves and protect themselves.

An important right is the right to strike. Up to now, as noted above, this right had not been legalized in Vietnam as an aspect of the fundamental right of assembly. Recognising the need for the right to strike to be legalized, the VGCL advocated for this right to be legislated and for a clear implementation mechanism to be established. VGCL has also, in order to build power in promoting rights by means of strikes, proposed mechanisms to make strikes feasible as well as legitimate. As one top leader in the VGCL puts it:[2] "The process of organizing strikes is complicated and takes a long time. The Ordinance for strikes was issued but lacks feasibility. The Union wants to make it simpler. In order to organize strikes, union officials need to have power." In general, union officials support legalization of the right to strike. One senior union leader at ministry level said:[3] "It is still difficult for trade unions to organise strikes even though the laws recognise the right to strike. Now needed is better law on demonstrations and strikes. When there is law, trade union officials need

[1]Report of Center for Development and Integration (CDI 2013). Experiences from CDI's project in cooperation with Trade Unions in fourprovinces: Hanoi, Hai Duong, VinhPhuc, BacNinh from 2010 – 2013 to provide legal awareness for workers outside and inside factories in industrial zones.
[2] Interview #U6 [dated 12/8/2014].
[3] Interview #U2 [dated 8/8/2014].

to organise strikes."The law making process is not, however, easy and extends beyond the sphere of trade unions, or trade union law. Wild-cat strikes demonstrate that there other ways to act.

Another way to enhance workers' rightsis to promote new sets of rights relating to workers' safety, health and housing conditions. These are matters thathave in the past fallen outside the scope of employer-employee relations andtheir emergence in the public domain indicates that the State is attempting to make workers less restive. This approach to compromising on procedural constraints on exercising the right to strike has been imposed by the state. In many provinces, the union influences authorities to provide social safety net programmes and companies to provide more social programmes under the rubric of corporate social responsibility. For example, a union cadre in Hanoi city shared that: "The Trade Union convinced Hanoi Authority to dialogue and hear the needs of workers in Thang Long industrial park so that the city invested more in infrastructure, including roads, and policies to stabilize the cost of house rents and electricity for migrant workers."[4]Another example was where the union recognised the needs of millions of workers who lack decent housing after they move from rural areas to work in the factories in industrial zones. Migrants who rent and live in small flats share about 5 m2 each and lack clean water.[5] Such crowded living conditions may affect workers' health and readiness for work. Thus unions have advocated for housing policies from local authorities and have had a certain success in this. They have also persuaded companies to invest in workers' dormitories. Obviously these are workers' rights but these rights are conventionally considered to come under the sphere of State responsibility.

In sum, with regard to promoting workers' rights, including those falling within the scope of contractual arrangements between employers and employees and also group rights, such as rights to strike and other social rights, VGCL is making substantial efforts to implement and expand its role. While there are limitations on exercising some important rights, such as right to strike by organizing workers, especially by unions at enterprise and district levels, VGCL has advocated for changes to law that mandate these rights. Trade unions have generally opted to choose ways

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[4]Interview #U21 [dated 21/7/2014].
[5] Research conducted by ActionAidVietnam, 2004, in Haiphong, and research by CDI Vietnam in 2011.

other than strikes to promote workers rights, notably through dissemination of knowledge of the law and their rights so that workers can be self-empowered and self-protected.

7.2.2 Protecting rights

"I want the union to demand rights and interests for us e.g. good wages, rest time, stable jobs."

"I want the union to protect workers when they are sacked without proper reason."

"If we think the demands are legitimate and reasonable, we will protect workers,"a union representative at enterprise level says.[6]

Many of the workers in focus groups made similar statements. Workers are now more aware of the role of unions in demanding that their rights be upheld and their interests advocated for. Yet they generally see the union as being passive. The upshot is that workers are commonly not interested in unions.

Views of the union's role may vary as between union and CPV. The Party assumes that labour conflicts lead to wild cat strikes and that if union cadres allow strikes to occur this would be "harmful to public security" and "harmful to the economy and investment." The Party and the Government thus push the union to maintain harmony in labour relations. At interview a union official at enterpriselevel confirmed the approach that union representatives often use when dealing with conflicts: "We need to harmonize this conflict of interests between employers and workers".[7] In this sense, they assume that when they take harmonised action, by mediating or by negotiating, the fewer strikes that occur the better.A trade union cadre in Hanoi city confirmed that it is important that workers understand the law and should avoid strikes. The task of the union is to resolve conflicts but not to allow strikes to occur. She said: "In our city, after hundreds of strikes in 2009, we have changed to promote dialogues, so the number of strikes was sharply reduced in 2011 and now

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[6] Interview # U16 [dated 21/8/2014].

[7]Interview #U17 [dated 21/8/2014].

conflicts are usually resolved by means of dialogue." Ultimately, given the instruction of the Party, not all union officials view their role of protection as essential. A union leader in a private enterprise firm said, for example: "In our trade union committee, not all members of the committee protect workers, some choose to protect employers." However, other interviewees, as the head of the Women's Affairs Department of the Hanoi union reflected, take the view that: "the union's most important role is to protect workers' legitimate rights."

So how can unions protect rights of workers when their rights are violated in a situation where union cadres have to follow the 'harmony approach' and when union representatives at enterprise level are paid by the enterprise? First, VGCL has worked to make dialogue mechanisms more effective with a concomitantly stronger role for unions. Secondly, in some cases, unions have opted to ignore strikes when they have occurred, seeing them as being beyond the capacity of union officials to handle. Third, unions in all branches, and at all levels, should be strengthened by supporting, collaborating and networking in protecting rights of workers before management. They can thus get support from other actors in cases seen as being beyond the normal sphere of union work.

As noted, to protect rights, one way is that unions can organise strikes as a form of resistance and protest against unfairness or violation of rights. Unions have however hesitated to organise strikes, despite their being authorized to do so under the current legal framework. Unions instead opt to promote rights by claiming them direct to management and by pushing for the recognition of rights by the State and by enterprises. In reality, when strikes have occurred, unions have neither organised them nor interfered with them. If a strike is successful, it is rights claiming by workers themselves. In addition, despite the law authorising unions at factory level to organise strikes, the rules make it difficult for unions to do so. So unions tend to let strikes occur when they are based in disputes and conflicts that are seen as being beyond the purview of unions. Interviews withunion leaders confirm that sometimes, in the face of urgent needs of workers, they have received requests to organise strikes, or at least are well aware that strikes would happen, but they "ignore it if workers to go on wild cat strikes".

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Most union cadres interviewed for this study support strikes and the role of unions in organizing them. A district cadre[8]said this, for example: "Generally both trade unions at enterprise and district levels support strikes as necessary. They see the union role as one of organizing strikes but only when the company is wrong doing."[9] Another union representative averred: "When a legitimate right is violated, of course the union must organise a strike."

Some unions at enterprise level do not, however, support the idea that workers should strike as a means of claiming rights.[10] A trade union representative puts it thus:

> Strikes, which rarely happened in the past, have become more common as a way for workers to struggle for their rights. Of course this is good in many ways. I know they struggle for their rights, however workers are only incited for higher benefits. They strike without notifying the union when (date and time) they would stop working.

Nevertheless, trade union representative are aware of the many constraints to organizing legal strikes. First of all, unions at enterprise level are not independent of enterprise management. The chair of a union at a joint stock company in the Hai Duong province explains why unions are not active in leading strikes:

> On the issue of spontaneous strikes, I wonder why the trade union chair cannot instruct workers to go on strike properly. I suppose the reason for such situations is that union chairs receive their salary from company owners – especially foreign owners – so it is hard to persuade them to meet all workers' demands. The union chairperson might genuinely care about workers' demands and convey those demands to the employer, but if the employer does not respond to those demands, then the union cannot do anything.[11]

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[8]Interview #U13 [dated 13/8/2014].
[9]Interview # U17 [dated 21/8/2014].
[10] Interview #U12 [dated 14/8/2014].
[11]Interview #U15 [dated 21/8/2014].

