Dilemmas of Development: Vietnam Update 1994

Benedict J. Tria Kerkvliet
editor

Political and Social Change Monograph 22

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Department of Political and Social Change
Research School of Pacific and Asian Studies
Australian National University
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Abbreviations

ASEAN	Association of South East Asian Nations
BBC	British Broadcasting Corporation
CBA	cost-benefit analysis
COM	Council of Ministers
COSTE	Committee of Science, Technology and the Environment
CPV	Communist Party of Vietnam
CRES	Centre for Research on Environment Studies [Hanoi University]
CRUNREP	Committee for Rational Utilization of Natural Resources and Environmental Protection
DRV	Democratic Republic of Vietnam
EC	European Community
EIA	environmental impact assessment
EP	environmental protection
FBIS	Foreign Broadcast Information Service
FEER	*Far Eastern Economic Review*
FF	Fatherland Front
GATT	General Agreement on Tariff and Trade
GDP	gross domestic product
GoV/UNDP	Government of Vietnam/United Nations Development Program
HDBT	Council of Ministers (Vietnam)
JPRS	Joint Publications Research Service
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOLISA	Ministry of Labour, War Invalids and Social Affairs

MOSTE	Ministry of Science, Technology and the Environment
NGO	non-government organization
NICs	newly industrialised countries
NPESD	National Plan for Environment and Sustainable Development
PRC	People's Republic of China
QUANGO	quasi-non-government organisation
SCCI	State Committee for Cooperation and Investment
SEASIA-L	Southeast Asia (Discussion) List on Internet
SIDA	Swedish International Development Authority
SOE	state-owned enterprises
SPC	State Planning Committee
UBCV	Unified Buddhist Church of Vietnam
UNDP	United Nations Development Program
VGCL	Vietnam General Confederation of Labour

Glossary

dien bien hoa binh	peaceful evolution
doi moi	renovation

Contributors

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B.K.

Chapter 1

Dilemmas of Development: An Introduction

Benedict J. Tria Kerkvliet

The four chapters that follow highlight some of the important political, social, economic, and legislative events in Vietnam during the late 1993 to late 1994 period. They began as papers presented to the Vietnam Update Conference, held 9-10 November 1994 at the Australian National University, Canberra. They are being published quickly in order to make this book as current as possible to an audience interested in recent events in Vietnam. At the same time, the authors hope that their analyses will be relevant beyond the life span of the details, many of which inevitably will change rapidly. The chapters have themes that are likely to be prominent in Vietnam's development for several years to come. Hence reading them should shed light not only on what has just happened but what continues to happen.

One theme concerns economic transformation. Most people who have followed developments in Vietnam are aware of the seismic shift that has occurred in the country's economy during the last dozen years. It has changed from one dominated by the state with highly restricted markets and based on collectivized production to one with a remarkably open and 'free' market. The state no longer seeks to control prices and production, collectivization has virtually disappeared, and entrepeneurship is flourishing. Economic growth has risen significantly; GDP increased nearly 9 per cent in 1994. Standards of living for most citizens have noticeably improved. Indeed, continued economic growth and expansion is a central concern of the

Communist Party's leadership. They believe, as Kerkvliet's chapter argues, that their continued dominance of the country's political system depends on a strong, vibrant economy.

But that emphasis leads to dilemmas as new problems emerge and some old ones now become more visible. One dilemma concerns the environment. As Melanie Beresford indicates, the fast track to economic growth has had adverse environmental consequences. Not that environmental problems were absent when the economy was stagnant. But those previous ones have often been aggravated by the flurry of investment, commercial and industrial expansion, and other changes connected with the headlong drive for economic growth. Innovation, Beresford argues, is a necessary (though not sufficient) condition for addressing and reducing environmental damage. Unfortunately, despite the changed economic system, ingenuity on these matters remains extremely limited. Also vital in order for such problems to be remedied is a state that has the will and capacity to make and enforce environmentally friendly policies. Beresford finds evidence that Vietnam's state has these abilities, but also that it lacks them.

Another dilemma involves labourers' working conditions. Stephanie Fahey points out that with the market economy has come a labour market. And in a country like Vietnam, bursting with underemployed people who are eager to work, it is a buyer's market. That often means employers provide rather miserable working conditions, pay extremely low wages, and are abusive to employees. Naturally, such circumstances make workers angry. At the same time cheap labour is one of the very attractions of Vietnam to foreign investors, which the state eagerly encourages. Yet Communist Party leaders and other state officials also say they want to help working class people and prevent exploitation.

Additional problems associated with rapid economic development are discussed in Kerkvliet's chapter. A major one is corruption. Though not unknown prior to economic renovation, official abuse of public positions for personal gain has spread rapidly in recent years. Many high ranking Communist Party leaders warn that if the campaign to curb

corruption is unsuccessful, the credibility of the entire political system could conceivably be undermined. Another difficulty confronting authorities is the purpose of socialism, the country's official ideology. It seems to be increasingly amorphous and problematic as Vietnam's economy looks more and more like Taiwan's, South Korea's, and Singapore's. Yet party leaders continue to insist that Vietnam is and should be socialist. Some, though, dispute that; others agree but then seriously wonder what does 'socialism' really mean.

Constituting a second theme in this book are the pressures on authorities in the Communist Party and other parts of the state to respond to and address serious problems. Some pressures come from within the state itself. Evidence in the chapters indicate considerable debate in officials circles about how to address environmental damage, improve labourers' conditions, fight corruption, and so forth. At the same time, people outside official circles, in society at large, voice their concerns, discontent, even anger. Fahey and Kerkvliet's chapters suggest that mounting labour unrest was one of the motivating forces behind the National Assembly's lengthy debates in 1994 over proposed labour laws. Another contributing influence were the concerns of employers and investors. Beresford suggests that grass roots protest against environmental degradation helps to explain why state agencies are taking environmental problems more seriously. Popular discontent with corrupt officials, Kerkvliet notes, has helped to make officials take notice of that problem. Pressure to loosen up the political system has also become more evident. Whether officials will be as responsive on this front as they seem to have been on others is still an open question.

A third theme is the making and implementation of laws and rules as the state deals with changing circumstances. The first three chapters touch on new labour laws, environmental codes, administrative and judicial actions against corrupt officials, and legal charges against people regarded by officials as political dissidents. The fourth chapter, by John Gillespie, concentrates on law making and implementation processes in Vietnam. After highlighting changes in the legislative process

during recent years, Gillespie discusses aspects of recent laws concerning land and corporate regulations. For the latter, he traces the steps required to establish a corporation. Guiding his detailed discussion is a significant general phenomenon he finds in Vietnam's legal system — the interplay between statutory law and administrative regulation. Rather than seeing these as irreconcilable, as is the inclination among many foreign observers, Gillespie argues the two are complementary.

This monograph is the first of two planned publications from the 1994 Vietnam Update conference. The second will look more specifically at state-society issues, pursuing questions concerning 'civil society' and the extent to which one can speak of autonomous groups and organizations bringing into public view questions, issues, problems that the state might not otherwise consider.

Chapter 2

Politics of Society in the Mid 1990s

*Benedict J. Tria Kerkvliet**

Introduction

Much has been said by journalists, academics, and development agencies about Vietnam's economic changes and remarkable achievements in recent years. Less analysis has been given to changes in society, their effect on politics in the country, and how political authorities are responding to, and trying to affect in turn, the growing dynamic interaction among economic changes, social changes and society-state relations. This is a large, complex, fascinating topic. In a sense, recent economic changes and the politics associated with them — the reduced control of state bureaucracy and Communist Party over the production and marketing of goods and services; a country more open now to trade and other intercourse with more parts of the world, new laws and procedures for the new circumstances — have contributed to the emergence of social

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* I am extremely grateful to Allison Ley and Claire Smith for helping me to gather material from FBIS, JPRS, BBC, SEASIA-L, and other services. Those materials have proved valuable for this study. I also am thankful to David Marr and Carl Thayer for regularly sharing materials with me and other Vietnam studies folks in the ANU's Coombs building. I have used several of those items, too, when preparing this chapter. I also thank Thaveeporn Vasavakul for correcting some factual errors and making helpful suggestions on an earlier draft.

forces, problems, and issues that cannot be easily ignored by state authorities. How these matters are manifested and how they are dealt with, inside and outside the institutions of the state, is what 'politics of society' refers to. Using events from late 1993 to late 1994, I want here to explore a few aspects of such politics and thereby demonstrate that a changing Vietnamese society poses significant political problems for leaders, especially those of the Communist Party, and for concerned citizens generally. Specifically, after some broad remarks about nature of state-society relations in Vietnam, I will discuss the political importance of economic growth, selected social problems (especially labour unrest), corruption, and pressures to alter the political system.

Vietnam's political system

I should first indicate the position I have tentatively come to about the political system in Vietnam, particularly the state and state-society relations. I say 'tentatively' because scholarly research has been so limited that we have little to go on when drawing conclusions about such matters. Yet inevitably, we academics find ourselves making generalizations in order to have a framework or orientation within which to makes sense of the material we have gathered. Such generalizations, of course, also influence what material is gathered, creating selective perception problems. Hence, there is all the more reason to be tentative about our generalizations.

One cannot comfortably say that Vietnam's political system is 'open' or 'liberal'. Citizens cannot relatively easily express their views and concerns on a wide range of issues in an organized, public, and direct manner. Only one political party is allowed and the security apparatus of the state vigilantly guards against efforts to create other political organizations. The news media consists of, with few exceptions, organs of state institutions or those closely connected to it — e.g. newspapers are from the Communist Party, the army, the Fatherland Front (FF), People's Committees of provinces and cities, and so forth. The National Assembly convenes twice a

year, each time for about a month, but precious little information is made public about what is said and by whom when delegates debate proposed legislation. The building where the assembly meets is itself inaccessible to the average person.

On the other hand, I find unhelpful the common characterizations in the academic and journalistic literature that Vietnam is a totalitarian system or mono-organizational or a bureaucratic polity. They portray policy making and implementation in Vietnam as being tightly controlled by and largely in the domain of the state's institutions — especially the Communist Party, bureaucracy, and military — and see those institutions as largely sealed off from and impervious to societal influences and interactions. Such frameworks also strongly suggest that Vietnam's society is forever under the thumb of the state. Seeing the country's political system in these ways leaves out too much that is important.

The broad objectives of the top leadership of the Communist Party, military, and state ministries is to preserve national unity, defend and maintain Vietnam's national integrity and independence, preserve political peace and stability, and bring economic prosperity. These are themes repeatedly articulated in speeches and pronouncements by the prime minister, the party's general secretary, the president of the National Assembly, the armed forces heads, and others. These objectives are premised on and are to be achieved under the leadership of the Communist Party. That is, entwined with the broad national priorities is the continued dominance of the Communist Party over the country's political system.

To maintain power, political leaders use a variety of methods. They employ repressive and threatening measures. They also use mass media and other methods to shape what people think, know, and do. But they use more than force and manipulation to remain in power. They also seek support. Most leaders want the political system they lead to have legitimacy in the eyes of significant sectors of the population, a concern that grows in part out of the mass-based revolutionary method by which the leaders' regime came to be in the first place and is

reinforced by the very propaganda and institutions created since. Speaking about China's Communist Party's leaders, X.L. Ding recently wrote that 'pressure of their own institutional environment' encourages them to care '...very much about the masses' understanding of, and support for, official socioeconomic objectives'. Communist leaders in China have been concerned about their legitimacy both in the eyes of 'high stratum' as well as lower stratum Ding says, investing 'tremendous energy' in appealing to the large social groups in society (Ding 1994:19). Much the same can be said about Vietnam's political elite. As a contrast, I think of the Marcos authoritarian regime in the Philippines, which came to power not by a mass movement but a *coup d'etat*. The political elite there cared little about whether their rule was legitimate in the eyes of workers, peasants, and other major sectors of society. To the extent they were concerned about legitimacy, they focused primarily on certain other elites in the country and key international audiences. Only when it was too late did the regime's leaders realize the importance of legitimacy among broad sectors of society. The Vietnamese elite have long realized this; whether they can maintain it is a question that concerns them.

Terminology used by Brantly Womack for a somewhat different purpose remains helpful for conceptualizing Vietnam's political system. It is both 'mass regarding' and 'authoritarian' (Womack 1987).[1] The political elite seeks to rule not just by force, surveillance, fear, and, manipulation, though it does do that. Leaders also want mass support and legitimacy for themselves and the regime. While they use resources to control activities and influence, even restrict people's views, they also want to understand and be responsive to what people really experience and desire. And to do that, they try to 'hear' the masses' complaints, concerns, and needs. Political leaders generally are trying to avoid being cut off from 'the people'. At the same time, they are also often wary and distrustful of the

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[1] Another term for 'mass regarding' that Womack uses is 'quasi-democratic'.

people. Put another way, the political elite tries to distinguish between the 'genuine' masses and the 'enemies' within society who want to throw them out completely. Features of the political system impede the elite's efforts to 'hear' the masses and recognize who is an enemy and who is not. Key institutions do tend to be closed and unfriendly to average people. And too often leaders develop narrow vested interests, are self-serving, are corrupt, and become greedy. Yet other forces within the system are pushing to overcome these barriers.

Economic growth

Economic growth, while not proclaimed to be *the* answer to major problems in Vietnam, is heralded as the single most important and most comprehensive solution. From late 1993 to late 1994, major events involving the government, Communist Party, and other institutions of the state included two party Central Committee sessions (first week of December 1993 and 25-30 July 1994), two sessions of the National Assembly (6-30 December 1993 and 25 May-23 June 1994), a special Mid Term Party Conference (20-25 January 1994), the fourth national congress of the Vietnam Fatherland Front (17-19 August 1994), and the 'Donor Conference' in December 1993 held in Paris at which the government requested ten billion US dollars in development assistance. The prominent theme emphasized in all is this: Vietnam's economic situation has improved tremendously in the last half dozen years thanks in large measure to the policies associated with *doi moi* (renovation), the party's leadership, and the hard work of the Vietnamese people, but Vietnam still has a long way to go in order to 'catch up' economically with the rest of Asia.

To Vietnam's top leadership, economic growth and development concerns more than economics. It concerns their political future and that of the political system they head. Their thinking seems to be that significant economic improvement can earn popular support for the political system, particularly the Communist Party. Two of the three 'prominent

achievements' celebrated in the resolution emanating from the Mid Term Party National Conference in January 1994 are (1) the economy is significantly healthier, overcoming stagnation and crisis and consequently 'people's lives in many cities and rural areas have been improved', and (2) '...political stability has been maintained and consolidated'. This combination, the resolution says, means that the party's role 'has been strengthened'. The third achievement, the conference declared, has been the broadening of Vietnam's foreign relations, which among other benefits contributes to economic growth and therefore better domestic conditions (Communist Party 1994:067:58). The subsequent lifting of the United States' international trade embargo on February 3, considerable progress toward normalizing Vietnam-US relations during the rest of 1994, and other foreign policy achievements are expected to contribute to even more rapid and sustained economic benefits to the country. The critical connection for Vietnam's top leaders between economic prosperity and the continuation of the present political system is particularly clear in a speech by party Secretary General Do Muoi to cadres in March 1994:

> If our economy develops strongly, and living conditions, culture, the situation of our people gets better day by day, then I believe the people will defend the party, the system of government [*chinh quyen*], and regime [*che do*] such that hostile forces cannot do anything. The key point is to make a good economy, take care to make living conditions good. In the process, principally because of a good economy and living conditions, people's confidence [*tin tuong*] in the party and regime will increase (Do Muoi 1994b:4).