Secondly, the procedure to organise strikes is complicated. Union representatives know these procedures but may not use them. A company's union representative said: "As per regulation, we can organise a strike, and as representatives of workers the union executive committee should organise a strike. The content, time and date of the strike, and proposals/demands from workers are all instructed in the manual."[12] Thirdly, unions are guided by the Party that they should not let strikes happen in harmful ways and they should as far as possible find alternative means for workers to claim their rights. Union officials clearly see that the union is an arm of the state and that they serve workers under two potentially conflicting mandates: "to protect the State as a political system and to protect workers against employers," as a union official at the Ministry of Trade puts it.[13]Last but not least, there isa contradiction between law and practice. The Trade Union law assigns the role of organizing strikes to grassroots unions. But often it is mandated to the Chairperson of the District People's Committee to resolve strikes, and the district People's Committee always assigns this task to the District Union. One union cadre at district level said: "I find it confusing. We can't help the grassroots union, we can't force the company."[14]

District unions have to take the lead. But they lack power to monitor enterprise compliance with the law. Unions at enterprise level have strong links with higher-level unions to support building more power to protect workers. So another way to protect workers is to get support from higher up. In fact, enterprise-level unions often require help from higher levels to gain more leverage in confronting management. In this way, grassroots unions need not operate alone, even though they depend on companies for their salaries. Mr Nguyen Huy Can, Chairperson of HCMC TU, emphasised this point in an interview with SGGP: "Higher level unions play an

[12] Interview #U15 [dated 21/8/2014]. "Strikes may be organised when a labour dispute occurs. A representative of the union executive committee should discuss with employers of the company. Then if we can't reach a mutual agreement, then we should proceed accordingly. If a right is violated, we should file a case and then submit to the district's people committee according to the law. If an interest is violated, we should send a document to the Council of Labour Arbitrators. If the district people's committee or the Council of Labour Arbitrators cannot resolve the dispute, according to legal documents and code,

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[13] Interview #8 [dated 12/8/2014].

[14]Interview #U13 [dated 14/8/2014].

important role as well, especially in protecting workers' legitimate interests; because they are not paid by enterprises, their voices are stronger. But local unions are responsible for learning about workers' thoughts and feelings."[15] In this way, unions at grass-roots level are not operating alone, even though they depend on salaries paid by companies. Hence they build up networks and a capacity to apply pressure from higher levels on companies to protect workers.

Unions seem to be more successful in protecting workers who work within the state's area of responsibility. Instead of protecting more direct labour rights concerning individual conflicts and violations between enterprises and workers, unions choose to protect other rights, such as right to health and right to social security, that fall within the sphere of the state's responsibility. This seems to be an easier task than confronting managements in the private sector.

One instance of success was elicited in interviews. During the restructuring of SOEs in the 2000s, the VGCL proposed a workers' support/assistance policy. A policy was formulated whereby laid-off workers were supported by one month's salary per year of service instead of halfa month in restructuring companies. This policy was also applied in the case of bankrupt companies (as, for example, in the case of the Vinashin Cooperation in 2012). Early retirees are now entitled to two months' salary per year of service and full social insurance. VGCL also succeeded in getting State policy to allow workers in equitised companies to buy preferential stocks and shares when companies are equitised. Another example was in 2009, when the economy was in crisis, when VCGL proposed government support for workers who lose jobs by providing loans to create their own businesses (Decision 30 of Government).

VGCL has worked assiduously with other agencies to assure insurance benefits for workers. A union cadre at enterprise level said:[16]

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[15] See Newspaper: SaiGongiaiphong, February 9, 2006, page 4. Title Vn**:** Nếubịdoanhnghiệp "ép", côngnhânhãygõcửacôngđoàn Title Eng: If workers are pressed by enterprises, they should call on unions. Author: Tran Toan.

[16] Interview #U1 [dated 13/8/2014].

> When a company fails to pay health insurance for workers, or when a company goes bankrupt, workers do not have insurance to cover their sickness or childbirth expenses. The union can participate in developing policies related to workers' rights and benefits, but there are many things we can't simply do just because the law says so. Relevant government agencies should pay more attention to that.

Interventions to protect workers now extend beyond the scope of the relationship between unions and management or unions and the State. Unions at local level may even bring cases of rights violations or labour disputes to courts or participate in judicial processes.[17] There have recently been cases where unions sued companies for compensation because a company failed to pay social insurance to the authority even though they deducted contributions from workers.[18] In other cases, when insurance authorities sue companies, unions can be witnesses to defend workers rights. [19] A district union official puts it like this: "We can even help to bring a matter to court if it is a legitimate case of conflicts or violation." In fact, there are many court

[17]See: Trade Union sued Company [Côngđoànkiệndoanhnghiệp]

Author: ThanhHai. Newspaper: Lao Dong (labour), No. *19/2013 (9341),* Page: 1, 4, Date: 23 Jan., 2013.

[18]See for information Ho Chi Minh City Labour Union claimed 1.8 billions dóngs for workers [5 July 2014] http://www.baomoi.com/Doi-lai-gan-18-ti-dong-quyen-loi-cho-nguoi-lao-dong/47/14238709.epi.

Ho Chi MinhLabour Union joined Social Insurance agencies to sued company for not paying social insurance. In 2012, they sued 594 companies to court. [5 March 2014]

http://bhxhhoabinh.gov.vn/news/2182/2614/gian-nan-doi-no-bao-hiem-xa-hoi.aspx

On Jan 24, 2013, the third trial of a lawsuit regarding overdue salary for almost 30 workers in the Da Nang Commercial and Service Joint Stock Company took place in the People's Court in Thanh Khe District, Da Nang City. This was the first time the Labour Union of Da Nang City sued a company on behalf of a group of workers. A few tens of workers/staff of the Da Nang Commercial and Service JSC won in the previous three trials (on January 7, 8 and 21) and claimed their legitimate rights and benefits thanks to help from union cadres.

[19] Social insurance agencies sued the companies for not paying insurance. On February 7, 2013, the Vietnam social insurance agent agreed to let the Vinh Phuc social insurance, working with the Labour Union, accept applications and pay sickness and maternal allowances to workers of TS-ARI company.

http://www.baomoi.com/Gian-nan-doi-no-bao-hiem-xa-hoi/47/13938115.epi .

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cases dealing with insurance claims and related matters. He adds: "Trade Union can participate in court cases."[20]

In sum, despite institutional constraints in the CPV instructing the VGCL to maintain harmonious industrial relations that hinder their legal role of organising strikes, unions have become better at protecting workers' rights. Whilst the VGCL, at national level, remains an arm of the state, it has indeed found ways to successfully advocate for legal changes that recognise a wider range of rights. At the same time, by being allied with other agencies outside the economic sphere and the companies, VGCL can make claims on behalf of workers. Enterprise-level unions are, however, constrained in their capacity to confront management independently and to aggressively protect workers. But they can ally with and get support from other stakeholders, including local authorities, labour and insurance authorities and judicial bodies in order to exercise power. In practice, where they cannot protect workers by organising strikes, they tend to ignore the occurrence of such strikes, recognising implicitly that they are initiated by workers themselves.

7.2.3 Defending rights

Whenever the rights of workers are not fulfilled or are violated, labour disputes may occur. The question is how unions deal with disputes; whether or not they try to resolve disputes and defend workers' interests.

The 2006 Labour Code provided a clearer description of a dispute resolution system. Article 14 makes a distinction between individual and collective labour disputes. This provision also distinguishes between rights-based disputes and interest-based disputes.[21]Nevertheless, the dispute resolution mechanism in the law is a better means to empower unions in their role of defending the rights and interests of workers.[22]As district unions are taking on the newly delegated task of conflict solving and minimizing the occurrence of strikes, in practice authorized by the People's Committee Authority, this would be the key non-regulated way for district and higher trade unions to intervene directly with enterprise managements.

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[20] Interview #U13 [dated 14/8/2014].
[21] Industrial Relations and Dispute Settlementsin Vietnam.ILO Discussion Paper. 2006.
[22] Further to Labour Code 2006, the new Decree 43-ND-CP dated 10 May 2013. Art 8– states the role Trade unions in advising agencies and individuals on labour conflicts resolution.

The process of defending rights evolves from negotiating through dialogues and collective bargaining. Unions initially must choose to defend claimed interests within the sphere of enterprises. When unions have to deal with complaints, workers may complain because they are not informed about the basis for wage setting, production calculation, bonuses and so forth. They may ask unions to make enquiries of management. In other cases, interviewees reveal that workers were fired without proper reasons being given. As workers are generally not successful in taking requests directly to management, they can send complaints to unions at enterprise level and sometimes to higher unions. But the fact is that union representatives at the enterprise level have limited capacity to deal with complaints on their own. This is partly because they do not have sufficient power to negotiate with management and also because they fear losing their jobs when they stand up on behalf of workers. Enterprise-level cadres are commonly seen as being too weak and inexperienced and lacking skills to resolve conflicts. Cadres are, at the same time workers, who are paid by employers. If they fight on behalf of workers, they fear being neutralized by being moved to another post or fired.[23] Gradually, union representatives are seen as becoming more confident in dealing with complaints, by raising them to management for responses. One union representative in a joint venture company in Hai Duong province put it thus:

> We will discuss directly with the managers of the company. And most of the time when we negotiate with managers we have to base on the workers' complaints in order to get attention from the managers … We also have to consider if the complaints are appropriate or not. The chance to get the employer's approval is lower if we just present every proposal from the workers. Therefore we have to see which one is appropriate, because the TU can only protect the legitimate and justifiable rights of the workers.

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[23] This is the view of Mr Le TrungNghia, Chair of Labour Union of Industrial Zones of Ho Chi MinhCity. Sourced from media Infoportal of VinaSteel: Trade Union role in industrialisation period.http://www.vnsteel.vn/noi-dung/tin-hoat-dong-khac/vai-tro-cong-doan-trong-su-nghiep-cong-nghiep-hoa/default.aspx [accessed 10 December 2014].

In most of cases, unions mediate and negotiate with both sides to balance competing interests between workers and management. As the chair of the union in a foreign-owned enterprise in Hai Duong Province explains: "The union stays in the middle, so if the employers are too intense, we try to explain the workers' rights. Usually the workers focus more on interests/benefits than rights, so if their demands are not appropriate, we must explain to the workers so that both sides agree."[24] As a trade union official in a private company in Hai Duong [25]puts it, as a mediator:

> [We] listen to workers and deliver their wishes to company owners, so the owners can respond to those needs with reference to the law. Regarding specific issues, we have to research whether the desires of workers are appropriate, and when we convey those requests to the company owners, we can analyze whether these desires are appropriate or not, and decide whether or not to push to have these desires met.

In cases when complaints are not satisfactorily addressed, workers may want unions to demand higher benefits but unions may fail to do so. In these cases workers are aware that they should appeal to higher trade unions. "I can complain to higher level management if the unit manager cannot deal with it."[26] When complaints from workers have been made, the union has a basis to defend them before companies for correction or justification. Sometimes, if companies refuse to take action, strikes may occur. However, neither companies nor unions want to resolve conflicts and complaints by letting workers strike. The higher union has often proved to be more powerful in negotiating with enterprises. The chairperson of a district trade union said:

> Strikes happen when companies have not met the needs of most workers and local unions have not been able to show their credibility and responsibility in addressing complaints from members. The district union promptly collected information and processed the case and engaged

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[24]Interview #W17 [dated 23/6/2014].
[25]Interview #U15 [dated 21/8/2014].
[26]Interview # W16 in [dated 23/6/2014].

> relevant government departments and the company as well as the enterprise union to meet workers' complaints about raising salary grading, expenses for meals and bonuses for overtime. The district union advises enterprises so that management will hold serious negotiations with their enterprise unions.[27]

Another way is to support workers in understanding issues and demands so that they can make more legitimate complaints. In the case of the union suing Da Nang Commercial and Service JSC, trade unions even helped workers to write the complaints.[28]

In terms of disputes, the defence of workers' rights is more challenging for unions to negotiate in favour of workers. Most disputes in Vietnam are largely interest-based (inasmuch as the issues go beyond wages, bonuses, work hours, and OHS), so the union then initiates negotiations with management. Under the previous mechanism, a dispute was resolved when it arose, through a Reconciliation Committee established by employers on a 50/50 (employers/workers) basis. In order to overcome this problem, the 2006 Code proposed the appointment of a 'third party,' agreed to by the employer and the union. Another new point in the 2006 Code was that, in the case of collective disputes (Art. 159), the Chairperson of the District People's Committee is responsible for trying to find a temporary solution[29] and the Chairperson delegates this

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[27] Read at:Hoat động công đoàn tỉnh Bắc Giang: Bảo vệ kịp thời quyền lợi của người lao động. Title Eng: TU in BacGiang: Protect workers' interests in a timely manner. Author: Song Thu. Newspaper: Lao Dong, date: March 27, 2013, No. 66/2013 (9388), page 4. The article quotes Nguyen Van Tuyen, Tan Yen district union

[28]Read more at: Newspaper: Lao Dong (labour), No. *19/2013 (9341),* pp.1- 4, Date: 23 Jan, 2013. [Côngđoànkiệndoanhnghiệp] Title ENG: Trade Union sues an enterprise. Author: ThanhHai.

Le Dung Phung – a staff member of the Sales Department in the Da Nang Commercial and Service Joint stock company - said:"The Policy-Law Department not only gave us instructions on how to file a complaint but also provides legal support. Many times, union staff also act as our representatives in dealing with the court."

Mr Truong Ngoc Hung – Head of the Policy-Law department of the Labour Union in Da Nang, said: "We not only provide advice but actually help workers to write each line in their complaint." According to the law, workers must sue the company individually, but the union was authorized by each worker so they could represent the whole group to sue the company."

[29] Decree 133/2007/NĐ-CP dated 8-8-2007.

task to the union. Therefore, unions at district level are often assigned the role of mediator in conflicts concerning workers' rights. This is probably appropriate in regard to issues where there is policy and where there are strong grounds for claiming rights and interests. In the case of rights claims lying outside of set policy, or when rights are violated, it is not easy for unions to act as mediators.

As analysed above, trade unions at all levels negotiate competing interests between workers and employers. The most common situation is to negotiate on wage issues. Since wages are the greatest concern of workers they demand wage increases from time to time. They also request transparency in terms of payment. Under the previous mechanism, wages were not the subject of negotiation between unions and enterprise management unless there was a request from workers who demanded strikes in support of wage increases. Enterprise unions are not able to supervise enterprises and government agents in terms of salary payments. VGCL has even demanded to take stronger positions in wage negotiations at political and policy level. Since the adoption of minimum wage adjustments regulated by the State from time to time does not guarantee decent lives for workers[30] VGCL takes part in the National Wage Council asan active stakeholder and sits in on annual wage negotiations with VCCI – the employers representative - and other industries and sectors.[31]

Instead unions choose to use the dialogue mechanism that is authorised by their regulated mandates and is a collective way of operating. In all of this it is important to note that the VGCL has been successful in advocating changes to law that make for more feasible mechanisms to promote dialogue with enterprises with legal power behind them. As one VGCL leader puts it:[32] "Trade Union should dialogue

[30] The State has introduced a minimum wage system based on the cost of living. Its aim is to ensurethat workers' working in normal conditions have the possibility to recover their strength and even increase it. The minimum wage is used to calculate the salary of any type of labour andis subject to adjustment when a rise in the cost-of-living index (CPI) causes a drop in real value of the workers' wages (Article 56). The Labour Code of 2002 allows private enterprises to work out their own wage scales and tables, andtheir production norms, based on some principles guided by the State instead of to simply follow wage scales and tables, and production norms regulated by the State(Article 57). Decree 3/2006/ND-CP regulates that the lowest salaries to be paid to workers who have received vocational training (including workers trained by the enterprise) should be at least equal to 107% of the minimum wage.