More economic success, party leaders insist, is needed to assure political stability and legitimacy. The possibility of 'being left further behind economically' is first among four 'dangers' in the Mid Term Party Conference resolution and first among its eight key tasks (Communist Party 1994:[068]:58-59). Official documents and statements in late 1993 and during 1994

particularly emphasize the need for greater industrialization and the acquisition of modern technologies, better science, and more investment in research and development in order to continue the economic success of recent years.[2]

This heavy political emphasis on economic improvement continues a strategy pursued since the late 1980s based on the theory that the transformation to a liberal economy must and can take place ahead of significant further changes in political institutions. The country's national leaders have consciously rejected arguments for simultaneous economic and political liberalization or, even worse from their point of view, arguments for putting political renovation ahead of an economic one (Stern 1993; Thayer 1991:31-32). Influencing the country's leaders' determination to follow this course are what has happened in several other countries in comparable situations. They see the negative cases of former Soviet Union and other Eastern European countries that put political transformation before economic liberation resulting in political chaos and economic disaster. Positive cases, on the other hand, like South Korea, Taiwan, Indonesia, and China, put economic improvement way ahead of political liberalization, and the results have generally been favorable for society, political stability, and the incumbent regime.[3]

Emphasizing economic liberalization to achieve high growth to, in turn, improve general living standards seems to be working. And one can probably say, though the information is more sketchy, that the credibility of the political system and the Communist Party in particular has generally gone up in the eyes of significant sectors of society. Yet with this success have emerged pressures on the political system, including to change it, with which the regime's leaders are struggling to cope.

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[2] See, for instance, the resolution on industrialization from the Central Committee's seventh session of 7th Party Congress in July 1994 (Central Committee 1994).

[3] There is a scholarly literature to support this line of thinking. See Zhang 1993.

Market socialism?

In a sense, having 'got it right', economically speaking (assuming this is true — a claim environmentalists, for instance, would dispute), has created growing concern that the leadership has got it wrong politically speaking. One area where this shows is the tension between the leaders' new celebration of a market economy and their continued celebration of socialism. Political leaders in Taiwan, South Korea, and other newly industrialized countries (NICs) and near NICs have not had to wrestle with this problem. Having never claimed to be socialist political economies in the first place, they did not need to dump a socialist system in order to make room for free markets. Vietnam's leadership, however, has had to back away from socialist production and distribution and take on what in many respects is a capitalist system (though never officially called that). This situation, in turn, conveys to many Vietnamese that socialism has failed, creating tremendous difficulties for the regime's leaders to explain what socialism is and why it must be the official ideology. The nation is still required annually to celebrate the birthdays of Marx and Lenin; people are reminded daily that Vietnam is following a socialist path to development; and the country's name remains the Socialist Republic of Vietnam.

Within the Communist Party and elsewhere in Vietnam people are questioning both the validity and wisdom of the political elite insisting on socialism. 'Validity' in that they wonder what is there any more that is socialistic about Vietnam. And 'wisdom' in that by insisting on socialism, the party's credibility is questionable, and the party conveys recalcitrance and conservatism, and the gap widens between the party and the general population for whom socialism has little or no meaning now, if it ever did. Socialism as an ideology should be abandoned, many argue. It helped the country to successfully fight for independence, but now it is a burden, weighing down society and the government in their efforts to accelerate economic growth and social and political

development.[4] Referring to party members who hold such views as 'opportunists', Pham Van Dong, the country's premier from the 1950s until he stepped down in 1986, summarizes some of these concerns prior to arguing against them.

> ...there are people who want to follow the capitalist road and believe that socialism 'has become outdated' and 'has collapsed'. There are other people who think that we should not use the world 'socialist' in the country's name, nor 'communist' in the party's name (Pham Van Dong 1993:21).[5]

Concerns and debates within the party about the meaning and purpose of socialism, among other issues, reportedly contributed to top leaders postponing a couple of times the party's mid term conference (*FEER* 2 December 1993). One of the four 'dangers' emphasized in the resolution from that conference was 'the risk of being disoriented from socialism...'. The resolution urged party members to do their utmost '... to avoid this danger, not only at the level of grassroots management but also at the levels of policy making and orientation' (Communist Party 1994:[068]:56-57).

One theme in arguments for keeping the socialist ideology is that what the country had in the past was not socialism after all. It was a system in which the state tried 'to control markets, production, people's lives, everything, and trying to maintain equality...'. It 'didn't work and created considerable misery'.[6] Closely related is the view that Marxist-Leninist ideas need to be reinvigorated by going back to what those thinkers said. A 'principle mistake' in the past, says Pham Van Dong, 'was to separate Marxist-Leninist arguments from reality; ...as a result,

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4 Such views are expressed, for instance, by Ha Si Phu (1994), alias for a biologist working at the Science Institute of Vietnam.

5 Pham Van Dong also noted that 'Still other people condemn the August Revolution and the two wars of resistance, which they say "were caused by the CPV".'

6 Interview with a teacher in a school for Communist party leaders, Hanoi, September 1992.

we transformed the Marxist doctrine from being a guide for action into being dogmatic' (Pham Van Dong 1993:21). Socialism and Marxist-Leninism, according to this argument, must be adapted and interpreted according to the times in order to develop and stay relevant to real conditions. Otherwise the socialist ideology will fade away, and the country will be taken over by capitalism.

Another theme is that features in Vietnam's new economy may not look like socialism but nevertheless should be done in a way that help to build socialism. The 'capitalist factor being a means to build socialism and the capitalist factor being a means to build socialism are ... basically different', stressed Pham Van Dong, but if socialist direction lost, then indeed a capitalist rather than a socialist system will emerge (*ibid.*:21). Likewise, market economies in socialist and capitalist systems have many similarities, argues a writer in the party's daily newspaper *Nhan Dan* who is troubled by the drifting away from socialism that has accompanied *doi moi*. But one important difference is '...whose interests state intervention in a market economy is supposed to serve...'. The socialist one should serve the 'labouring people' while the capitalists serve the 'exploiting minority'. Other differences include the basic concept in socialism that, even though the economy is 'multi sectoral', the state-run sector is a leading one (*Nhan Dan* 2 March 1994:3).

Such arguments sometimes go on to lament the decline and disappearance of cooperatives, state-owned enterprises, and other features associated with the pre-renovated Vietnamese economy, as if to suggest that socialism was somehow nearer at hand then. This does not impress most Vietnamese for whom that previous economic system is discredited.

Social problems

After applauding success of 'market mechanisms' and other features of new economic development, one concerned party member writes,

> ...these moves have also given rise to more social vices and new negative phenomena, especially social injustice, egoism, pragmatism, and the readiness to do anything for money.... These factors create a very new and complicated environment and constantly affect the thinking, sentiments, and psychology of cadres, party members, and the people. That situation has raised new problems concerning the party's leadership and the task of building, renovating, and revamping party organizations (Bui Dinh Bon 1994:67).

His worries are shared by many other Vietnamese within and outside official circles.

The rise in narcotic trafficking, drug abuse, and prostitution has been alarming. Reportedly the country has over 800,000 drug addicts and 600,000 prostitutes (*Vietnam Insight*, SEASIA-L [Internet] 19 August 1993). They live not only in the cities; provincial towns and villages, too, have reported unprecedented increases in these problems. Hai Hung provincial authorities, for instance, in the Red River delta, said that there were only eleven known cases of drug abuse in 1990 but in the first eight months of 1994 there were 85 (Voice of Vietnam [6 October 1994], BBC Monitoring Service: Asia-Pacific, 12 October 1994). During National Assembly sessions in December 1993 and May-June 1994, many delegates expressed concern about the problem. Speaking to the December session, Prime Minister Vo Van Kiet urged that ways must be found to curb these social illnesses before they become even worse, 'especially prostitution', he said, because it leads to AIDS.[7] Kiet called for 'drastic measures' against owners and clients of brothels, emphasizing that if customers are civil servants, they should be dismissed from their jobs 'regardless of their position, and expelled from the party if they are party

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[7] Officials report nearly 1,500 known HIV cases in 30 provinces and cities and 103 AIDS patients (Voice of Vietnam [7 June 1994], BBC Monitoring Service: Asia-Pacific, 9 June 1994). The real level of infection estimated in 1993 was between 7,900 and 79,000 people (*Viet Nam, HIV/AIDS* 1994:4).

members' and their 'names will be announced to mass media' (Vo Van Kiet 1993:58).[8] The Communist Party's Central Committee also issued directives in 1994 against prostitution and drug addiction (Vietnam Television [9 March 1994], *BBC Summary of World Broadcasts*, 11 March 1994, FE/1943:B/3).

Even more serious social problems that likely contribute to the drug addiction and prostitution are rising levels of unemployment, declining school enrolments, widening gaps between the poor and wealthy — all of which have frequently been discussed and debated in the National Assembly, Central Committee sessions, and countless conferences and meetings. Clearly, officials pin considerable hope on more economic growth to help alleviate these problems, which many recognize are partly the product of the very economic growth that the country has experienced in the last dozen years.

While government and party leaders deliberate, people in various ways are acting to deal with these matters as best they can with or without authorities' help. People create new ways to make a living. A flood of villagers have streamed from the countryside into the cities to work as pedicab drivers, construction workers, porters, traders, street vendors, scavengers, and in other parts of what academics call the 'informal economy'. Though technically such movement violates residency requirements and other laws, it occurs, with or without permission (Li Tana 1994).

A different kind of activity are the growing number of groups and organizations trying to offer help to drug addicts, the homeless, the unemployed, street children, and others struggling in this new economic environment.[9] Such groups also mount modest campaigns to draw more attention to social

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[8] Such expulsions have occurred. The newspaper *Tuoi Tre* published the names of seven party officials holding key provincial and district posts in Kien Giang province who were caught having sex with prostitutes in a Vung Tau hotel room (*Indochina Digest* 16 September 1994:2).

[9] This paragraph relies heavily on Carole Beaulieu's fascinating account (1994).

problems and solicit resources from government and international aid donors. Their causes range from poverty alleviation to environmental protection. Some are official organizations within the Fatherland Front that have become more energized in recent years. Other groups have been created by government agencies, an arrangement which constrains their work but gives them protection and access to resources they might not otherwise have, which some creative activists in these types of organizations have been able to use in ways not entirely consistent with their creators' agendas. Still another category includes groups independent of the Communist Party, the Fatherland Front, and the government. Often their leaders are retired officials whose connections with authorities perhaps provide some protection for their organizations. Many have funding from foreign development assistance sources, which in turn increases their independence. The number of such groups has grown noticeably in recent years. Meanwhile their legal status remains unclear, creating dilemmas for authorities. Trying to stop them would perhaps create considerable controversy for the regime; but to let them work independently flaunts the party's insistence that all organizations should be under the Fatherland Front.

Perhaps in time some legal standing will be given to these non-government organization just as authorities decided in 1994 to recognize the legality of another kind of autonomous organized activity: workers' strikes. From 1989 to late 1993, according to one official source, workers went on strike in 27 state-owned enterprises and seventeen private companies (Nguyen Van Tu 1994:28). Another report, based on Ministry of Labour figures, says there were 70 strikes in 1992 and 1993 alone (*Vietnam Investment Review* 22-28 November 1993:14). At least ten strikes occurred during the first three months of 1994 (Reuter News Service 9 April 1994). Most of the strikes were in the southern part of Vietnam, though some did occur in central and northern areas. All of these strikes occurred outside the law and often at odds with the instructions of the official General Confederation of Vietnamese Labour (VGCL, *Cong Doan)*, which is supposed to represent all labourers.

Workers resorted to drastic measures apparently not only because many foreign and Vietnamese companies were paying extraordinarily low wages (often below the legal minimum) but also because they were being forced to work overtime without compensation, beaten, and abused in other ways. Besides better pay and fairer treatment, workers in many strikes demanded 'greater "democracy" in the workplace'.[10]

While workers have struggled to deal with these problems and pressures by the VGCL against drastic action, many have become critical of the VGCL itself, arguing that it was more interested in defending the employers than them. Within the VGCL, according to Gerard Greenfield, cadre themselves have been divided. Many at the local level side with the workers' against the organization's higher officials, reinforcing the labourers' complaints against the VGCL. They endorse the criticism that for too long the VGCL has been a top-down organization, conveying to workers what the Communist Party's leadership wants rather than pressing for workers' needs (Greenfield 1994:221-23). These and other matters were voiced in numerous local meetings leading up to the seventh national congress of the VGCL. That congress was supposed to meet in October 1993 but was postponed until November 10-12 because of vociferous debate within the VGCL. 'What began as the usual pre-congress "mass mobilization" campaign...turned into open conflict between trade union members and their representatives in which public criticism of the failures of the trade union movement was unleased' (*ibid.*:220). Tensions within the confederation persisted during and after its November congress. One positive outcome was the VGCL's endorsement of legislation then being considered by the National Assembly to legalize strikes, at least under certain conditions (Reuter News Service 2 November 1993). And the VGCL's president (and also party Central Committee member),

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[10] *Vietnam Investment Review* 22-28 November 1993:14; Agence France Presse 21 February 1994, FBIS-EAS-94-036, 23 February 1994:42; and Greenfield 1994:226-27. For additional information, see Stephanie Fahey's chapter in this volume.

Nguyen Van Tu, has signalled that its unions 'must undergo a major renovation' so that they can defend workers' interests (Nguyen Van Tu 1993:28).

During its May 1994 session, the National Assembly acknowledged the growing pressure from workers, private business people, and state enterprises by passing a labour law. Debate over numerous provisions, especially concerning strikes, was heated, though like all National Assembly sessions, few details of what was said have been made public. There are hints that one fissure was that some delegates wanted a more liberal and pro-worker orientation to the law than what ultimately passed. The new code does legalize strikes, though conditions and restrictions are imposed regarding the process by which strike decisions are taken and the conditions under which strikes will be legitimate.[11] It prohibits strikes in enterprises considered essential to the economy or national security and defence. A provision that would seem to recognize the importance of localized rather than centralized decision making within the labour movement is that executive committees of the trade union at the grass roots levels has the authority to decide by majority vote whether to strike or not. Among the law's numerous other provisions is that collective bargaining in the work place is required, potentially giving worker organizations more protection than before.[12]

Passing such a law is one thing. Interpreting and enforcing it on the ground will, as always, be another matter. No doubt considerable controversies and disputes lie ahead, and innovations by workers and owners will swing wide of structures which authorities think they have put in place. Many issues within the trade union movement also remain unresolved, perhaps the most crucial being the extent to which workers may organize outside the Communist Party's VGCL —

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[11] For a negative assessment of the law as far as advancing workers' interests are concerned, see Greenfield 1994:227-28.