[31] The VGCL had, therefore, to refer to Party Resolution 20/5/2008, which gave guidance on the minimum wage http://dddn.com.vn/chinh-tri-xa-hoi/khang-dinh-su-menh-cua-giai-cap-cong-nhan-20130426040018499.htm.As a result, VGCL persuaded Government to take responsibility for implementation of the Law on Minimum Wage

[32]Interview #U6 [dated 12/8/2014].

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with management and orient for workers. Dialogue is the better way to resolve conflicts. Therefore, we developed the current labour law that requires quarterly dialogues in enterprises or dialogues by ad-hoc request. If a conflict is not resolved, only then should they organize a strike."

Enacting dialogues as the law provides for, depending on union capacity, workers have an increased opportunity to make and back up demands on management. A union leader at a joint-venture enterprise with Japanese investors discussed how he previously worked at a foreign-owned hotel chain and had prevented them from unjustly laying off workers. All enterprises with unions hold yearly workers' conferences (which should now take place quarterly) in which management must give concrete oral replies to all the questions and demands coming from employees. The main way that workers can thus formally influence their enterprise union is by making complaints to union leaders, which leaders collect each year for the workers' conventions, where management comes to listen to workers' demands. Union leaders then negotiate with management about these issues. After the workers' convention, management signs an agreement with the union (e.g. interview with the chair of union in a joint stock company from the Soc Son District). The success of the law and regulations on dialogue mechanisms at enterprise level are quite clear with regard to expanding a democratic process at enterprise level as well as pushing the rights claiming process directly by workers.

In sum, union capacity to defend workers' rights has increased in the form of negotiating capacity to handle complaints and to participate in conflict and dispute resolution between workers and management. The recent mechanism regulated by law allows district trade unions to intervene into enterprise matters in cases of conflicts, disputes or complaints. At enterprise level unions are enabled to act to defend the rights of workers through collective dialogue mechanisms. Therefore between district and enterprise trade union, there is a stronger connection to build more power against an enterprise. There are more opportunities for support and alliances. Referring to theories of democratisation, where group interests, in the form of rights struggles, can be represented in collective ways that change power relationships, labour movements may be instrumental. In this case, as analysed, trade unions can demonstrate connections across levels to call for collective action. Unions can thus build more

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power for negotiating rights and interests of workers. Such practices have opened up scope for unions to better defend the rights and interests of workers outside the factory gate on a broader social canvass.

7.2.4 Representation for workers

One of the important roles of the VGCL and its affiliated trade unions at all levels is representation. This role is articulated in the State's mandate and stressed in actions. When conflicts between employers and employees occur, theState and trade union seek resolution to improve collective bargaining mechanisMsConflicts become important reasons for social changes and thus potentially drive dynamic of democratic transition. People with competing conflicts with state and other actors may join the struggle to contest power relations. Conflicts further come from divisions of upper-status groups or ruling elites (Oberschall, 2008). In this sense, the CPV has opted for legal changes to protect workers' rights whilst accommodating contests between interest groups. Even after the amended 2012 Trade Union Law was passed, VGCL successfully advocated for a new Government Decree on rights and duties of trade unions to "represent and protect legitimate rights and interests of workers."[33]

Workers now have more than one mechanism to formulate and agree on their agenda and priorities with support from unions. Under new Decree No. 43/2013/ND-CP, Article 6,workers are encouraged to discuss and make their own resolutions that are agreed on and result from dialogues at work between employers, employees and unions.

Collective bargaining is an important mandated means for unions to represent workers. A collective bargaining agreement (CBA) consists mainly of commitments about employment and security of employment, working time, rest time, salary, bonus, labour norms, OHS and social insurance, in line with the Labour Code. LabourLaws have been changed to make CBA more workable and better

[33]No. 43/2013/NĐ-CP. It states clear ways to represent workers in collective bargaining including negotiation, signing and monitoring of agreed terms and conditions as per CBA, rights to dialogues with companies in issues related to workers' rights. Workers discuss and make their own resolutions that are agreed and resulted from the dialogues at work between employers and employees and trade unions have role to monitor the implementation of these resolutions. Although Vietnam has not ratified three of the eight fundamental ILO conventions, including the Right to Organise and Collective Bargaining Convention of 1949 (no. 98), the main contents of the convention are reflected in the Labour Code.

monitored.[34]Provided that, in the past, even when there was a CBA, employers did not strictly follow what they have signed,[35] unions are now authorized to monitor the implementation of CBAs. This tool requires unions to organise workers to understand and prepare for negotiation for the purpose of guaranteeing employers' compliance with laws and regulations on labour rights and benefits. It is also the means by which unions can represent workers to demand more favourable conditions. Thus, the right to collective bargaining falls under the sole authority of the union.

As noted, although Vietnam has not recognised the right of independent unions to exist, workers do have the choice of joining and establishing a union at enterprise level with in the VGCL framework. To some extent, this provides an opportunity for workers to choose their union representatives. Interviews with workers who became union representatives revealed that they were elected on the grounds of capacity and trust. In some interviews workers referred to cases where the union representative had to resign from the position because s/he could not organise claims and demand processes as per workers' wishes. Workers demand capable representatives to represent them. Workers now also have the choice to re-elect their representatives or to appoint a representative to make claims or lodge complaints on their behalf. According to Mr Le TrungNghia, Chairperson of TUs of Industrial Zones in HCMC, workers typically do not trust unions and believe that they work for the benefit of employers.[36] Pressure from workers on their representatives through democratic process at enterprise level has led to higher-level unions acknowledging such practices and role of elected representatives in enterprise unions. At the same time, enterprises have to acknowledge union functions according to law.

The preceding text indicates'democracy at work' evolving in Vietnam, inasmuch as workers, acting independently and through the trade union system, have a good deal of scope to freely express their concerns about welfare issues wihtin and

[34]In 2002 the Provincial Labour Management Office acquired the right to declare a CBA partly or wholly invalid, the rights of both sides having to be defined in accordance with the law. The 2012 Labour Code and 2012 Trade Union Law, together with Decree 43/ND-CP in 2013, have provided strong legal status for unions at enterprise level to negotiate CBAs to represent and protect the rights of workers.

[35] According to a report from Workers and TradeUnion Institute, 8/2007.

[36] See Infoportal of Vina Steel for information: Trade Union role in industrialisation period.http://www.vnsteel.vn/noi-dung/tin-hoat-dong-khac/vai-tro-cong-doan-trong-su-nghiep-cong-nghiep-hoa/default.aspx.

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beyond the workplace. Workers are far from automata toiling on behalf of a socialist state or a merciless capitalist class.Dahl (2000) construes democracy as a condition within the sphere of the state, as a form of government that recognises political rights, including effective participation, equal voting and inclusion. But beyond this, a consideration of democracy cannot ignore the work sphere: recognition and autonomy at work are exercised within the framework of a society and under democratic norms. 'Democracy at work' is a concept that argues for recognition and autonomy at work including the right to participation in decisions that impact on employees' interests through trade unions. Thefindingsoutlined above indicate that there is indeed a progressive process for 'democracy at work.' As trade unions face on-going challenges in representing their members they are opting to go for democratic election processes, at least at enterprise level. Democratic tendencies are thus seen as strengtheningfrom within union system, even though there remainsbut one recognised trade union with unions at lower levels belonging to VGCL, as noted previously. Pressuresfor such democratic processes within the union system come from union members themselves. This happens when workers' demand that unions orchestrate collective bargaining and therefore required enhanced competency of union representatives.Moreover, the legal framework (such as the new lawon trade unions)provides for better mechanisms for collective bargaining, as well as empowering union representativesto participate effectively in collective bargaining.In order to choose more capable union representatives, elections should be organised at enterprise level with free vote of members. Enterprise union representativesarenow able to operate more independently of control by higher level unions, VGCL, State and management than hitherto.