[12] Vietnam News Agency (18 June 1994), BBC Monitoring Service: Asia-Pacific, 21 June 1994; Australia, Department of Foreign Affairs and Trade 1994.

a debate that contributes to growing political pressures on the party, as discussed later in this chapter.

Corruption

One of the most volatile issues facing Vietnam's leaders is corruption, meaning the taking advantage of one's public position and authority to appropriate 'the property of the people' and to enrich oneself through such activities as smuggling, accepting or demanding bribes, embezzlement and other forms of stealing, graft, and kickbacks.[13] Already corruption has aroused citizens in numerous villages and towns to march, protest, and sometimes even brandish guns because they are so angry at corrupt local officials. Such demonstrations of discontent in late 1988 by peasants in the south were early warnings to officials about the political significance of the problem (Thayer 1992a:354). Many more have occurred since. In early 1994, for instance, numerous villagers in an unspecified part of the country were so upset at local officials whom they strongly suspected of siphoning off for themselves money allocated for infrastructure development that they surrounded and refused to release for two days the village chairperson (*Nong Dan Viet Nam* 21 January 1994:7). An analysis of 120 incidents of 'major or even fierce struggles' among people in Thanh Hoa province found that a principal cause is that 'some of the leading and managerial cadres at the primary [local] level are corrupt and have violated the ownership rights of the people' (Nhi Le 1994:71). A report on 'voters opinions' to the National Assembly's December 1993 session said that corruption, smuggling, and inadequate prosecution against perpetrators were among citizens' greatest concerns (Vu Mao 1993:72).

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[13] This is basically how Nguyen Van Linh, former Communist party secretary general (1986-91) and now adviser to the Central Committee, talks about the meaning of corruption (Reuter News Service 10 May 1993).

Many political leaders worry that corruption could fatally poison the Communist Party as a credible political institution and undermine their efforts to shore up the legitimacy of the political system. No doubt many are aware that hostility against corruption contributed significantly to public upheavals that toppled the former Soviet Union and Eastern European socialist regimes and challenged the Chinese regime at Tiananmen Square in 1989.[14] As the National Assembly's December 1993 resolution on the subject states, 'corruption, smuggling and waste...have developed to a serious degree, thereby corrupting a segment of cadres and state personnel, adversely affecting social order and safety, creating indignation among the public and diminishing the people's confidence in our regime' (National Assembly 1993:B/5).

Corruption and smuggling (which often involves connivance with officials, if not actually being done by them) were prominent issues at several additional official gatherings between late 1993 and mid 1994. In October 1993, the Communist Party held a 'special "in-family" meeting to discuss corruption within its ranks' (Agence France Presse 27 October 1993, SEASIA-L (Internet). Prime Minister Vo Van Kiet and National Assembly Chair Nong Duc Manh convened a May 1994 meeting to discuss how to implement the National Assembly's resolution to increase the fight against corruption and smuggling. Among those attending were the chief judge of the Supreme People's Court, leading cadres of various ministries and departments, and several National Assembly leaders (Voice of Vietnam, FBIS-EAS-94-094, 16 May 1994). Abuse of office for private gain was also condemned during the Central Committee's November 1993 and July 1994 sessions. And delegates to the January 1994 Mid Term Party Conference in Hanoi reportedly concluded that 'corruption is not only practised by a few people, but it resembles an organization

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[14] In a succinct analysis of what led up to the 1989 upheavals in Eastern Europe, Daniel Chirot argues that a major factor was people's disgust with the '...utter moral rot' in the political systems there (1991:20).

which operates from a system existing in state organs' (Voice of Vietnam, *BBC Summary of World Broadcasts* FE/1903, 24 January 1994: B/5). The resolution issued at the end of the conference cited corruption as one of the four greatest dangers now facing the party and that it 'has become a national disaster...that is wearing down our people's confidence' (Communist Party 1994:[068], 57).

Available data are too sketchy to assess well the extent of corruption and how effective the government's campaign against it has been. Nearly 3,000 cases of corruption (not including smuggling) were reported in 1992; 918 in the first ten months of 1993, and 919 in the first *eight* months of 1994. Smuggling figures, reported separate from other corruption (apparently because non-officials can engage in it), are 50,000 reported cases in 1992, 17,025 in the first eight months of 1993 (perhaps reflecting a reported reduction of smuggling involving officials), and 12,430 during the first *six* months of 1994.[15] If such numbers are comparable, they suggest a sharp drop between 1992 and 1994, though some rise between 1993 and 1994. On the other hand, perhaps how 'corruption' and 'smuggling' were tallied in 1992 is different from how they have been counted since, hence the contrasts are not meaningful. Or maybe law enforcement was actually better before, detecting more cases in 1992 than in the last two years, despite the government's stepped-up efforts against corruption and smuggling. The amounts of money and other valuables involved appear to have increased significantly, from the equivalent of about US$230 per smuggling case detected in 1992, to $1,731 in 1993, to $2,299 in the first half of 1994 (staying well ahead of inflation). For corruption, the amounts per case were $2,920 in 1992, $29,570 in 1993 — a whopping ten fold

[15] Statistics noted here come from Heng 1993:356; *Nhan Dan* (23 December 1993), FBIS-EAS-94-012, 19 January 1994:41; Voice of Vietnam (8 December 1993), FBIS-EAS-93-238, 14 December 1993:70-71; Voice of Vietnam (16 July 1994), FBIS-EAS-94-139, 20 July 1994:72; Reuter News Service, 22 October 1994.

increase — and $44,460 in 1994.[16] These figures suggest that more 'big fish' are being caught than before, which would mean recent anti-corruption efforts are paying off. Perhaps the best indicator of the overall situation are the conclusions in the minister of Interior's December 1993 report to the National Assembly that even though the campaign had been accelerating, it has 'generated few results', '...[s]ignificant changes have not been attained, and corruption and smuggling are still prevalent' (Voice of Vietnam, FBIS-EAS-93-238, 14 December 1993:70-71).

Three prominent corruption cases in 1994 involved a textile manufacturer, a beer maker, and a government minister. In April, Nguyen Thi Son was dismissed from her position as general director of Legamex, a state-owned garment factory. And in June she was arrested and scheduled to be tried. She was charged with using company money to help friends' businesses and favouring her relatives with shares in the company.[17] The brewer is Hoang Chi Quy, director of Saigon Brewery, who in February was kicked out of the Communist Party for abusing his position to acquire five houses and profit from an earlier beer shortage (*FEER* 17 March 1994:55). Also in February, former Energy Minister Vu Ngoc Hai was tried and convicted for masterminding a scam involving 4,000 tonnes of steel for the country's north-south power line causing loses to the state equal to nearly US$300,000 — charges he persistently denied. Eight accomplices were also convicted, among them former Deputy Minister for Energy Le Nien, and the heads of three state companies. Fired from his ministerial post in 1992 by Prime Minister Kiet and expelled from the party's Central Committee by the Mid Term Party Conference in January 1994, Hai is the highest ranking party member of government official yet to be tried and convicted of corruption (Reuter News Service 17-23 February 1994).

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[16] I am using 10,500 dong to the US dollar to convert monetary amounts reported in the sources cited in the previous footnote.

[17] Reuter News Service 13 June 1994; *The Australian* 9 June 1994:31.

One of the worst features of corruption is that the very people who are supposed to be fighting it are themselves among the perpetrators, a point the Minister of Interior Bui Thien Ngo highlighted (*Nhan Dan* 23 December 1993:1). For instance, the chief and deputy chief of the customs smuggling control team for Quang Nam-Da Nang province were caught smuggling vehicles (Reuter News Service 26 October 1993). A captain in charge of Nam Ha province's 'economic police', whose duty is to catch corrupt officials, was convicted (and sentenced to death) for misappropriating gold and cash worth over US$300,000 (Reuter News Service 22 August 1994). Too often police and public security (*Cong An*) officers demand bribes and engage in graft. An example is a lieutenant colonel in Hanoi's public security who was found guilty of making money selling car registration documents to smugglers (*Nong Dan Viet Nam* 10 June 1994:1ff). In the army, about 100 corruption and smuggling cases were adjudicated in 1993 and several more in 1994, over half involving Communist Party members.[18]

Corruption is certainly not peculiar to Vietnam; it is a serious problem for numerous other Asian countries, including some of the NICs and near-NICs (e.g. Japan, South Korea, Indonesia, and Thailand). Nor is it a new phenomenon to Vietnam. It was widespread in the government of the Republic of Vietnam in the south, contributing to that government's chronic lack of popular support. But at least until the recent past, the Communist Party-led government of Vietnam has prided itself in being relatively clean and party leaders from local levels to Uncle Ho Chi Minh leading rather austere lives. And they were generally seen that way by most people. This is not to say corruption did not exist; it did and sometimes caused people to be bitter against their local officials. But by and large the misuse of public property and positions of authority were modest and involved few cadre.

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[18] Agence France Presse, FBIS-EAS-94-016, 25 January 1994:72; Voice of Vietnam, FBIS-EAS-94-071, 13 April 1994:52-53.

Why the relatively recent and rapid increase in corruption is not clear. In-depth analysis has not been done, so far as I am aware, by Vietnamese or foreigners. Broadly speaking, two interrelated reasons may help to explain this change. One is the new economic environment itself. The opportunities for people in authority positions to take bribes and kickbacks are much more numerous than before. One of the most common types of corruption, for instance, is officials colluding with foreign business partners to cheat the state of taxes, material, and cash (*Nhan Dan* 23 December 1993:2). Added to the new opportunities is the new ethos, closely associated with market economies, that encourages material consumption and endless desires for anything money can buy. A spokesperson for the people's committee in Ho Chi Minh City put the problem this way: 'When you move to a market economy people stop thinking about communist ideology and they think only about profit...' (quoted in *Economist*, SEASIA-L [Internet] 4 June 1994). The decline in public services like health care and education that has accompanied the new market economy also contributes to people having greater concern for making and accumulating money in order to improve their children's educational opportunities, pay for medical expenses, etc. All this is happening in the context of low salaries for public servants, adding to the problem.

A second reason is moral decay among too many Communist Party members and other authorities. Ultimately, corruption is an ethical problem. A public official has to answer the question, should I take advantage of my position for personal gain or not? Those who answer 'yes' on the grounds that their families are genuinely destitute can plausibly be given understanding by fellow Vietnamese, perhaps even forgiven. The most politically disturbing corruption, however, is not the petty corruption of lowly-paid local policemen and office clerks. It is the debauchery by officials who have relatively well-paid positions and perks such as cars, expense accounts, and housing. Their justifications are ethically bankrupt.

The political leadership's fight against corruption includes an emphasis on better training and education of party members and other officials, teaching them the importance of discipline and honesty. This orientation, if it works, will obviously require considerable time before results take hold. Meanwhile, the anti-corruption campaign also stresses tighter administrative procedures, increased policing and prosecution, stiffer penalties, and making all heads of administrative agencies at all levels individually responsible for corruption occurring at each level.[19]

Critics inside and outside elite circles argue such measures are poorly enforced and insufficient. An editorial in the party newspaper complained that officials '...have slackened inspection and failed to take timely action [against corruption]...and [s]ome local party committee echelons, including a significant number...at central-level agencies, do not make due efforts to direct the anti-corruption campaign. Many local anti-corruption and smuggling mechanisms perform poorly' (*Nhan Dan* 1 July 1994:1). Letters to the editor in newspapers and magazines frequently complain of corrupt officials and the lack of determination by authorities to investigate and prosecute. As one letter said, '...despite the government's numerous directives, decisions, policies, and other legal measures, corruption and smuggling becomes worse by the day, more sophisticated, and more shameless. Corrupt rascals still slip through the net...' (*Nhan Dan* 1 February 1994:3). A theme in debates during the Mid Term Party Conference in January 1994 was the pressing need for "more energetic" action against corruption' (Voice of Vietnam, FBIS-EAS-94-015, 24 January 1994:74).

Some have argued that the party's success in fighting corruption is meagre because too many officials have vested material interests in the status quo. The new capitalist class emerging in Vietnam is, as one party member wrote, 'formed

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[19] See excerpt from Vo Van Kiet's address to the National Assembly (Voice of Vietnam, FBIS-EAS-93-247, 28 December 1993:57-59); Bui Thien Ngo 1993:71; National Assembly 1993.

mainly around smuggling and corruption'. And this class 'consists of powerful officials in the structure of the party and government at all ranks and all branches...'. Based on this and other stinging assessments, the critic, who is a geologist in a state environmental agency, goes on to call for 'political freedom and democracy' (Nguyen Thanh Giang 1993).[20]

Such arguments are lambasted by numerous party officials, among them Senior Lieutenant General Tran Van Quang (1994), for taking advantage of corruption and other mistakes to call for far-reaching political change — which, if listened to, would bring instability and chaos, setting Vietnam back decades and threatening the gains of the country's revolution and long struggle for independence and unity. General Secretary Do Muoi (1994b:5), too, warns against enemies who grab on to corruption in order to undermine the political system.

Studies of successful efforts to drastically reduce corruption in other Asian countries without a radical change in government find that while appealing to people's ethical and moral senses, raising public servants' salaries and giving other positive incentives to officials not to be corrupt, training officials to be more professional, and improving auditing and other administrative procedures are important, they are not enough. Three additional measures are required. One is a system for gathering reliable and extensive information in order that the chances are high that anyone who engages in corruption will be caught. Second, penalties for corrupt behaviour need to be strictly and uniformly enforced, and they should be clearly commensurate with the kinds of corruption — the more serious the corruption, the stiffer the penalty. The third element is a strong, well-financed investigative and enforcement agency that is above reproach in honesty and the use of its powers. It should have the authority to find and prosecute corrupt officials wherever they may be, from the highest to lowest levels (Klitgaard 1988:74-97, 115-31). Thus far, there is little evidence of these three in Vietnam. Watching for

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20 Also see Greenfield 1994, especially pp. 215-16.

them to emerge would be a guide for assessing how seriously the political elite takes the growing indignation in society against corruption.

Criticisms of the present political system

High-ranking political leaders in Vietnam routinely assert that not only is Vietnam a socialist country but it is a democratic one. They do not mean 'democratic' in the sense of 'liberal democracy' as found in the United States and Australia. Such political systems, Vietnamese leaders argue, are not only different from Vietnam's but undesirable because they are often violent and verge on anarchy and in reality are run by dominant capitalist interests. Vietnam's democracy, its leaders often underline, is 'rule of the people, for the people, and by the people'. And 'the people' refers especially to workers and peasants, though increasingly in recent years also to intellectuals. Also celebrated in recent years is that Vietnam is building a 'law governed state' in which rules and regulations are to be clear and uniform, with minimal amount of ambiguity, partiality, and manipulation by connections and personalistic rule-making and implementation. Developing a body of law in keeping with new economic environment has, indeed, been a major project of the state and notable progress has been made (Thayer and Marr 1993; Porter 1990).

Yet the significant gap between what is claimed and what is actually happening, particularly with regard to democracy and the Communist Party's role as the leader and voice of the people, remains a grave shortcoming that has been condemned at many levels. Corruption, discussed earlier, is one large blight on the standards the political leadership has set for itself. Another is 'authoritarianism', cited by the resolution issued by the January 1994 Mid Term Party Conference as one of the foremost dangers confronting the Communist Party. In an article published a few weeks later, Political Bureau member Vu Oanh elaborated with a list of failings:

> The party does not yet deeply understand the people; the people in reality are not closely attached to the party; lower level cadres dare not tell the truth to higher level ones. The atmosphere for democracy, debate, and dialogue in order to find the truth is limited.... [T]he illnesses of bureaucratic concentration and arbitrary and autocratic rule [*benh tap trung quan lieu, doc doan chuyen quyen*] still exists... (Vu Oanh 1994 [1 February]: 3).

Another party member wrote 'bossism, arbitrariness, ignoring public opinion, neglecting state law,...[and] authoritarianism' within the party must also be stopped. Required, he said, is the promotion of 'true democracy' (Bui Dinh Bon 1994:68). There is too much 'formalistic democracy' within and outside the Communist Party, says Vu Oanh; the party needs 'to organize democratic debates among the people' and party leaders must 'talk to the people, listen to their views, and discuss the situation with them...' (Vu Oanh 1993 [24 December]:3). In order to move 'the bureaucratic state to the democratic one, from stagnancy to dynamic action...', Pham Van Dong emphasized, continued renovation of party is required, because '...in reality, we must admit that the party's political vanguard role has shown that it has fallen short.... The capabilities and qualities of party members still show a gap in regard to the needs of the situation' (Pham Van Dong 1993:22).

Clearly, party leaders are aware of many shortfalls. And they feel pressure from within and outside circles of power to confront the situation. The party's seventh congress in 1991, several sessions of the Central Committee since (including the sixth in November 1993 and the seventh in July 1994), and the Mid Term Party Conference in January 1994 have endorsed gradual political reforms and emphasized the need to rejuvenate the Communist Party's relationship with the general public (Thayer 1992b; Communist Party 1994 [070]:76; [075]:59-61). But finding a balance between accommodation, on the one hand, and preservation of the status quo (including the one-party system), on the other, is difficult and perilous.

National Assembly delegates devoted considerable time in June 1994 to debating proposed legislation, which after several

amendments were passed, to reform the people's councils, including how council members are elected and the relationship of the councils to people's committees. Each province, provincial city, district, and commune is supposed to have a people's council, which the Constitution says is 'the local organ of State power', the counterpart to the National Assembly at each level (Constitution 1992:59). Apparently, judging from the sparse information available about the assembly's debates, part of the objective was to make the councils more active, representative, and powerful, moving them from the sidelines of local governance where they have been overshadowed by the people's committees to the centre — a direction that would be parallel to the National Assembly's own increased importance in recent years.[21] Part of the impetus for this may be, for instance, villagers demanding self-government even at the hamlet level and more representation at higher levels of government (Tran Lan Huong 1994). Strengthening the people's councils is also cited by official documents as an aspect of the making government generally more accountable and separating legislative, executive, and judicial powers (Socialist Republic of Vietnam 1993:39-40).

An important theme in the fourth national congress of Fatherland Front in August 1994 was to make it relevant to the new, more vibrant character of Vietnamese society. Speaking to the nearly 460 delegates attending the first congress in six years, Secretary General Do Muoi said that because of recent 'changes in the structure of everyday life, the economic sectors, and the social classes', organizations within the FF need to 'broaden and diversity efforts...to attract more people...' (Do Muoi 1994a). Implicit in his remarks was criticisms made more forth rightly and directly by others about the Peasant Association, Confederation of Vietnamese Workers, and other organizations within the FF that these groups were lethargic, top-down, and inattentive to needs of people they were

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[21] Various Voice of Vietnam accounts (1-3 and 17 June 1994), from BBC Monitoring Service: Asia-Pacific, and FBIS-EAS-94-106, 107, 120, of 2, 3, and 23 June 1994.

supposed to represent.[22] Earlier in the year Le Quang Dao, a FF leader who was elected its head at the August congress, complained that the front had to overcome the perception that it was '...only a symbolic, formal organization, an "ornamental plant"'. A major task of FF organizations, he said, is 'to attract more typical people from among the various classes, social strata, nationalities, religions, etc., in particular those who are not party members' (Le Quang Dao 1994:67-68). A statement issued after the front's congress underscored this orientation, adding that the FF wanted to unite all Vietnamese '...irrespective of their past and ideology' (Vietnam News Agency, BBC Monitoring Service: Asia-Pacific, 19 August 1994). Organizations within FF, Le Quang Dao says, should be based on 'democratic consultation' with the purpose to 'rally the people and, on behalf of the people's groups and other member organizations, put forward necessary issues to the party and state for consideration...' (*ibid.*:67).

Contrary, however, to this theme of needing to be more inclusive and open in order to make Vietnam's political system more responsive to people's needs and concerns is a different theme of control and domination by the Communist Party coupled with dark suspicion and hostility toward those who challenge or are perceived to challenge the central place of the party.

Though the new FF president says that the front 'operates in accordance with the principles of democratic consultation, equal cooperation, mutual respect...', he reminds his audiences that '[w]e must hold fast to the principle that the party exercises leadership'. The party is 'both a member and the leader' of the FF (*ibid.*:66-67). The FF is also supposed to be the supra-organization for all other organizations. Leaders worry that organizations outside the FF pose potential threats. Referring to the many 'different classes and social strata' emerging in Vietnam, Le Quang Dao cites in particular a

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22 See the critique of the Peasant Association (*Hoi Nong Dan*) in *Dai Doan Ket* 21 May 1993:1ff. This weekly magazine is a publication of the Fatherland Front.

rapidly expanding 'contingent of private businessmen'. 'If we [in the FF] know how to unite and lead it well, this social stratum will play a positive role in national construction. Otherwise, it will develop perniciously and negatively' (*ibid.*:64). Similar concern for control surfaces in recent discussions about elections for the people's councils. National Assembly Vice Chair Phung Van Tuu explained that if there are conflicting views between the consultative conference empowered to select candidates and the local party leader, the party leader, after taking into consideration the consultative conference, would have final say (Voice of Vietnam, BBC Monitoring Service: Asia-Pacific, 21 September 1994). Vu Oanh, though critical of the party's failure to be more in touch with Vietnamese society, also emphasizes the need for 'strengthening the party leadership' over 'the Fatherland Front, mass organization, and public movements...', underscoring that the party 'directs the National Assembly elections...' and 'directs the front and mass organizations by helping them formulate their orientations, guidelines, objectives and tasks' (Vu Oanh 23 December 1993:3). The party's Mid Term Conference, after stressing that Vietnam is building a law governed state in which there are three branches of power — legislature, executive, and administration — felt compelled to say that it is the party that 'formulates lines and policies and leads political organizations to implement them' (Communist Party 1994:070, 75).

Groups and individuals who openly oppose the central role of the Communist Party or the maxim of single-party governance are likely to get into trouble with state authorities. A dramatic example is the Unified Buddhist Church of Vietnam (UBCV), which persistently challenges the Communist Party's claim to dominate all organizations within the country and refuses to join the FF. These Buddhists are not necessarily against communism *per se*. They seem to oppose any political system that tries to dominate and control them. In the context of a more liberal economy and more open society, the UBCV has acted more directly to assert its views. The most explosive confrontation thus far occurred in May 1993 when several

UBCV monks, followers, and other citizens blocked traffic and jostled with police. In December 1993 its top leader, Venerable Thich Huyen Quang, publicly called for the government to undertake political reforms, including abandoning the one-party system (*Asia Watch* 1994). In mid July 1994 a Buddhist monk in Vinh Long province burned himself to death, reportedly to protest against the Vietnamese government's persecution of the UBCV and other infringements of religious freedoms.[23] In mid August, police arrested more than 100 Buddhists as they staged a hunger strike in downtown Ho Chi Minh City while demanding 'their right to preach and study their faith without government interference...' (Associated Press, SEASIA-L [Internet], 18 August 1994).

Because the UBCV has a sizeable membership with good connections to Buddhist and other religious groups internationally and because Buddhists in Vietnam can be politically explosive (as the Ngo Dinh Diem government failed to appreciate in the early 1960s), officials have thus far refrained from using the full weight of their military and police forces. Numerous monks and lay people have been arrested and imprisoned, usually, it seems, on charges other than political ones. The four monks and five lay Buddhists arrested following the Hue confrontation were convicted in November 1993 for 'disturbing public order' and given prison sentences ranging from six months to four years (*Voice of Vietnam* [15 November 1993] SEASIA-L [Internet], 22 November 1993). Government officials have managed to keep the confrontation from escalating further also by using the national radio and television media to put their case in the best light and portray the protesting Buddhists in a negative manner and, quite likely, by continuing behind-the-scenes discussions with Buddhists involved, perhaps through intermediaries. But pressures from Buddhist and other religious groups is unlikely to dissipate

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[23] Reuter News Service, 18 July 1994, SEASIA-L (Internet), 20 July 1994; Agence France Presse, FBIS-EAS-94-137, 18 July 1994:70; Agence France Presse, FBIS-EAS-94-139, 20 July 1994:69.

without concessions and could escalate if authorities use more violence.[24]

Other direct challenges to the Communist Party's domination of the government have also been reported in recent months. A small group in Ho Chi Minh City advocating 'pluralism' and 'true democracy with all inherent civil liberties and freedoms' had planned a conference in that city in November 1993, perhaps with an aim to influencing the Mid Term Party Conference. Organizers thought that they had support from high level Communist Party officials for this meeting to which retired general William Westmoreland and former CIA director William Colby had been invited from the United States. Stephen Young, an American in Vietnam who was involved in the planning, said that support had come from 'liberals in the party' favouring a gradualist course toward a more open political system. If there were such backers, they could not prevail. Police arrested three Vietnamese who allegedly were organizing the meeting and deported Young (*FEER* 9 December 1993:12-13). Also prior to the January party conference, photocopied critiques of the party's insistence on socialism and its resistance to political liberalization circulated around the country. One author was Ha Si Phu (Nguyen Xuan Tu), a respected biologist at the Science Institute of Vietnam in Hanoi. Another was Lu Phuong, former official in the government's Ministry of Culture and former party member, who is now a photographer in Ho Chi Minh City (*FEER* 2 December 1993:26). Lu Phuong and Ha Si Phu were not arrested, as far as is known, though they are reportedly under surveillance and their movements have been restricted. For instance, Lu Phuong was not permitted to travel to Australia to

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[24] Catholic Church groups have had run-ins with the state, too. The most notable recent instance concerns the assignment of Bishop Nguyen Van Thuan, nephew of Ngo Dinh Diem, to Ho Chi Minh City. Prime Minister Vo Van Kiet objected strenuosly. After considerable negotiation, the Vatican decided to assign the bishop to Rome instead (Agence France Presse, 2 and 17 March 1994, FBIS-EAS-94-041:42 and 053:51).

participate in the 1994 Vietnam Update to which he had been invited by the ANU's Research School of Pacific and Asian Studies.

In March 1994 authorities did arrest — again — Nguyen Ho for circulating a paper he had written (Agence France Presse 22 March 1994, FBIS-EAS-94-055, 22 March 1994:55-56). Among other things, the paper critically assessed socialism, called for 'pluralist democracy' (*chinh tri da nguyen-dan chua da dang*), urged a new constitutional convention, and accused the Communist Party of having committed numerous crimes, including killing several opponents (Nguyen Ho 1994:42, *passim*). Upon arrest, he was charged with spreading propaganda against the 'regime and state' (*che do va nha nuoc*) and provoking 'doubt and division' (*hoai nghi chia re*) between the people and officials.[25] A former National Liberation Front guerrilla, Nguyen Ho previously was under house arrest for nearly three years between 1990 and 1993 after having attempted to form a veterans association independent of the FF and Communist Party. Reportedly the 78-year-old Nguyen Ho is now home but under surveillance (*Dan Viet* [Cabramatta, NSW], 11 August 1994:1)

Meanwhile, the government feels domestic and international pressures to release prominent prisoners who have advocated peaceful change to more democratic forms of government. Doan Viet Hoat, one of the writers of *Freedom Forum*, a mimeographed newsletter circulated in late 1989-early 1990 that advocated free speech and political pluralism, has since August 1993 been serving a fifteen year prison term.[26] While his wife and others in Vietnam plead with authorities to release him, PEN American Center, an affiliate of the international association of writers (PEN) bestowed on him the

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[25] The charges appear in documents from the People's Committee, Ho Chi Minh City, printed at the end of Nguyen Ho 1994:45-48.

[26] The short lived newsletter's articles, together with other related materials, appear in *Doan Viet Hoat* (1993).

organization's 1994 Freedom-to Write Award.[27] Similarly, Amnesty International has taken up the case of Nguyen Dan Que, who serves a twenty-year prison term after publicly advocating a multiparty system (*Asian Wall Street Journal* 9 September 1993). International pressure may have contributed to the release in May 1995 of Quach Vinh Nien, who had been sentenced to sixteen years, reportedly for publishing newspapers articles critical of the Communist Party's domination over the country's government. He has been permitted to join his family in Australia (*Independent*, SEASIA-L [Internet] 26 May 1994).

Among the several individuals in recent months who have been openly advocating an end to a single-party, Communist Party dominated political system is Father Chan Tin, a Redemptorist priest in Ho Chi Minh City. Despite having also been under house arrest in 1990-93, he wrote in March 1994 a scathing critique of Secretary General Do Muoi's speeches, ending with a word of advice for the Communist Party: 'If it wants to survive, [it] needs to orient itself to the people's wishes, to accept democracy, to respect individual integrity, to respect civil and human rights, and to accept pluralism' (Chan Tin 1994). Duong Quynh Hoa, a paediatrician who was once prominent in the Communist Party in southern Vietnam, has frequently criticized party and government policy. She is quoted as saying the 'system is too rigid. Our leaders don't have enough knowledge to run the country. They're very dictatorial, and are only trying to keep their seats' (*FEER* 2 December 1993:90).

Besides possibly the sheer desire to keep power for its own sake and protect their self interests, why do top Communist Party leaders oppose opening up the political system more rapidly, particularly allowing for more than one political party? One central reason is the fear that Vietnam would revert to instability, chaos, and possibly civil war. Leaders worry that lingering legacies of past deep divisions within the country

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[27] Letter from PEN American Center to Secretary General Do Muoi, 24 May 1994, SEASIA-L (Internet), 13 June 1994.

could burst out and obliterate the country's achievements if the political system suddenly thrown open. It is a concern of even critics like Duong Quynh Hoa, who believes that political change must be slow. 'For us it's very difficult to talk about democracy. We never had democracy in Vietnam so must set it up step by step. I want democracy, but I don't want anarchy' (quoted in *FEER* 2 December 1993:90). Ordinary people have expressed fears that rapid political change would bring the misery and chaos they hear about from eastern Europe and the former Soviet Union.[28] Even those with little sympathy for the present system, argues Do Muoi, recognize that pluralization at this time would significantly jeopardize achievements thus far in economic recovery, improved living conditions of people, and the country's independence (Do Muoi 1994b:3).