7.3 Conclusion

History shows that labour movements will not necessarily lead to regime change but may drive the widening of political space within regimes. Whilst there is no sense in which this constitutes democratisation, it is reasonable to conjecture that the incremental widening of political space is a precursor to democratisation processes being entrained in the future. The history of trade unions around the world (Chapter 2)

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shows that they have played a key role in, indeed have emerged from, labour movements. In the sphere of the workplace, this Chapter has shown that in Vietnam there is indeed more space for participation, inclusive dialogues and negotiation processes between workers and employers. Chapter 6 described rights claims of workers, expressed through wildcat strikes and demonstrations organised by workers themselves, despite such activities lying outside the legal sphere. Rights claims have sometimes reached a scale whereetheyhave required the attention of trade unions and the State itself. Unions are no longer content to simply mediate for harmonious workplace relations or to be mere 'transmission belts' of government policy; although of course these activities remain part of union responsibilities. In the present Chapter, more evidence has been presented of trade unions at all levels taking more active roles in negotiating, bargaining and lobbying to change laws supporting the rights and benefits of workers.

To a certain extent then, it can be argued that unions act not merely in the sphere of employer-employee relations but also act to defend the rights and equity of workers with regard to State responsibilities. Recent rights struggles, in the form of strikes, represent social stresses that the CPV has opted to address through legal changes that have given more power to unions to protect, defend and represent workers. New laws establish mechanisms for enterprise unions to handle complaints from workers, to represent them in collective bargaining, to negotiate better rights and benefits and to engage in judicial action, including litigation, against enterprises on behalf of individuals or groups of workers when their rights are violated. Furthermore, leaders of enterprise unions can now be elected by workers, thus enabling them to be more autonomous from the State and higher trade unions. With laws and procedural mechanisms now in place, the VGCL and its affiliate unions can more effectively speak for and stand up on behalf of members to management. In an important sense, the fact that the State recognises the right to unionise, and to be more inclusive of workers, signifies a widening of political space. The State and VGCL have, moreover, stepped further away from controlling the way that enterprise level unions organise their members – including organizing strikes.

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It can reasonably be claimed that there is more 'democracy at work' than was ever the case, notably where union representatives are elected by free choice of

workers rather than being appointed by the CPV or by management, as was the case in the past. Again, as proposed above, whilst these trends cannot be construed as pathways to the democratisation of Vietnam's political system it is plausible to conjecture that the opening of political space may have, as a corollary, an opening of the minds of workers to the possibility of political futures different to the current regime. What is clear, nevertheless, is that the widening of political space has been mediated by institutional changes in laws and practices within the State and the institution of the VGCL as the product of economic changes. These changes act to preserve State (including VGCL) power but also respond to a genuine desire to protect the interests of workers in a time of rapid economic change. They also, of course, underpin the agenda of economic growth by providing a safety valve to limit damage caused by disputes in the workplace spilling over into strikes.

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CHAPTER VIII
CONCLUSIONS

Three questions were posed in Chapter 1. This Chapter restates those questions and considers the extent to which they have been answered in the thesis. The most general insights are presented rather than re-stating the detailed conclusions of each chapter.

8.1 Why and to what extent, and in what ways, has economic liberalisation influenced the transformation of Vietnam's Trade Union system into an agent capable of acting more independently of government?

On reflection, the notion that an agency of the State can act independently of the State seems rather naïve. Perhaps the term 'at arm's length' is the best way of describing the situation that has evolved since Doi Moi. The VGCL and, by extension the system of trade unions that come under its wing, are unquestionably agencies of the State, even at the grassroots level. The major shifts in the VGCL system's role and responsibilities are thus perhaps best characterized as resulting from the need to devolve power within a large and complex system that neither the State nor the apex leaders of the VGCL would be able to micro-manage. The many and significant changes in the system can also be read as pragmatic responses by the State to enable trade unions to mimic the behaviour of unions in democratic states but without the State giving up ultimate control. Of course in democratic states governments also set the rules that provide the legal settings within which unions may act. In a sense then there is a convergence between the expectations and capacities of unions in communist and democratic settings; a convergence predicated on common challenges thrown up by economic globalisation. One way or another, all kinds of states delimit rules for the behaviour of unions and indeed workers operating within or outside of the union

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framework, either as workers per se or as citizens. The obvious and critical difference is that the rules in democratic states are set by governments controlled by dominant political parties or coalitions of parties elected under universal franchise. The VGCL, because of its role as an arm of government, is able to and has advocated effectively for changes in its own role and the legal system that enables it to act and adapt. In this respect it operates in much the same way as bureaucracies in democratic states that also develop and advocate policies to governments that accord with political agendas. It is these (institutional) interactions between state and VGCL that have been largely responsible for changes. This is not to say, however, that workers, through their enterprise and higher-level unions, and through strikes, have not been influential in driving change.

What is clear is that the Vietnamese State, in response to the requirements and by-products of economic liberalisation(essentially the need for rights protection in the new privatised setting whilst simultaneously minimizing disruption to the forces of production) has changed the policy and legal framework within which the VGCL system operates. It has been enabled to act more like unions in democratic states and to act in the delegated manner mandated for the effective management of large and complex organisations. The atomising of production units(workplaces) has been paralleled by explosive growth in enterprise-based unions. Issues of recruitment, financial capacity and right to strike have been pragmatically dealt with (in the case of strikes) and technically in the other cases.

The notion of a ‘semi-civil society’, following Saxonberg (2012), had been expected to inform the interpretation of changes to the trade union system in Vietnam. As noted earlier, ‘semi-civil society’ actors are not legally defined and that is exactly why they are termed ‘semi-civil’ and are not elements of either civil society or traditional Marxist-Leninist mass organisations. Semi-civil society organisations face an undefined, unclear situation and must feel their way around it and test the limits of what they can do. Certainly the VGCL and unions have been finding their way in the changing top-down and bottom-up settings that they have operated within since Doi Moi was triggered. The mutually constituted expectations of workers and businesses, and of the State, have driven the State to re-define the role of unions. The VGCL has been an active player in advocating, to the State, changes to its role. The political and

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bureaucratic seniority of its top leaders, and the nationwide network of information sources it commands, would hardly indicate otherwise. Nor would any large organisation and its leaders remain passive in the face of existential threats to its longevity.

As noted, Vietnam is undergoing economic liberalisation, but so far it has not experienced much democratisation. It would, however, be wrong to claim that there have not been any political reforms. The political sphere is much more open than it used to be. Members of parliament can vote against the government and sometimes government policies fail to get support. This would be unthinkable under an orthodox Marxist-Leninist regime. Moreover, although it is true that the mass media is censored, it is much more open than it used to be. Internet newspapers have discussion forums where citizens often criticize government policies, etc. It is important to contextualize the political situation in a more nuanced manner, because the fact is that it has liberalised and is not a 'hardline' dictatorship and the shifts make democratisation more likely.

What is also clear is that the institutional relationships between unions at different levels in the VGCL hierarchy and the State are mutually constituted; that is to say, information and debate flows in a multiplicity of ways. Those relationships have driven changes in attitudes, laws, policies and practices that have enabled and/or mandated an enhanced capacity of unions to better protect the rights of workers.

8.2 Why and to what extent has the 'political space' within the Trade Union system shifted to what may be interpreted as a more democratic position?

The key features of the VGCL system today, as noted, mimic/emulate those of trade unions operating in democratic states.Union leaders, at enterprise level, are elected by their members but at district, provincial, city and national levels of the VGCL officials are appointed by the State and the VGCL itself. Union leaders at enterprise level no longer need to be members of the CPV. In one sense that may seem trivial but in another it may open space for ideas and mind-sets not framed only by

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CPV rhetoric. Whether that translates to a greater sense of freedom to act is the question (one that cannot be answered in the present thesis). There is definitely movement of ideas and actions from bottom-up as well as top-down. Presumably this was also the case pre-Doi Moi although this was not a question addressed in the research. Certainly the membership of workers on the boards of SOEs seems likely to have been significant in that earlier period.

The Vietnamese State has in fact opted to widen the space for the participation of trade unions in the broader political process and to allow, indeed strongly encourage, unions to act in response to workers' demands. The State and unions have allowed room for effective participation, equal voting or representation for union members. The VGCL has stressed collective bargaining on behalf of all workers in private companies. Applying the law, Vietnam's trade unions can speak for and stand up on behalf of members to confront management. In an important way the State, in recognising the right to unionise, and to be more participative and inclusive in its policy-making and practices, signifies democratisation in action. Both the Vietnamese State and the VGCL have stepped further away from controlling the way enterprise-level unions organise their members – including the right to organise strikes.

The new laws undoubtedly establish mechanisms for enterprise unions to handle complaints from workers, to represent them in collective bargaining, to negotiate better rights and benefits and to engage in litigation against enterprises on behalf of individuals or groups of workers when their rights are violated. In addition, grass roots/enterprise trade unions are encouraged to function in collective bargaining and effective negotiation with management. And there are strong indications that democracy at work at enterprise level happens as enterprise unions can be elected by choice of workers to represent them. By doing so, enterprise unions can thus become more autonomous from higher trade unions or VGCL and the State. At the same time, in practice, workers are also now empowered to choose their representatives democratically to protect and bargain for their rights.

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8.3 Why and to what extent have workers' demands, exemplified through frequent strikes, influenced the internal struggle within the Trade Union for a more inclusive political space from legal, political and practical perspectives?

It is not possible to provide a definitive answer to this question. It was noted that wild cat strikes, whilst illegal, have been generally tolerated by government. But what was in the minds of members of the government is unknown. Two conjectures may be offered. First, because strikes have not been a challenge to government, but rather a challenge to firms, or clusters of firms, government has had no immediate political interest in suppressing them. Second, as a socialist government, recognizing its core commitments to the welfare of the population as a whole, including workers, and grasping the significant challenges to the welfare of workers resulting from economic renovation, the State wants to ensure that workers have a strong voice in claiming rights both within and beyond the workplace. Because strikes can now be legally organised by unions (by current Labour law), as a response by the State to labour unrest, it can be inferred that illegal strikes, and the worker unrest that they represent, have indeed impacted on the role of unions. Of course the history to date indicates that illegal strikes continue and that unions do not organise strikes. What was not explored, in the research on which this thesis is based, are the links between the VGCL system and the organisers of illegal strikes. Nor was much information gathered as to the organisation of illegal strikes; and organisation of some sort is clearly involved. In retrospect this is a very interesting question. If illegal strikes are organised, who are the organisers, how do they organise, how do they relate, if at all, to unions, and do they endure? So fundamentally information is not to hand that would enable the characterization of illegal strikes as reflecting the existence of a labour movement or movements. It seems likely that the authoritarian State would not tolerate any semblance of an organisation of workers that was a power source outside the legal framework for unions. Conflict between the VGCL and the CPV (at least in the public domain) is notable by its absence. This may suggest that there are no significant undercurrents amongst workers struggles that might be characterised as social movements.

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Changes in terms of trade unions' role towards democratization have also come from demands of workers. First, workers are more aware of, and more apt to demand, their rights and interests. Labour rights have been popularised and workers now demand rights instead of merely asking for their interests to be considered. The conception of labour rights as a subset of human rights is a notable shift paralleling the State's ideological transition. Labour rights now cover the promotion of economic and social rights such as, for example, decent wages and working conditions. The pursuit of recognition of labour rights, even by means of strikes, has challenged perceptions of State, trade unions and workers as to what constitutes rights. Rights struggles have started mainly around economic rights –notably the right to work and higher wages - and as reasons for many wild cat strikes. At the beginning of their movement, workers claimed more economic benefits such as wages, allowances, working hours and in some cases this was because they were angered by poor treatment on the part of foreign managers. In reality, 90 percent of strikes occurred as a result of violation of labour laws by enterprise employers. The rights struggle now went beyond the factory gate. From time to time, workers have called on the State to take responsibility and even to initiate litigation, especially on social rights such as social security and job security issues. Workers concerns about rights expanded from immediate benefits and interests to more social and safety considerations. Now, the workers movement has been conducted in different forms, from making complaints and walking off the job on wild cat strikes, to better organised negotiations and legal actions. Workers' demands, voiced through strikes and by other means, have effectively expanded their political space. Nevertheless, rights struggles, expressed in wild cat strikes, are indicative of the emergence of a labour movement widening the democratic and political space. In the process of evolving labour rights, the right to union membership and freedom of assembly become more recognised and called for legal changes. It is noteworthy that workers' demands have not expanded to include matters not directly or indirectly associated with employment conditions. Nor were any signs detected in the research of workers wishing to form unions separate from the VGCL system. It may reasonably be inferred that workers are essentially concerned with their own wellbeing and have no general consciousness of the need for regime change.

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Second, workers have increased their demands to be protected irrespective of whether trade unions exist. The legal framework has changed to give workers more power and capacity to hold dialogues more democratically with management. Workers can now make demands for dialogues through their direct choice of representative, not necessarily through a trade union. This framework provides more room for workers to dialogue directly with management and to indirectly request trade unions to represent them in bargaining. The burden of fulfilling the interests and rights of workers was laid on the shoulders of unions. Trade unions actually face open pressure from workers to make the agenda and role of unions more attractive and beneficial to members. Unions have thus been placed under pressure to more actively support workers' interests and to protect their rights more directly and effectively.

Third, workers are now more empowered in demanding that their trade union representatives represent them. Workers' rights to participation at work have been enhanced. The practice could also enhance democracy at work involving both workers directly and trade unions. There remain, however, challenges for VGCL to act democratically and to engender changes from within to promote more democratic relationships with members. Under Vietnamese law, there is still only one legal trade union, the VGCL and its branches, and it is State-controlled. This means that workers can only join one trade union legally accepted under Vietnamese law and cannot form and/or join trade unions of their own choice or otherwise freely associate.

Despite this reality, it is possible to identify the widening of political space in a localised and incremental sense. The extent to which this argument holds water depends on how political space is defined. In fact all sorts of things might be cited, including: a widened remit from the State to enable the VGCL to support workers and to argue for policy change; decentralisation of union management and growth in numbers of unions; training for cadres to give them greater capacity to act independently (or quasi-independently) of the state; recognition that because they represent such a large and economically essential part of the population unions have power in themselves. Limited as these trends are in the context of a wider debate about democratisation, they do perhaps signify greater capacity for social action outside of the tight constraints of a centralised one-party state. It might also be conjectured that

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in loosening constraints people will be empowered to more independent action and thought.

Overall, there is no sense that the VGCL has done anything to expand political space in the wider society. So far in Vietnam, the zeitgeist is ‘all stops out for growth;’ while people are getting better off, especially the middle class, there is no discernible threshold of interest in regime change. This perhaps reflects the situation in Singapore where, under an authoritarian regime, it is assumed that the population is content with its material state and has limited interest in challenging for more democratic engagement. But it could be assumed that concomitant with economic growth, the working class is becoming politically mature and, endowed with choice, may begin to demand political change; so that workers can enjoy greater equity and basic rights than is the case under the current regime.