Many Vietnamese authorities also believe that advocates for a multi-party system, Western-style democracy, etc., are part of a larger movement opposed to Vietnam as it is presently constituted. The movement, according to this interpretation, is a continuation of the 'peaceful evolution' strategy used since the late 1940s by imperialists and other enemies of Vietnam's struggle for independence. The strategy's aim is to gradually subvert and bring down the Communist Party and its government and to deny Vietnam its right to independence and self-determination. Official alarms against subversion by 'peaceful evolution' (*dien bien hoa binh*) have been numerous since the early 1990s, and appear to have accelerated after the United States lifted the trade embargo in February 1994. Speaking to party cadres in March, Secretary General Do Muoi warned that while the end to the embargo creates many positive opportunities for Vietnam, it also creates opportunities for 'hostile influences' to intensify 'peaceful evolution activities and plots' (*ibid.*:2). At conferences, meetings, and seminars provincial and district cadre have been told to vigilantly guard

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[28] Conversations with villagers in the Red River delta, April and May 1993.

against those involved in this 'peaceful evolution' strategy.[29] Earlier, in January, the party's Mid Term Conference declared that one of the four greatest dangers facing the country now is the 'violent subversion plot' represented by 'peaceful evolution' (Communist Party 1994 [068]:77). Specific groups and activities exemplifying this threat, according to party leaders, include numerous organizations abroad led by former South Vietnam government officials and those foreign and local Vietnamese arrested in March 1993 for plotting to set off bombs in Ho Chi Minh City. Even some of those who advocate only peaceful methods and were former supporters like Nguyen Ho are sometimes included among those involved in this strategy (Ideology Committee 1994).

This context of top leaders being agitated about the threat they perceive from 'peaceful evolution' may help to account for their actions that provoked the cancellation of a planned Australian parliamentary delegation in July 1994. Vietnam authorities refused to grant a visa to Quang Luu, a member of the intended delegation, on the grounds that he had told the BBC on June 27 that the purpose of the trip was to examine the human rights situation in Vietnam. Not only is that topic a very sensitive subject as far as Vietnamese leaders are concerned, but their understanding was that a human rights investigation was not the purpose of the visit.[30] The fact that Quang Luu, an Australian citizen who heads SBS radio's ethnic minority service, had once been an official in the South Vietnam regime

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[29] See, for instance, the account of a seminar in Thai Binh province to 'fighting against [the] peaceful evolution strategy of hostile forces' (Voice of Vietnam [14 April 1994], FBIS-EAS-94-077, 21 April 1994:59-60). Also see speech by Senior Lieutenant General Tran Van Quang (*Tap Chi Quoc Phong Toan Dan*, FBIS-EAS-94-073, 15 April 1994:54-56) and statement by radio station editor Vu Dinh Vinh (Voice of Vietnam [22 February 1994], FBIS-EAS-94-037, 24 February 1994:53-55).

[30] Vietnam News Agency [14 December 1993], *BBC Summary of World Broadcasts*, 16 December 1993, FE/1873/B/11; Voice of Vietnam [5 July 1994], BBC Monitoring Service: Asia Pacific, 7 July 1994.

made authorities in Hanoi all the more nervous and upset. After they refused Quang Luu a visa, the Australian government decided to protest by cancelling the trip.

Another part of an explanation for why Vietnam authorities are extremely suspicious of even moderate, low-keyed calls for more latitude to organize and engage in political activities independent of the Communist Party may be their socialist ideology and understanding of Marxism. For them, as for many Marxists, a more open political social order allows for — indeed encourages — the rise of self-centred, self-serving narrow interests that are not concerned with others in society.[31] Most dangerous would be the rise of organizations and political parties serving capitalists' interests that are opposed to and could displace the interests of workers and the peasantry, which the Communist Party claims to serve and believes should be foremost. This is the situation, party officials frequently argue, in the United States and other Western democracies, political system which Vietnam should avoid, not emulate (Do Muoi 1994b:3-4).

Summary and reflections

I have argued that the political leadership in Vietnam, particularly of the Communist Party, has put a lot of stock in economic growth and related improvements to bolster support in society for the political system. To a considerable extent, this emphasis appears to have earned the political system more legitimacy than it otherwise would have had, especially had economic conditions continued in the dismal direction that they were going during the late 1970s and early 1980s. But with success has also come social issues and discontent, which have become significant political problems. Several of these have been particularly apparent during the last year. One is widening scepticism if not opposition in society and even within state institutions to socialism as an ideology, yet the

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[31] For the general argument about Marxism in this regard, see the Manfred Henningsen's informative analysis (1992).

national's political leadership continues to insist that Vietnam is a socialist society, following a socialist path to development. Another problem is a range of adverse social changes that have arisen as the state has receded from trying to control production and distribution and as a market system, which increasingly looks like many others in Asia, has expanded. Rising unemployment, widening differences between the wealthy and the poor, and more prostitution and drug addiction cause policymakers considerable concern. The one that has been the most politically difficult is labour unrest, including numerous strikes during in recent years. Such discontent influenced the National Assembly to pass a new labour code in mid 1994 that legalizes certain kinds of strikes. A more serious political challenge for the regime is corruption. People from many sectors of society and within various quarters of the state are outraged at authorities who abuse their privileged position for personal gain. While leaders have been assuring the Vietnamese people that their anti-corruption campaign is serious, they have been struggling to be convincing. The last political problem discussed in this chapter is the clamour from Buddhist organizations, other groups, and numerous individuals that the political system change in order to accommodate dissent and political opposition. This has brought out sharply the disjuncture between the political leaders' claims and efforts to be more open and inclusive, one one hand, and their often suspicious, hostile, or furious responses, on the other, to pressures for changing the political system.

This brief examination of the politics of society in Vietnam brings out an aspect of state-society relations having to do with the intermingling of the two. 'State' and 'society' are often conceptualized by analysts as though they are distinct arenas; and relations between them are seen as relations between two entities, each trying to influence, exercise power over, or be separate from the other. At one level, analyses along this line make sense. After all, in most countries, the military, police, courts, taxation offices, and so forth are identifiable institutions of the state, often distinguishable enough from other

institutions in society. To society, they often are places to avoid, if possible; people rarely want to be at the mercy of the power that state institutions can wield. Typically citizens feel vulnerable and relatively powerless before institutions of the state. On the other hand, state institutions can be places to which people in society turn for help, look to for services, and so forth — a reasonable approach that again suggests that state and society are separate.

Thinking of them as separate in Vietnam makes sense, too, to a degree. This chapter highlights, for instance, that one of the reasons corruption has become a significant political problem for the state is the considerable protest against it by villagers and others in society. Also, because one of the major political questions in Vietnam is the extent to which social activities, organizations, etc., can be distant, distinct, or autonomous from state institutions and control, it is reasonable to look for evidence of groups in the sphere of 'society' that are trying to do that. Pertinent examples cited in this chapter are the Unified Buddhist Church of Vietnam, some non-government organizations, and groups and associations of labourers who have protested against working conditions and gone on strike, defying in the process the law and the state's labour federation.

But taken too literally, treating state and society as separate entities has pitfalls. One is that it can blind or deflect analysis away from important places and events for the politics of state-society relations. State and society are often intermingled. Educational institutions like universities, for example, are frequently neither exclusively state nor exclusively societal but both, and often places of conflict and negotiation about state-society relations. Banks and other financial institutions comprise other examples. The intermingling of private and public resources may be a means to perpetuate state power, or for private investors to increase power by tapping into and having backing and protection of state monies, police, or other resources (Mitchell 1991:89-90). While the state can shape society, social forces can influence the state as well, and not just from the outside but also from inside. This dynamic is easier to see in relatively 'open' political systems such as liberal

democracies than in 'authoritarian' or 'totalitarian' systems. But such interactions can be important for explaining significant shifts in these more 'closed' political systems. Institutions and organizations that are part of the 'state' can be agents of and avenues for change by social forces within them. Hence, one would want to look at state institutions for evidence of struggles regarding issues of autonomy and control.

Studies of authoritarian regimes highlight the importance of organizations created by or closely associated with the regime becoming sources of advocates for pushing the political system to become less authoritarian and/or more democratic (Zhang 1994; Huntington 1991). In the Soviet Union during the 1960s-1980s, writes Moshe Lewin (1988:79-81), a myriad of associations and networks arose in the '...bosom of a system that is statist par excellence'. Some existed and acted independently of the state, while others were 'official organizations capable of developing their own spontaneous views on national or local issues and then impressing these views on their members, on small groups and, finally, on the authorities'. Independent trends and groups appeared 'among the Soviet state bureaucracies'. Public opinion and reactions penetrated 'state bodies and the party...', meeting 'with either opposition or sympathy from state officials'. Administrators often partook of 'the opinions prevalent in different strata of society at large'. All such networks and organizations, whether inside or outside institutions of the state, Lewin concludes, were part of an emerging 'civil society'. Similar phenomena are found in China during the late 1970s and 1980s, though X.L. Ding calls what occurred inside the state 'institutional parasitism' rather than an aspect of civil society (Ding 1994: 26-27).[32] Ding finds in research organizations, universities, bureaucracies, and other government institutions that intellectuals and other counter-political elites were challenging the ideas and policies of the ruling elite and using official and

[32] Ding thinks 'civil society' should be reserved to refer to organizations, associations, etc., that are fully outside the state and in opposition to the prevailing political order (1994:25-26, 35).

semi-officials institutions like 'parasites' to create alternative networks and associations that fed into the 1989 democracy movement.

Something along this line seems to be happening in Vietnam as well, indicated by examples in this chapter. Arguments against the utility and value of a socialist ideology arise within a range of state institutions, including the Communist Party itself. Organizations created by various ministries and bureaus are pursuing programs not entirely in accord with those state institutions' objectives and are trying to become more independent. Within the General Confederation of Labour, an organization headed by high-ranking Communist Party leaders and under the official Fatherland Front, there is considerable tension as some members try to turn it into an advocate for workers' interests rather than a conduit for the party's directives and to distance it from the state. A number of individuals, like Ha Si Phu and Nguyen Thanh Giang, who are critical of the present political system are themselves employed by institutions of the state. Others noted in this chapter, such as Nguyen Ho and Duong Quynh Hoa, are former party members and government officials who, though now outside the state, still have family members and friends inside who sympathize with them and, one can imagine, carry their complaints into official meetings and deliberations.

Chapter 3

Changing Labour Relations

Stephanie Fahey

Introduction

Significant changes have occurred in Vietnam during the past seven years with the progressive shift from a centrally planned economy to one dominated by the market. This shift has generated a new complex of interest groups which regularly play out the fundamental contradictions which exist between them. At the heart of economic reform is the changing set of labour relations brought about by the rationalization of state-owned enterprises (SOEs) and the growth of private enterprise and foreign investment. The challenge for the Vietnamese government is to effectively manage this change. The new Labour Code approved in July 1994 by the ninth National Assembly was an attempt to the regularize labour relations. The implementation of the code, however, which is scheduled for 1 January 1995, is expected to be slow and regionally uneven.

This chapter provides an overview of some aspects of Vietnam's labour market and current labour relations. Contemporary changes are described: increased unemployment resulting from structural adjustment and youth entering the work force and the differential impact of unemployment on women, industrial sectors and regions; the apparent inescapability of poor working conditions including low levels of pay and occupational health and safety risks; and increased labour disputes along with protests from private entrepreneurs against increase government charges. The government's

response to increased levels of unemployment and labour disputes include redundancy packages, reform of the salary schedules, and more formal means to ease unemployment. The introduction of the new Labour Code, which formalizes trade unions and their right to strike, is an attempt by the state to withdraw from direct involvement in the activities of enterprises. These changes have significant implications for foreign investors.

A conceptual change in labour relations

Under *doi moi* (economic renovation), the command economy in Vietnam has undergone substantive changes with the gradual demise of SOEs and the continued emergence of powerful Vietnamese private-sector and joint-ventures companies. During this transition, not only has structural adjustment given rise to an altered distribution of labour across economic sectors and geographic regions, but also the nature of the relationship between employer and employee has fundamentally changed.

Within a command economy, labour is not conceived of as a commodity to be bought and sold at the value of the work done. Hence, labour relations are not those between employer and employee. Rather the director of the enterprise is considered to be a manager of state assets and the state is a state of the workers.

With the transition to a market economy, labour in Vietnam is increasingly becoming a commodity. This has a number of implications both for the organization and operation of sectors of the labour market as well as the playing out of labour relations.

Structural adjustment in the labour force

Under the command economy, labour was tied to SOEs and agricultural and handicraft cooperatives and collectives. The economy was centrally planned and production targets established for units. Consideration of the efficiency of labour in these units was of low priority whereas full employment was

considered a necessity. With the introduction of market economic principles, substantial structural adjustments in labour allocation are required.

The decline of employment in the SOEs has gone some way to improving productivity, but officers of the Ministry for Labour, War Invalids and Social Affairs (MOLISA) that over 25 per cent of those employed in SOEs are redundant. Between 1989 and 1993, 1.5 million state workers have become unemployed, retired or reduced to part-time work as a result of the dissolution or restructuring of 2,000 SOEs, according to Nguyen Van Tu, chairman of the Vietnam General Confederation of Labour (VGCL) (*Vietnam Investment Review*, 22–28 November 1993) and each year over one million Vietnamese youth reach the age of employment. While some have been absorbed by the private sector, others have remained unskilled and jobless.

Rationalization of SOEs is essential for the development of a market economy. Newly formed profit-making ambitions of directors of SOEs are plagued by significant overemployment, caused by existing excess workers and exacerbated by the introduction of high-tech equipment and the need for a more sophisticated work force in some enterprises. For example, from 1991 to 1992 in Hanoi, almost 54,000 workers were made redundant. In Minh Khai weaving mill over 700 workers were laid off. In the weaving and dyeing workshop alone, the work force was trimmed from 550 to a little more than 100 workers due to overemployment and the introduction of new equipment. The Thang Long cigarette company laid off nearly 400 workers, and the Hanoi bus company laid off 300 employees (*Vietnam News*, 7 March 1993).

One of the most pressing problems in Vietnam is the high rate of unemployment and underemployment, although the official unemployment rate is only 7.37 per cent (Ministry of Labour, Invalids and Social Affairs 1994:36). The problem cannot be solved by old-style bureaucratic centralization or a Western-style headlong rush into private enterprise abandoning social justice according to Vu Oanh, a member of the Politburo (*Vietnam Investment Review*, 16–22 May 1994). His concern is

underlined by the World Bank's lack of attention to rising rates of unemployment in its review of public sector management and the private sector incentives. This report assumes the necessity for transition from state involvement in the more lucrative sectors of the economy such as energy to infrastructure and human resource development. The private sector is expected to absorb redundant labour and the government is expected to ease the temporary poverty which arises from this transition (World Bank 1994).

A difficulty for SOEs is the 'brain-drain' from the SOEs to the private sector as skilled workers shift to higher incomes. The private sector has drawn between 80-85 per cent of its skilled work force from the SOEs to the 70 per cent of workers in foreign-invested companies are from SOEs (*Vietnam Investment Review*, 20–26 December 1993). In retaliation, some directors of SOEs are demanding compensation payments from employees for training given to the staff member. That is illegal unless a contract has been signed to this effect (*Vietnam Investment Review*, 25 April–1 May 1994).