8.4 Suggestions for Further Research

As is the case with any research project, in the course of the work undertaken as a basis for this thesis a number of unresolved questions were identified. In particular, whilst changes to State policy and laws relating to trade unions and the rights of workers have been exhaustively documented in the thesis the specific role played by the VGCL within the corridors of power deserves further study. More explicit questions addressing the detailed mechanics of how unions operate at different VGCL levels and in different types of organisations is another line of investigation that would shed greater light on their effectiveness and autonomy. The phenomenon of wild cat strikes clearly requires extended consideration. How such strikes are actually organised, and whether organisers continue to develop forms of organisations even after strikes have ceased are of particular interest. The overarching concern, in this regard, is whether or not entities identifiable as labour movements exist in anything more than vestigial form.

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APPENDICES

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APPENDIX A
LIST OF INTERVIEWS

Table 1 List of Interviews

Informants	**Date of interviews**
Trade Unions By level in VGCL hierarchy: • 2 national trade union (VGCL) • 2 union representatives in ministries • 2 provincial level • 4 city • • • • level • 2 district level • 10 enterprises level By region • 4 in southern Vietnam(one from HCMC, 2 from Dong Nai Province and one from an enterprise) • 18 interviews in northern Vietnam o 4 national union (VGCL) o 3 city level o 2 district level o 5 FDI companies o 3 joint stock companies (former SOEs)	See appendix 1.a

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Worker Interviews 01_Hai Duong province = 25 interviews and questionnaires	8 Dec 2013
Workers Interviews 02_Hai Duong province = 11 in-depth interviews	28 January 2014
03_ Vinh Phuc province = 17 interviews and questionnaires	23 June 2014
Worker Interviews 04_Vinh Phuc province 4 worker leaders (activists)	22 June 2014
Hanoi_05 = 1 interviewwith union activist	27 Jul 2014
Civil society/activists (= 7) ACDC, CGFED, CDI, GPAR, CEPEW, CECODES, NH (anonymous)	28 February 2014
Media and journalists: (=5) Vietnam News, VOV1, VN media, Finance News, Vietnam News Agency	17 Jul 2014
State officials on labour affairs (=2)	16 Jul 2014

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Table 1a List of interviews: Trade Union Officials and Cadres

Code #	Level	Name	Work	Date of interview
U#1	Enterprises Joint Stock	Nguyễn Bích Liên	Cty Giày Thụy Khuê (Chủ tịch CĐ)	13/8/2013
U#2	FDI - enterprises	Bùi Tuấn Mịch	Staley Electronics Head of Trade Union	8/8/2013
U#3	Enterprises FDI	Nguyễn Ánh Cẩm	Head of TU (PROTECH)	14/8/2013
U#4	Ministry	Nguyễn Ngọc Chiến	Ministry of Trade	8/8/2013
U#5	Ministry	Nguyễn Thị Huyền	Ministry of Construction Women's Affairs Department	13/8/2013
U#6	VGCL	Đặng Quang Điều	Head of Policy Depart	12/8/2013
U#7	VGCL	Phạm Thị Thanh Hồng	Deputy – Women Affairts Dept	13/8/2013
U#8	TU Hanoi City	Kiều Hùng	Head of Policy Department	12/8/2013
U#9	TU Hanoi City	Đào Minh Đức	Head of Women Affairs Department	12/8/2013
U#10	District TU	Phó Thị Nguyệt Nga	Head of TU Long Bien District, Hanoi	13/8/2013
U#11	Industrial zone management	Nguyen Cong Ky	Standing committee member of Trade Union of Industrial zones management	13/8/2013

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U#12	Enterprise JSC	Mr Nguyen Van Hung	Vigracera – Xuan Hoa Soc Son District, Hanoi	14/8/2013
U#13	District	Mr Nguyen Van Bon	Deputy Head Soc Son District - Hanoi	14/8/2013
U#14	SOE	Nguyen Van Phuc	Head of TU / Deputy Director URENCO Hai Duong Province	21/8/2013
U#15	FDI Enterprise	Mr Phuong Mr. Pong	Head of TU, Deputy Director Long Hai Jsc. Hai Duong province	21/8/2014
U#16	Enterprise, FDI/JV	Mr Nguyen Trung Kien	Formos Star	21/8/2013
U#17	Enterprise	Ms Nguyen Thi Loan	Head of TU, Urban Management Facility, Hai Duong province	21/8/2013
U#18	TU Ho Chi Minh City	Mr Ho	Deputy Head – TU HCMC's Policy Department	26/2/2014
U#19	Viet Thinh Joint Stock Co. (Ho Chi Minh City)	Ms Phuong Loan	Head of TU Unit	26/2/2014
U#20	TU – Province	Mr Nguyen Van Ha	Head of legal aid Unit, TU of Dong Nai province	25/2/2014
U#21	TU – Hanoi	Nguyen Thi Thanh	TU vice chair person	24/7/2014

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		Ha	– Hanoi	
U#22	VGCL	Dang Quang Dieu	VGCL – Head of policy	25/7/2014 (2nd time)

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Table 1b List of interviews: Workers

#	Name	Gender	Age	Work area	Date of interview
W#1	Dao Xuan Tuoi	Male	25	Vinh Phuc	22/6/2014
W#2	Nguyen Van Men	Male	25	Vinh Phuc	22/6/2014
W#3				Vinh Phuc	22/6/2014
W#4	Nguyen Ngoc Chuyen	Female	22	Vinh Phuc	22/6/2014
WG1.VP	Trieu Thi Van	Female	24	Vinh Phuc	21/6/2014
WG1.VP	Tran Thi Thanh	Female	26	Vinh Phuc	21/6/2014
WG1.VP	Bui Thi Hien	Female	25	Vinh Phuc	21/6/2014
WG1.VP	Nguyen Thi Thu Trang	Female	20	Vinh Phuc	21/6/2014
WG1.VP	Tran Thu Dieu	Female	19	Vinh Phuc	21/6/2014
WG1.VP	Phung Thi Mai	Female	20	Vinh Phuc	21/6/2014
WG1.VP	Bui Thi Thu Ha	Female	24	Vinh Phuc	21/6/2014
WG1.VP	Nguyen Van Ben	Male	24	Vinh Phuc	21/6/2014
WG1.VP	Dang Van Sac	Male	26	Vinh Phuc	21/6/2014
WG1.VP	Le Thi Minh Nguyet	Female	25	Vinh Phuc	21/6/2014
WG1.VP	Duong Thi Dung	Female	19	Vinh Phuc	21/6/2014
WG1.VP	Luc Thi Hien	Female	20	Vinh Phuc	21/6/2014
WG1.VP	Phan Thi Thao	Female	19	Vinh Phuc	21/6/2014
WG1.VP	Phan Thi Thanh Tu	Female	22	Vinh Phuc	21/6/2014
WG1.VP	Hoang Thi Yen	Female	20	Vinh Phuc	21/6/2014
WG1.VP	Dao Xuan Lai	Male	24	Vinh Phuc	21/6/2014
WG2.HD	Nguyen Van Trinh	Male	30	Hai Duong	28/6/2014

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WG2.HD	Khong Van Long	Male	33	Hai Duong	28/6/2014
WG2.HD	Nguyen Van Hung	Male	29	Hai Duong	28/6/2014
WG2.HD	Nguyen Minh Quang Hai Duong	Male	28	Hai Duong	28/6/2014 28/6/2014
WG2.HD	Do Thi Thuy	Female	21	Hai Duong	28/6/2014
WG2.HD	Hoang Thi Chung	Female	27	Hai Duong	28/6/2014
WG2.HD	Nguyen Thi Hien	Female	27	Hai Duong	28/6/2014
WG2.HD	Dao Thi Hao	Female	27	Hai Duong	28/6/2014
WG2.HD	La Cong Khoai	Male	20	Hai Duong	28/6/2014
WG2.HD	Vu Dinh Ban	Male	21	Hai Duong	28/6/2014
WG2.HD	Dang Van Dieu	Female	21	Hai Duong	28/6/2014
WG2.HD	Vu Thi HUyen trang	Female	27	Hai Duong	28/6/2014
WG2.HD	Nguyen Van Tuan	Male	20	Hai Duong	28/6/2014
WG2.HD	Thai Xuan Quan	Male	26	Hai Duong	28/6/2014
WG2.HD	Ngo Khac Diep	Male	26	Hai Duong	28/6/2014
WG2.HD	Doan Dac Dung	Male	22	Hai Duong	28/6/2014
WG2.HD	Tran Thi Thuong	Female	18	Hai Duong	28/6/2014
WG2.HD	Tran Thi Nho	Female	24	Hai Duong	28/6/2014
WG2.HD	Hoang Thi Cham	Female	27	Hai Duong	28/6/2014

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APPENDIX B
INTERVIEW QUESTIONS

Focus on trade unions to understand how they are seen to have been changing since Doi Moi.