Even though unemployment rates are high, labour shortages exist in particular sectors. A report issued by the Ho Chi Minh City government at the end of 1993 noted that although over half the residents of Ho Chi Minh City of working age are unemployed, many branches are short of workers in such areas as construction, transport, and mechanical engineering, child care and house-keeping (*Vietnam Investment Review*, 20–26 December 1993). Branches which continue to attract workers include textiles, food-processing, rubber production, chemical industry and wood-processing. Similarly, labour shortages also exist for skilled college and university graduates. At the same time many graduates remain unemployed due to the lack of coordination between education-planning priorities and labour market needs. Although these maladjustments may be short-term, it illustrates the problems which structural adjustment create in the labour market.

The changing position of women in the labour market

During Vietnam's wars, women were highly represented in the labour force. With the unfolding of economic reforms, however, women have lost proportional representation. As SOEs have rationalized, the loss of female labour has been faster than male labour. According to the VGCL, although women made up 49 per cent of total state employment in 1989, in 1992 it had declined to 47 per cent indicating a more rapid drop in female state employment with state rationalization. It is not unusual that women are the first victims of unemployment. The reasons given for the more rapid rates of unemployment by various women's groups in Vietnam focus on the lack of training of women, their poor health, health-related costs such as maternity benefits and absenteeism due to child care and other family responsibilities.

Women in Vietnam are still expected to take care of the domestic arrangements of shopping, cooking and cleaning as well as meeting family responsibilities for ceremonies such as at Tet (Vietnamese New Year), funerals and weddings. As a consequence, women, and especially married women, are leaving paid employment within state and private enterprise and opting for more flexible arrangements as petty traders.

Under communism, the state introduced regulations to protect women's rights: the free choice of wedding partners, the right to work, the responsibility of men to share housework and affirmative action to promote higher education for women. As the state withdraws from the provision of social services such as subsidized child care, health care and school fees, these responsibilities are falling back onto women. This may decrease government expenditure on social services and reduce the unemployment levels but it discriminates on the basis of gender and enforces women's retreat from public life.

During the immediate post-war period, women were highly represented in the labour force. Even in 1992–93, 52 per cent of those employed were women and 92 per cent of economically active women were employees (State Planning Committee and General Statistics Office 1994). Although no detailed statistics

are available, it appears that they concentrated in occupations of low skill and high labour intensity. Women in the urban areas concentrate in the industrial groups of wholesale and retail trade and restaurants; manufacturing; agriculture, hunting, forestry and fishery; and community, social and community services (*ibid.*). Until 'renovation', women were not disadvantaged with respect to pay as workers were paid according to their need rather than their responsibility or output. With salary reform and the creation of a labour market, the lack of skill and training for women became more obvious as unskilled women workers began to lose their jobs and congregate at the most lowly paid end of the newly created pay scales.

Some have suggested that women were in fact the instigators of increased private sector activity in Vietnam during the 1980s. Women progressively moved into petty trade, a sector which they continue to dominate. Women are also highly represented in other private sector activities. For example, many of the growth industries for foreign investors are those which traditionally employ women including textiles, garment production, leather products and food stuff processing. Women workers make up between 55 to 87 per cent of the labour force (Bui Thi Kim Quy 1994).

But conditions for women in Vietnam's work force appear to have deteriorated with their increased private sector activity. For example, a recent survey of thirteen enterprises with foreign capital which predominantly employ women was conducted by the Institute of Social Sciences in Ho Chi Minh City. The survey found that the women were young (i.e. 70 per cent of women were between 18-30 years) and usually single (i.e. 60 per cent) (*ibid.*). Nevertheless, most women found it difficult to maintain their family and social commitments as well as maintain full-time work in which they were expected to work overtime every two days from 7.00am to 9.00pm and on weekends.

Other indicators which point to the deterioration of women's conditions are the reduced female membership of the national assemblies from over 27 per cent in 1976–81 to a

current membership of only 18 per cent.[1] Proportional representation of women has also declined in people's committees, at commune-level administration and as ministers and vice-ministers. In 1992, women chiefs of departments are only 13 per cent and directors of SOE are only 3 per cent (Vietnam General Confederation of Labour 1993).

The emergence of casual labour markets

Since the introduction of *doi moi*, labour has become increasingly responsive to market demands. For example, labour migrates on a short term basis especially after the seasonal harvests when less work is required in the fields and others on a longer term basis in search of appropriate employment. In the early stages of economic reform, increased employment opportunities emerged first in the countryside. Migrant labourers moved within the countryside to work in forestry or mining gem stones. As economic reform affected the cities, rural-urban migration began, though the rate is unknown because people who come to the city from the countryside rarely register. In fact, many provincial government officers give the required papers to young men to allow them to engage in urban migration labour with the understanding that some of the money comes back to the village.

These unofficial city-dwellers reside in 'labour markets' or 'student villages'. In the outlying villages of Hanoi, day labourers gather at Bat Trang pottery village 10 kilometres southwest of Hanoi and at Ninh Hiep fabric market 12 kilometres north of Hanoi. In Hanoi, labour markets exist just metres away from Hang Da market, north of Hoan Kiem Lake where carpenters from the countryside gather with their tools mounted on their bicycles, and on the median strip of Giang Vo and Minh Khai Street and Giai Phong Boulevard labour market where people from the countryside gather from 5.00am and await casual work as porters, waiters, construction assistants,

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[1] The statistics come from a 1993 table provided by the National Assembly office in Hanoi.

house cleaners, for washing or cattle raising. These labour markets which spontaneously emerged about two to three years ago are becoming increasingly organized by agents. For example, one Hanoi family has taken the initiative to organize parts of this casual market. They have organized over 100 porters (locally known as *cuu van* after a figure on a Chinese playing card) to provide labour for construction sites. Foremen directly contact the family who provide a gang of labourers and take about 15 per cent of the wage as a fee. They also provide accommodation in their home for some at VND1,000 (US$0.10) per night in their home (*Vietnam Investment Review*, 21–27 November, 1994b). Cyclo drivers are another example of a migrant labour, many of whom come from the countryside and hire a cyclo to become full-time drivers.

Under the planned economy, college and university graduates were employed by the government. Now, however, they are required to find their own employment. Graduates from the countryside often chose to continue to reside in urban areas and engage in casual labour such as tutoring of high school students. An example of a 'student village' of this kind is Bach Hoa near the Hanoi University of Technology. Nowadays, many universities have set up relations with labour promotion centres to assist their graduates in job search activities.

The increase in the number of labour disputes

Substantial structural adjustment in any economy is bound to cause dissatisfaction. This has been expressed not only by workers in the form of wild cat strikes but also by private entrepreneurs who protest against new taxes and advantages given to foreign investors.

With the separation of interests of employers and employees under a market economy, several labour disputes have occurred particularly in the past two years with over 40 such strikes being recorded, principally in joint ventures and 100 per cent foreign-invested companies in Ho Chi Minh City although increasingly in Vietnamese state-owned and private

enterprises. Although problems did occur in pre-renovation Vietnam, most of those conflicts concerned the lack of democracy in the management of the enterprise rather than pay as there was little differentiation between wage levels, which were set by the state. Furthermore, disputes were limited by the lack of any formal mechanism for resolution. Most of the recent conflicts have arisen in textile, garment and shoe-making enterprises with foreign capital from South Korea, Taiwan and Hong Kong (Hiebert 1993a:16). The workers' major complaints, according to Hoang Thi Khanh, president of Ho Chi Minh City's Federation of Labour, have been over low pay, compulsory overtime and rude treatment of workers by foreign managers (*ibid.*). Fewer than 20 per cent of the 252 joint-venture enterprises in Ho Chi Minh City have labour contracts with their 16,000 workers and only 15 per cent have labour unions.

Conditions for workers in most sectors are poor with particular problems in occupational health and safety. Old and outdated equipment are still in operation, giving rise to serious industrial accidents. Another implication of the high levels of unemployment is the disinclination of workers to insist on better physical working conditions. Rather than issues of occupational health and safety, protests generally focus on pay scales, physical abuse and dignity issues.

Nevertheless, a 1993 report of the Institute of Scientific and Technical Research of Labour Safety under the VGCL summarized by the *Vietnam Investment Review* (4–10 October 1993) found that labour accidents and occupational disease was increasing especially in the private sector. In many enterprises, noxious exposure is beyond permitted levels with the presence of lead in the Thanh Thanh Enamel Tile Factory in Dong Nai Province to be 101 times required standards and 100 per cent of workers in battery production in Ho Chi Minh City to have lead contamination. These problems will likely continue at least in the mid term due to the lack of information and education of workers with respect to these issues together with the pressure on workers of high rates of unemployment.

Pay scales in Vietnam by regional standards are low. Factory workers earn between US$15 to US$35 per month and Vietnamese managers earn less than US$500 per month although there is increasing pressure by deputy general directors in joint ventures to increase their after-tax earnings to US$700–1,250 per month. This is in contrast to Indonesia where, although factory labour rates are on par with Vietnam, managers rates are in excess of US$4,500 per month. In Thailand, factory workers are paid about US$300 per month with managers in excess of $3,000 per month.

In 1991, as additional incentive to foreign investors, the minimum wage for factory workers to be paid by foreign investors was reduced from US$50 to US$35 per month. This is still regarded as too high by some foreign investors who attempt to depress the real wage by paying below the minimum rate or increasing the hours worked. For example, investigation of a strike at Louitech Lesgo, a Taiwanese joint venture in December 1992 revealed that the company was only paying the workers a monthly salary of US$14 (Hiebert 1993a:16).

Workers are often expected to work nine or ten hours or at night with no compensation. For example, an investigation of a strike by 120 workers of the tailoring company Gohhsing (Taiwan) in Hoc District in Ho Chi Minh City in September 1993 found that workers complained they had only received a US$5 advance in the past 6 weeks even though they had worked overtime and on Sundays (*Vietnam Investment Review*, 4–10 October 1993). Other companies hire workers on 'probation' as 'apprentices' and use those labels to deny them fair wages (*Vietnam Investment Review*, 22–28 November 1993). The period for training should be established in the labour contract but the majority of companies have not negotiated these contracts.

Foreign investors in labour-intensive industries such as textiles, clothing and footwear are generally from Taiwan and the Republic of Korea. These enterprises move investment to Vietnam due to the shortage and consequent high cost of labour at home. Furthermore, investors from these countries experience increasing difficulty securing markets in the EC and the USA

whereas Vietnamese goods in many markets are given preference. Nevertheless, some foreign investors experience difficulty in securing foreign markets and in some sectors it is difficult to compete in the domestic market against Vietnamese companies who pay lower prices for inputs such as land, power and water. Consequently, some foreign investors have difficulty meeting their wages bill.

Labour disputes also often arise over failure of foreign investors to meet cultural expectations of workers. A major problem for Vietnamese workers with managers from Taiwan and Republic of Korea appears to be the social distance created by these managers. Vietnamese workers are familiar with management practice in which the director is respected but expected to be socially accommodating which is in contrast to the rigidly hierarchical management style of northeast Asian managers. Consequently, many of the strikes in joint ventures are inspired by dignity issues.

Problems occur not only in foreign-invested companies. For example, in a state-owned handbag-making enterprise, Sagoda No. 3 in Ho Chi Minh City, a strike in October 1993 was sparked because the company had only paid US$4.70 in salary and US$7.00 in commission for the month (*Vietnam Investment Review*, 18–24 October 1993).

The role of trade unions

In Vietnam, trade unions are in the process of renewing their organization and activities to perform the function of workers' representatives in protecting their rights and interests. In the past, they existed only as part of the state sector and were organized to promote political unity.

In the past, the management of SOEs was through four positions: the Communist Party representative, the director, the trade union representative and the representative of the Youth Union. The party official carried the most power. Often the trade union representative was either the deputy party representative or deputy director and in this respect was seen as closely linked to management. In fact, union leaders saw

their major task as assisting management to meet enterprise production targets and assuring the enforcement of government labour laws and policies. The priorities of the union were to participate in administration, to educate workers and to defend workers' rights whereas their new set of priorities reverse this order with the primary role being to protect the material interests of its members.

In reality, many trade union leaders see themselves more in the role of mediator rather than workers' representative. For example, in a dispute at the Viet Thang tailoring company the trade union requested the director to take disciplinary action against a supervisor who insulted a worker and asked the workers for restraint (*Vietnam Investment Review*, 16–22 August 1993). Other actions by trade unions have been to persuade employers to increase hazardous work, lunch and relief allowances; to strictly adhere to minimum wage levels and work and rest hours; and to allow the formation of trade unions. More recently, trade union leaders in Ho Chi Minh City have called for a nationwide hike in the minimum wage from US$35 to US$50, a suggestion likely to be rejected by government (*Vietnam Investment Review*, 21–27 November 1994). Nevertheless, it is an attempt by unions to act publicly on behalf of employees.

The trade union movement was born during French colonial rule with the formation of the Northern Red Trade Union, which first convened in 1929 in Hanoi. The union was initially organized as an underground political arm of the Communist Party around local cells. The formal Yellow Trade Union structure was organized according to occupation. The French colonist also organized a trade union. During French colonialism, Vietnamese workers were exposed to brutality and long working hours of between 12 to 16 hours a day not only by the colonists but also indigenous feudalists. The Northern Red Trade Union was the predecessor of the VGCL and this was supported by the publication of *Nguoi Lao Dong*, the labour weekly. The political heritage of the trade union movement in the north contributes to its unusual structure of the dominance of locality-based unions rather than occupation

unions. In the south, before 1975, the trade union movement was actively linked to the Brotherhood of Asia Trade Unions as part of the Christian-influenced World Confederation of Labour and participated in international conferences. Under communism, the southern trade union movement was absorbed into the northern structure.

Recent experience in Song Be province illustrates the historical connection between French colonial history and contemporary labour disputes. Song Be province has a long history of strikes and workers action. Tens of thousands were employed in virtual slave-labour conditions on rubber plantations there during the French colonial rule. More recently, Song Be has been the site of several major labour disputes. For example, at the privately owned Thai Binh shoe factory whose workers went on strike on 15 October 1993 (*Vietnam Investment Review*, 25–31 October 1993), and in April 1994, 3,600 workers in the state-owned Thanh Le cashew nut-processing factory in Song Be held a ten-day stoppage demanding better pay and conditions and expressing disapproval of the management style of the newly appointed director (*Vietnam Investment Review*, 25 April–1 May 1994).

The drive for the right to strike has come from the workers rather than the VGCL which appears keen to use strikes as a last resort and to maintain Vietnam as an attractive climate for foreign investment. Advice given to the VGCL through their international affiliations has warned of the dangers of transnational corporations, but the Confederation intends to encourage transnational investment. Nguyen Van Tu, chairman of the VGCL, stated that the role of trade unions was 'to protect the worker's legal rights without causing bad influences to the economic development and political stability of the country' (*Vietnam Investment Review*, 22–28 November 1993). In fact, Tu earlier in the debate argued against the right to strike, fearing it may be abused for political purposes. Apparently, some workers are reluctant to support trade unions as they believe that officials are too easily co-opted by company bosses.