1. How do you perceive that your organisation has changed in recent decades? Has it changed its focus, goals, ways of operating?
2. What do you consider to be the biggest problems it faces and how is it trying to solve them?
3. What do you consider to be its biggest achievements?
4. What are the main activities it has been involved in and what is its main goals?
5. Can you think of any concrete cases in which they were able to influence policies?
6. What actions if any have they taken to increase member influence? What ways do members have to influence their organisation?
7. Do they have any problems in recruiting members? What actions are they taking to recruit more members?
8. Do they have cooperation with any international organisations or organisations from other countries?
9. How has this cooperation influenced them? What are the advantages and disadvantages of this cooperation in their opinion?
10. Do unions behave any differently in private enterprises than they do in public ones?
11. How has your organisation changed in recent decades? Has it changed its focus, goals, organisation or ways of operating? What are its main goals today?
12. What do you consider to be their biggest achievements of your organisation? What do you consider to be your personally biggest achievement?
13. What do you consider to be your organisation's biggest problems and how is your organisation trying to solve them? How are you personally trying to solve these problems?

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14. What are the main activities you have been involved in and what are your main goals?
15. What actions if any have they taken to increase member influence? What ways do members have to influence their organisation?
16. Do you have any problems in recruiting members? What actions is your organisation taking to recruit more members?
17. Can they think of any concrete cases in which members were able to influence union policies?
18. How is the leader of your organisation chosen? How did you get your position and under what conditions? In other words: are there any firm rules on casting of positions in the TU?
19. Do you know about any successful legal or illegal strikes in the country that would help employees to improve their working conditions (wages, bonuses, insurance)? At which company did that strike take part? Has the TU ever supported or started a legal strike according to your knowledge? Do TU cadres ever help start or join strikes that they did not start themselves?
20. Does your organisation have cooperation with any international organisations or organisations from other countries? How has this cooperation influenced your organisation? What are the advantages and disadvantages of this cooperation in your opinion?

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Questions for Trade Union representatives at the National/Ministry Level/Province/District level

1. Does your organisation ever try to influence national policies?
2. If yes, how does it try to influence policies? What are its main policy goals? Does it try to influence welfare policies (e.g. access to daycare)?
3. Can you think of any concrete cases in which your organisation was able to influence national policies? How did your organisation go about influencing these policies?
4. What are the biggest obstacles that your organisation faces in trying to influence policies?
5. Has it become easier or more difficult to influence national policies in the last three decades? Has it become easier or more difficult to influence national policies in the last few years? Please explain your answers.
6. Have you noticed any differences in the problems that your organisation faces in dealing with publicly and privately owned enterprises? Are there any special problems in dealing with foreign-owned enterprises? Please describe the advantages and disadvantages that your organisation faces in dealing with each type of enterprise.
7. If you were asked to propose some improvements in the functioning of your organisation what would you propose?

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Questions for Trade Union officials at the Enterprise Level

1. Can you explain to us the precise mechanism of how employees may legally strike? What is your role in the process? How the rules on striking change since the last amendment of Labour Code (2012)? Did you come through some educational programme on how to lead a strike?
2. How many strikes have occurred in this company? How many under the leadership of TU? What is the most common reason for striking? How many strikes did you organise which were considered legal? How many strikes were deemed illegal because of some legal/technical mistake? How were those strikes finally ended? What do you think is the usual reason why strikes are prohibited in your and other companies? In terms of strike practice are there any differences between state and non-state companies?
3. Do you think that calling a legal strike is an easy procedure and why?
1. If not: Have you ever complained to somebody because of this fact (e.g. senior executive or higher level of TU). What areyour ideas/proposals about how to improve the feasibility of the strike mechanism? At which step of getting permission for a strike do your efforts typically fail and why?
4. Have you recently had complaints from employees (labour collective) about problems at work? If yes, about what? Have employees ever gone on strike because of this? Do you think there are more effective ways how to settle workers' disputes? Have employees ever asked you to organise a strike? When employees have some problem do they usually contact you? Why do you think employees do not want to strike?
5. Do you think that being a TU cadre is a difficult job and why? Do you think that your position of TU cadre should be paid for by the state and not by the employer? Why?
6. Have you ever contacted/is it usual to contact a higher level TU when you have some problem? Have you ever contacted central TU (VCGL). Can you directly contact them or do you have to contact the TU one level above yours?
7. Have you ever been asked for an opinion on TU legislation. Have you ever suggested any improvements in legislation or operation (functioning) of TU?

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8. Besides National Congresses of TU are there any regular meetings at various levels of TU where you would discuss, for example, problems with legal strike action or other issues?
9. Do you have regular meetings with your employer around the TU's agenda? What form do they take? What is the usual agenda of those meetings?
10. Do you know of legal or illegal strikes that have helped employees to improve their working conditions (wages, bonuses, insurance etc.)? At which companies did those strikes take place? Have you ever talked about such strikes with your colleagues?
11. If you were asked to propose improvements to the functioning of TU what would you propose? If you were asked to propose improvements in strike procedures, so that employees and TU cadres could more easily obtain permission for a strike what would you propose? Do you personally feel you can change something? Who do you think can improve the situation with strikes (central TU, government, National Assembly? combination of those organs?)

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Open-ended questions to workers and workers rights activists:

1. What are the working conditions like inside the factory, and outside factory
2. What do trade union representatives do?
3. How do you elect trade union representatives?
4. What do you expect from trade union?
5. What changes have you observed in your trade union's work in your factory?
6. What do your employers demand of you and do you see them as being fair?
7. What do you expect from work?
8. What conflicts have you been involved in or observed at work?
9. What do you do if you have a conflict with employer/supervisor? How has trade union been involved. Has it helped you?
10. Have there been any strikes in your workplace? strike? If so, please provide details.

Open-ended questions to journalists I:

The aim is to explore issues related to workers' struggles in order to assess how public interests are reflected in the public media.

1. What are journalists interests concerning workers?
2. How do journalists write about the workers' 'situation?
3. Is it sensitive to write about strikes or other labour conflicts?
4. Do journalists support workers or employers?
5. Is there public interest in and empathy for workers' issues? What do the public think about free unions?

Open-ended questions journalists II:

1. What are the critical challenges in industrial relations?
2. How does the state perceive strikes? How have you been instructed to deal with workers' demands in your reporting?

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3. Is it difficult to harmonize workers' interests and rights with employers' interests by law?
4. Have laws been made to more strongly support workers? Have you been active in promoting stronger laws and policies to supporters? If so, how and to what effect?

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BIOGRAPHY

NAME	Ngo Thi Minh Huong
DATE OF BIRTH	26 May 1975
PLACE OF BIRTH	Hanoi
INSTITUTION ATTENDED	• Master in Law: Public International Laws University of Oslo (2008-2010), Norway • Master in Philosophy: and Human Rights - Faculty of Law, University of Oslo (2008-2010), Norway • Master of Development Management (MDM), Asian Institute of Management, Philippines, ADB Scholar, 2003 • Bachelor of Economics, Finance and Banking, National Economic University, Vietnam, 1999 • Bachelor of Arts (Foreign Languages), National University of Vietnam, 1995
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