Under the command economy, trade unions were limited to the public sector even though a substantial private sector operated within 'the hidden economy' (Fahey 1994). But by the end of 1993, only 4.4 per cent of the 2.5 million workers in non-SOEs were unionized (*Vietnam Investment Review*, 22–28 November 1993). There were 44,000 members of 480 non-state trade unions and 58,000 members in 324 trade associations for professional workers. Even so, a 1993 report from the VGCL noted that the development of trade unions in the non-state sector is too slow (*Vietnam Investment Review*, 16–22 August 1993). Although it generated 60 per cent of GDP, only 10 per cent of private enterprises have labour union organizations.

The report suggests that low membership in the private sector is because both the employee and employer see little effective outcomes from union involvement in labour relations (*ibid.*). Some joke that 'the trade union is as the breast of a man': it is necessary for appearances but has no function. Nevertheless, it is encouraging that the problems faced by the trade union movement are discussed so frankly within the union newspaper. Other criticisms of the trade union organization concern its large bureaucracy and ownership of enterprises such as construction firms, tourist agencies and more recently a joint-stock bank (*Vietnam Investment Review*, 5–11 December 1994).

The major challenge which faces the trade union movement in Vietnam is credibility in its representation of labour, a challenge not unlike that which faces the Communist Party as a manager of a market-oriented economy. Does the trade union movement need to be independent from government to be effective? Could the trade union movement be financially viable or enjoy its current level of freedom of expression without government support? How will it continue to fund its activities with declining membership in the state sector which is not compensated for by the private sector? These questions will need to be resolved in the coming years.

Government response

As unemployment increases, household incomes decline. The impact of unemployment is aggravated in many transitional economies because severed ties with the enterprise means that access to basic social services and other mechanisms of social protection are impeded. Furthermore, stress is created in households as access to income is potentially under threat as SOEs one by one dissolve. This level of stress is exaggerated in economies where in the past, although the level of existence was basic, at least it was assured. Older people who depend on the financial solvency of their children appear to be worst affected by this stress.

Easing the social costs of what is hoped to be 'transitional unemployment' is one of the greatest challenges for the Vietnam Communist Party which sewed its roots in the nationalist campaign against the exploitative labour practices of the French colonialists and their sympathizers. The hope of the state is that the emerging private sector will absorb the increasing number of unemployed. Of concern is that in the current period of excessive unemployment, labour is more susceptible to abuse. The new Labour Code in Vietnam has gone some way to introducing necessary labour protection legislation. Furthermore, the government has attempted to ease the burden of 'transitional unemployment' by sponsoring retraining programs, creating job creation schemes, allocating business start-up loans for redundant workers and encouraging the export of labour to labour-short countries of the Asia region.

Central to the task of economic reform in labour relations in Vietnam is to change from a situation of government direct intervention at the enterprise level to that of enterprise autonomy based on market adjustment and to progressively introduce legislation in order to manage this transition.

Redundancy packages

Theoretically, under decisions taken in 1989, those made redundant from SOEs were entitled to payouts which would

assist them to start a new business in the thriving service sector (e.g. baby-sitting, hairdressing, cleaning, snack-selling. Because many SOEs, however, were cash-strapped, they registered debts with their former employees or paid them with whatever products were left unsold by the enterprise. For some workers, a promise of an eventual payout was never realistic. This policy fell short of launching former SOE workers into the private sector.

Salary package reform

Fundamental alterations in the salary structure have also become necessary in the market economy of Vietnam although economists express some apprehension as the last salary reform in 1985 contributed to spiralling inflation. Exceedingly low wages gave rise to corruption and absenteeism as state employees looked for alternative sources of income to feed their families. The new structure aims to end the old egalitarian wage system in which levels of salary were based on length of service and not at a level which could support the worker or the family. Rather, workers are supposed to be paid according to their skills, responsibility and productivity. In the former system, the highest salary was only 3.5 times greater than the lowest salary. The new scheme allows a range of thirteen times as well as a cost-of-living allowance to reflect the differences between rural and urban (Hiebert 1993b:95).

Furthermore, the former salary package in state businesses included a number of miscellaneous benefits. These included subsidized health care and housing and other bonus payments which covered electricity, transport costs, school fees, lunches, holidays and holiday bonuses (for example, for Tet). These benefits came out of the earnings of the SOEs and were over and above the statutory levels for state employees. The new package attempts to regularize these profit-sharing payments into the salary package which would be subject to tax and in effect cut real wages. Under this new system, state employees are expected to contribute 7 per cent of their salary which will reimburse their medical expenses and pay retirement benefits.

But the introduction of the salary restructure package in April 1993 has moved slowly and has been implemented regionally (*ibid.*). While this downward pressure has been imposed on wages in state businesses, significant real wage gains have been made in the non-productive state sector (e.g. teachers and civil servants) with salary package reform.

Vietnam has marketed itself to the international business community as a source of cheap yet highly skilled and diligent labour. Many investors are finding, however, that the skills required in certain areas are in short demand — for example, English language, computer literacy and international accounting skills. Furthermore, some entrepreneurs suggest that Vietnamese workers, while industrious, intelligent and quick learners, are also well-known for their low productivity and slack discipline (*Vietnam Investment Review*, 9–15 May 1994). An additional difficulty is that the expectations of workers for foreign companies are generally high. They often make comparisons with living standards in nearby countries. Whereas the expectations of those with skills are generally met with high wages and good conditions, for the unskilled work force, conditions are often inferior to those within SOEs as foreign investors attempt to improve the productivity/labour cost ratio which they still consider to be too high in Vietnam. 'They pretend to pay us, so we pretend to work' is a common saying. As a consequence of mismatched expectations, labour disputes arise. The increasing number of labour disputes has brought pressure to restructure the activities of trade unions.

Work creation schemes

Formal strategies designed to absorb the increasing ranks of the unemployed include the state's work creation program in which workers receive rudimentary training and receive business start-up loans, official resettlement schemes, and the export of labour to labour-short countries of the Asia region. However, these programs have met with little success and the government is resigned to ameliorating the impact of what it considers to be 'transitional unemployment' to be absorbed by private sector

employment creation. A small business start-up loans scheme was commenced in Ho Chi Minh City in 1991 by MOLISA and later was made into a national program. This scheme offered loans at an interest rate of less than half that of the banks but to a maximum of VND5 million (US$500). Entrepreneurs complained, however, that the amount was inadequate and thirteen entrepreneurs by mid 1993 had refused them on this basis (*Vietnam News*, 25 July 1993).

Although a number of state and private and individual training centres have been established, they have met with little success due to financial shortage and the lack of training know-how and materials. Only a few of the graduates have successfully entered employment. In Ho Chi Minh City at the end of 1993, there were seventeen district-owned and 221 private and individual training centres. Fierce competition has emerged between state and private providers and it appears that the private providers experience greater success in retraining and placing workers (*Vietnam Investment Review*, 18–24 October 1993).

Resettlement schemes

For many years the government has attempted to even out the geographical oversupply of labour through the resettlement of families to less populated areas. Nevertheless, these schemes have created problems for the receiving localities. For example, Dak Lak province in the central highlands has received 600,000 people under the government scheme and together with unauthorized settlers, it has given rise to problems of overpopulation (*Vietnam Investment Review*, 5–11 April 1993).

The implications of increased foreign investment

The changing nature of labour relations in Vietnam have important implications for foreign investors. From a positive viewpoint, the state is becoming less involved in the daily operation of enterprises by withdrawing from dispute resolution and an agent for the employment of workers.

Many of the difficulties which have arisen from structural changes in the labour market have been experienced by foreign investors. For example, most of the labour disputes to date have been in joint-venture enterprises. Numerous cases have been reported of foreign investment enterprises who have not fulfilled the required labour regulations concerning labour contracts, labour registration, social insurance funds and collective welfare funds.

Foreign investors have varied experiences depending on the sector of their investment. For example, foreign investors who have come to Vietnam to take advantage of low labour rates in low-technology, labour-intensive industries, attempt to reduce labour costs through extending the working day and reducing wages. Those investors in capital-intensive enterprise who wish to take advantage of resources or service sector activity may experience fewer difficulties.

In Vietnam, investors from South Korea and Taiwan have notably experienced labour disputes in their labour-intensive enterprises. Due to severe domestic labour shortage, these companies have invested in Vietnam. Korean business clearly sees Vietnam as a site for low wages. This is the main attraction rather than benefits from government, according to Kirsten O'Neil's MBA thesis from the School of International Studies, Yonsei University (*Vietnam Investment Review*, 28 February–6 March 1994). Vietnamese minimum wages were US$35 per month rather than US$300 per month in Korea and, allowing for lower productivity of Vietnamese workers, Korean entrepreneurs found production costs 60 per cent cheaper in Vietnam. O'Neil nominates the conflict in management styles between the Vietnamese and Korean managers as one of the major problems for Korean business: the long hours and self-sacrifice by Korean managers was unacceptable to the Vietnamese. O'Neil uses this conflict as an explanation of the Korean move away from joint ventures to 100 per cent ownership. However, it is unlikely that labour in Vietnam will passively accept the Korean 'impatient' management style, which often translates to physical abuse of workers.

A major change for foreign investors over recent years is that foreign companies can employ labour via one of three means: employ through the provincial labour board or through provincial labour promotion centres and if one of these options fails, companies are free to employ through direct advertising. Many companies prefer to make their own appointments as the province then does not take fees from the workers and the employer has more control over who is appointed.

The new Labour Code of 1994

A new national Labour Code was passed by a convincing majority (326 of 332) at the ninth National Assembly and was signed by Le Duc Anh, the Vietnamese president on 5 July 1994. It has been heralded as progressive by international standards. The creation of a national Labour Code is an attempt by the state to provide a cohesive and comprehensive view of labour relations for the future.

Drafting of the new Labour Code began in 1990 and went through over 30 revisions . The process involved extensive consultation with various representative bodies (for example the Women's Union, Youth Union, VGCL, government ministries, the ILO) and foreign organizations (for example, from the Philippines, Germany and Australia). Although this code is seen by some foreign legal practitioners as nothing more than a collection of past legislation, fundamental changes in the law were approved as well as the repeal of existing legislation on labour approved in June 1990 in Decree 233/HDBT. For example, trade unions no longer have the right of veto over the sacking of workers (National Assembly 1994: Chapter 14).

The code was potential politically sensitive. Consequently, so as not to alarm entrepreneurs, it was promoted primarily as a code to promote job creation and to serve both workers and employers. Prime Minister Vo Van Kiet said that the Labour Code 'should create favourable conditions for every labourer to have a job and work freely. It should protect workers' rights and the rights of employers as well' (*Vietnam Investment Review*, 3–9 January 1994). The code is fundamentally an

industrial code which covers only 10 per cent of the working population (Ministry of Labour, Invalids and Social Affairs 1994: 37) but it was promoted as a general labour code in order to gain the support of the National Assembly, which is dominated by rural representatives.

The code covered four major areas: generalizations about the scope of application and principles, labour conditions, labour relations and labour administration. The most substantive changes occurred with respect to labour relations which covered the new employment contract, the collective agreement, a new role for the trade union and dispute settlement procedures. The two pronouncements which have received most public attention were to strengthen the worker-representation role of trade unions and extend their presence to joint ventures and foreign owned companies and to legislate the right to strike. Theoretically, the code should reduce direct state management of labour disputes. All companies including joint ventures and 100 per cent foreign-owned companies should have a trade union if their workers number more than ten, or worker representatives for those with fewer employees.

Under the new Labour Code, Vietnamese workers were given the right to strike for the first time since the formation of the Vietnamese Republic. To support this initiative, those involved in drafting referred to Ho Chi Minh in Decree No 29 of 1947 that supported the right to strike under market conditions. Though in the past, strikes were not specifically outlawed, they were officially considered unnecessary as the enterprise belonged to the workers. In Vietnamese law, the tendency is to state what can be rather than what cannot be done.

The legislated right to strike conforms to the International Convention of Labour, though some analysts are critical of the restrictions imposed on workers right to strike especially in the state sector. Although workers have the right to strike, they must give two weeks' notice prior to any industrial action to allow time for mediation. Furthermore, the right to strike will be rescinded in situations where a strike may hinder essential businesses and badly affect public life, national security and

defence, including health care, public transport and water and power supply. As well, public servants, the military and the police are unable to take strike action. Furthermore, the International Convention on Labour gives the right to freedom of association but in Vietnam this freedom is theoretical as there is only one trade union association.

Other issues formalized by the code included an expanded social security system, legislated collective bargaining in the work place, introduction of an autonomous legal arbitration system which will operate outside the main judicial system, introduction minimum health and safety conditions, introduction of a minimum wage and overtime payments (overtime payments to be at 150 per cent, Sunday and holidays at 200 per cent and night shift, 30 per cent), a minimum working age and provide special provisions for women and juvenile labourers (flexible working hours, maternity packages and part-time work).

The revisions made in the code of women's rights came under intense debate (*Labour Code of Vietnam*, 1994 Chapter 10). In fact, some conditions for women deteriorated as a result of the new code. Paid maternity leave, for example, was reduced from six months to six to four months. Some textile factories who employ mainly women such as Minh Khai Textile Factory have attempted to deal with these constraints by drawing up schedules planning when each female worker is allowed to take maternity leave, leaving the women to plan their pregnancies, according to Do Nang Khanh from the research department of the Women's Union (*Vietnam Investment Review*, 30 June–6 July 1994). The draft Labour Code included a provision for 30 minutes off everyday when a woman was menstruating and 60 minutes when they were breast-feeding.

Implementation of the code is scheduled for 1 January 1995 but it is likely that the necessary decrees for implementation will not be in place by then. Implementation requires procedures to be documented in the form of decrees which should be formally adopted by the government. This is both a time-consuming and expensive process. In December 1994 only

half of the expected twenty decrees had been drafted and the government would not consider these before 1 January 1995.

Implementation of the Labour Code — as with other legal reforms in Vietnam — will likely experience substantial delays not only due to the pressure on government to deal with the backlog of legislation but also due to the continuing tension among interest groups. In the case of the Labour Code this tension is most clearly seen between MOLISA and the VGCL ostensibly centred on the ambition of MOLISA to create a unified social welfare system by taking over part of the role of the trade unions. But underpinning the tension is the reluctance of the VGCL to return control to MOLISA of valuable real estate in the form of holiday houses formerly used during vacations by workers at state-owned enterprises.

Conclusion

Vietnam is undergoing a process of fundamental change in labour relations: this involves a change in perspective from worker-run units to employer-employee relations in which interests are in opposition. These new labour relations strike at the heart of the socialist economy and their successful management is one of the greatest challenges for the Vietnamese government.

The new Labour Code is an attempt by government to create a new image of labour relations which is appropriate for market conditions. Although formal implementation of the code will be undoubtedly delayed, both employers and workers are expected to progressively use the code to regularize their relationships.

Chapter 4

Economy and the Environment

Melanie Beresford *

Introduction

The achievement of 'sustainable development' is being increasingly discussed in Vietnam. In the last few years, we have seen a number of measures taken such as the establishment of environmental protection (EP) agencies in provinces; new investment projects may be required to include environmental impact assessments (EIAs) (though this is still at the discretion of the government and may be ignored if other objectives are considered more important); incorporation of environmental protection into the list of desirable attributes of foreign technology imports and investments; and the adoption by the Council of Ministers, in June 1991, of the National Plan for Environment and Sustainable Development 1991-2000 (NPESD 1991). Moreover, interest in research on environmental issues has widened from the strong focus on the deforestation issue and questions of sustainable agricultural development which preoccupied earlier writers (see Beresford and Fraser 1992; CRUNREP 1985), to the so-called 'brown' issues like industrial pollution and urban environment. This does not exactly amount to a flood of activity; far too little analysis has been done, particularly on the *political economy* of environmental issues in Vietnam. However, since 1990, when Lyn Fraser and I were writing our earlier article, the level of

* Thanks are due to Nguyen Duy Truong for research assistance and to the Australian Research Council for providing financial support.

research and environmental activism has increased substantially. Just as in other countries, where environmental issues have become part of the economic agenda due to rising public pressure, this augurs well for improvements in the ability of Vietnamese institutions to handle environmental issues in the future.

There is also increasing recognition among the major development agencies (World Bank 1993) that environmental damage can become a significant constraint on growth and development, not only through the overuse and destruction of natural resources, but through the potential for social instability which arises when populations are negatively affected by the impact of rapid ecological changes (as occurs, for example, when logging companies destroy forest resources upon which ethnic minorities depend for a living, or when hydropower construction alters the availability and fertility of surrounding agricultural land). The impact of economic change on the environment, therefore, has become an important aspect of research and policy on economic development.

My aim in this chapter is not to provide a survey of environmental problems facing Vietnam today — in any case this is a job that would be better done by a non-economist — but to discuss some of the political economy issues relevant to achieving improvements in environmental management. This includes the issue of institutional change under the impact of economic renovation, or *doi moi*: what kind of avenues exist for the expression of environmental concerns, how are conflicts of interest over environmental issues resolved and what sort of social organization exists to deal with environmental problems?

Environment in a transitional economic system

It is appropriate to begin with a brief discussion of the 'centrally planned' economy in Vietnam as it functioned prior to *doi moi*. This system has by no means been swept away in the past decade and, although important elements of a new

type of economic system are already in place, the influence of more traditional institutional arrangements is still felt.

A succinct summary of the high environmental cost of economic growth in the former 'socialist' economic systems is given by W. Brus and K. Laski, both of whom were deeply involved in the effort to make central planning work in Poland. They make the point that, while the plans succeeded in getting rid of some of the irrationalities of the capitalist economic systems (chiefly lack of effective demand and unemployment),

> [The] plans singularly and consistently failed in respect of the cost of growth.... The intensity of inputs (labour, material and capital) in relation to output in countries of 'real socialism' was substantially higher not only in the leading industrial countries but also those countries at a similar level of economic development. This is especially true of the degree of material intensity (use of energy, steel, cement, and so on in relation to national income) and of the dynamic of capital intensity in the process of growth. The Soviet rate of change of capital productivity was negative over the entire half-century.... [The system's] high-cost characteristics also had wide-ranging negative consequences for environmental issues, which were supposed to be singularly cared for under socialism in view of its expected capacity to 'internalize externalities'.... In actual fact, the arbitrary power to impose narrowly selected objectives, and to disregard long-term implications if they were seen as interfering with the chosen aims, has led in many cases to damage to the environment in countries of 'real socialism' on a scale almost unknown nowadays in developed capitalist countries (Brus and Laski 1989:29-30)

Various experiments in combining plan and market, mainly focussed on overcoming the problem caused by high rates of output growth without rising living standards, were tried out in Eastern Europe. But Hungary and Yugoslavia were the only countries where it proved politically possible to modify the centralized economic mechanism over any length of time. Yet,

as Brus and Laski point out, even the innovative Hungarian New Economic Mechanism suffered from the problem of what they term 'overriding policy objectives inimical to market coordination'.

> Under this enigmatic formula many different things may hide, including the goal of preservation of the monopoly of political power by the ruling communist elite, or the goal of safeguarding the well-known and deeply entrenched vested interests of the bureaucracy.... However, under this heading we may also put noble, socially desirable policy objectives aiming at raising the level of welfare of the society, defined in a comprehensible and widely accepted way. This is the foundation of the concept used by Kornai in the last chapter of his *Economics of Shortage* -- paternalism, which as a matter of principle props up a family member in difficulties (*ibid.*: 70).

In practice this means that even under reformed socialism in which enterprise directors and others are supposed to respond to market signals, there are many elements which ensure that they do not. Enterprise directors in Vietnam still receive conflicting signals to a certain extent. On the one hand, they are supposed to be financially autonomous and make their own pricing and output decisions; on the other hand, they are still subject to a considerable degree of interference by the bureaucracy. Some of them still have to meet export orders at 'friendship prices' (e.g. for trade with Cuba); there are informal quotas and licences; there is monitoring of prices, the burden of profit taxes seems to be partly a matter for negotiation with higher levels (since profits themselves are not clearly defined); and there is rationing of credit according to criteria imposed from above instead of commercial considerations. Moreover, despite the passage of the much-vaunted bankruptcy law, it has not yet been applied to the state-owned enterprise (SOE) sector. Basically then, many SOEs still face 'soft budget constraints' which means that the pressure on them to perform, although greatly increased compared with the past, is not yet

fundamental to their operations. Faced with a choice between operating according to market criteria and the wishes of administrative bosses, most enterprises would choose the latter. 'There is less reliance on the force of competition in preference to direct intervention from above' (*ibid.*: 69).

The implications of this lack of competitive pressure are that enterprises do not generally experience incentives to innovate. One of the chief benefits of a market economy is supposed to be the competitive pressure to reduce costs, increase profitability, improve diversity and quality of products in order to increase market share. In principle, competition ought to increase the rate of innovations which reduce wasteful use of raw material and energy. However, we know from capitalist experience that technical 'progress' is far from automatically environment-friendly. The existence of externalities, in which private costs and benefits are socialized, is precisely what has led to calls for state intervention to force polluting industries and their customers to bear the true costs of their activities. In theory, the imposition of taxes or other penalties on polluters should encourage them to innovate in ways which reduce pollution.

In practice, competition between SOEs, between state and private sectors and between local and foreign producers is generally discouraged in Vietnam.[1] Despite decentralization of decision-making, the level of public monopoly in the industrial sector has not been reduced significantly. The local private sector, in particular, still suffers from discriminatory practices which deprive it of access to capital and foreign exchange. The foreign private sector is treated somewhat differently, but despite a foreign investment law which allows 100 per cent ownership, most foreign companies go into partnership with local SOE producers rather than enter into direct competition with them. Although these joint ventures may lead to technology transfer (including skills transfer), competitive

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[1] For similar concerns expressed about reform in China see the comments by Wu Jinglian quoted in *BBC Summary of World Broadcasts*, Part 3, Far East, FE/1524, B2/3, 29 October 1992.

pressures are only likely to be felt in the export-oriented ones. Despite periodic prohibitions on imports, some foreign competition also exists from smuggled goods in the domestic market.

Despite imperfections, some spur to improve productivity and output quality may result from competing with imported goods and through the various incentives to increase exports. The intention of the government, however, would appear to be to protect the state industrial sector from competition as much as possible during the transition period. This is particularly evident in relation to potential competition between domestic state-owned producers. In practice, many of them have been deliberately formed into cartels like the Vietnam National Steel Corp, which includes all the country's steel producers, in which the various state enterprises exchange information about technology, fix prices, etc. Many enterprise directors express views about competition which sound more like the old 'socialist emulation' than capitalist 'survival of the fittest'.[2]

Transition to a market economy in Vietnam has therefore been accompanied by both formal and informal pressures to maintain monopoly power within the state-owned industrial sector. Administrative interference has often been used to shore up monopoly and establish barriers to entry by new firms. The result is what one writer has referred to as the emergence of a 'state business interest' in which supposedly autonomous SOEs and their line ministries derive mutual benefit from continued indirect subsidies and protection of markets (Fforde 1993:310). Under these circumstances, the expected benefits of competition are unlikely to materialize and indeed the 'state business interest' may form a serious obstacle in the medium-term to market-driven innovation.

These observations are supported by the little empirical evidence that is available on the rate of innovation in Vietnamese enterprises. According to one source (Do Hoai Nam 1994:334), only 18 per cent of SOEs have 'made

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[2] See Beresford (1993) for further discussion of attitudes among state enterprise directors.

investments in new technologies after the year 1986'. My own research on a mixture of state and collective enterprises in the northern region during 1992 showed a very strong correlation between date of establishment of the enterprise and age of equipment. In enterprises established before 1985, an average of 3 to 12 per cent of equipment had been introduced since that date, while over 40 per cent of the equipment dated from before 1965 (Beresford 1992).[3] Industrial output increases are therefore being achieved on the basis of increased use of old capacity. Moreover, even where new capacity is introduced, the chiefly anecdotal evidence is mixed as to whether pollution-control measures are being added.

While the situation is changing, then, the shift towards the market mechanism has not yet produced a major shift towards innovation in the enterprise sector. And since the shift to innovation is itself very small, it is too soon to say whether the future trend will be towards pollution reducing measures. Innovation is a necessary condition for reduction of the environmental damage caused by industry, but whether it achieves this objective will not depend on ingenuity per se, but on the capacity of the state to compel pollution-minimizing changes. Because the state is the arena in which the power of certain social groups to affect change is expressed, the development of a capacity to achieve better environmental controls will largely depend on the new concentrations of power emerging in the market economy and the institutional forms to which they give rise. It is to this issue that I now turn.

The politics of environmental economics

The definition of what is pollution and what is a resources is essentially cultural (Rawlings 1994:4); and what is a resource

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[3] A total of 41 state and collective enterprises provided data on the age of their machinery stock. In nineteen pre-1965 enterprises, the average proportion of new machines was 12 per cent; in ten enterprises established in 1965-74, 3 per cent; in three enterprises established from 1975-84, 3 per cent.

for one group of people may be pollution for another. Conflict between different cultural systems are the heart of the problem of sustainability. Examples of this abound: the culture of shifting cultivators versus that of the lowlanders who are increasingly settling in the highland regions; the culture of heavy industrial producers in the state-business sector versus the tourist industry and local residents in Quang Ninh (Bach Tan Sinh 1994); the culture of local farming communities versus discharges of waste water in Hanoi (Rawlings 1994). Economics tries to ignore the cultural dimensions of the problem and reduce it to a question of costs and benefits which are measurable, not only in principle, but in practice.

The stumbling block for cost-benefit analysis (CBA) is the existence of externalities which often have a non-economic character. A typical example of how this problem with cost-benefit analysis is usually ignored or underrated can be found in a recent analysis by Mohan Munasinge, chief of the World Bank's Environmental Economics Division:

> Unfortunately, externalities are often difficult to measure in physical and monetary terms. [An] example is open-access resources — typically assets usable by all without payment, such as a lake or public highway — which are difficult to value and tend to be overexploited since user charges are negligible.
>
> What can be done? The value of an externality can be assessed, based on its shadow price or economic opportunity cost, and a charge imposed. But if this is not possible, policymakers can impose regulations and standards that set physical limits on perceived external damages, or better define property rights — thereby encouraging improved natural resource management (Munasinge 1993:17).

The quote exemplifies current World Bank thinking in favour of 'bringing the state back in' that has been a result of the East Asian experience of growth. But there is little recognition here or in other World Bank analyses of the implicit

biases in such thinking or, what amounts to the same thing, the essentially political nature of the decisions to impose regulations, set limits or define property rights. Recognizing the political nature of these decisions involves opening up the whole hornets' nest of who in a given society holds political power and in whose interest they tend to wield it. The bank's environmental department does in fact recognize the importance of information, institutional arrangements and local people's participation in environmental rehabilitation programs (Steer 1993:21), but it has to work with existing state apparatuses and, moreover, has historically strongly supported institutional arrangements favouring capitalist development. In Southeast Asia generally, the existing state structures do not tend to favour democratic controls (viz. the numerous examples of reafforestation programs favouring commercial interests in Thailand [Apichai *et al.* 1992]) and this has never provided the World Bank with any level of discomfort.

Some of the difficulties with CBA can be illustrated using the example of Thanh Tri district and Hanoi's waste water (Rawlings 1994).[4] Here the economic beneficiaries are Hanoi polluters who have free waste water discharge and the farmers in northern part of Thanh Tri district who use nutrient rich waste water to boost crop and fish production. External diseconomies are: for the Hanoi residents, increasing incidence of flooding and toxicity in some areas; for Tranh Tri residents, relatively high incidence of infections (ENT, genital, etc.) and (possibly, though the link is not yet established) below average-size of children in a relatively wealthy district on account of frequent serious flooding in the area. Cost-benefit analysis says that the benefits to Thanh Tri farmers outweigh the costs. Farmers' costs are measured in terms of cost of medical treatment, which is low because the infections are mostly self-

[4] Thanh Tri is the district immediately to the south of Hanoi city which, due to the system of natural drainage, is the ultimate recipient of Hanoi's waste water.

treated,[5] and the cost of drilling bores for drinking water (the bore water is high in ammonia at 27 mg/litre (Nguyen Thanh Binh and Pham Manh Chinh 1994:144, 211) which may add to the diseconomies). On the basis of this assessment, Rawlings (1994) recommends solutions to the diseconomies should be based on the existing system; i.e. it should leave the benefits intact. This means continuing to utilize the natural drainage system of the city, stopping toxic pollution at point of discharge and creating a wetland buffer zone which would naturally purify the waste water, so eliminating the infection problem. The problems raised by flooding the polluted bore water are not explicitly dealt with in this solution.

The CBA also does not look at dynamics. The population and economic activities of Hanoi are growing, thereby increasing not only waste water discharge but also the level of toxic substances in that water. At the same time, houses are being built, in an uncontrolled way, where lakes used to be, so the natural drainage system has a decreasing capacity to handle the waste water discharge. Industrial development in the city is also largely unregulated, especially with regard to the growth of the small scale private sector. The SOE sector is also expanding, still using old technology, while new investment is not necessarily going into upgrading the old technology or into environmentally 'clean' technology. The city has a declining proportion of organic waste. In practical terms, how can the city control pollution at source? If we have problems with illegal dumping of toxic chemicals in a well-regulated city like Sydney, what can we expect from a city like Hanoi which has

[5] A question not dealt with in Rawlings' paper is whether the individuals who suffer from the infections are the same household members who derive income from the activities which utilize waste water. The methodology of the household survey is not disclosed, but the reference to vaginal infections (Rawlings 1994:6) gives indirect evidence that the direct bearers of the cost are in fact not always the same as the 'household' recipient of income. The presumed ability to aggregate individual utility functions to arrive at a 'household' or even a 'social' utility maximization position, which is at the basis of CBA, is brought into question here.

few resources, problems with corruption, thousands of unregistered economic activities and a population whose environmental awareness is, despite quite high levels of education, very much conditioned by short-term economic benefits? Despite the enormous cost of waste treatment plants, the 'end of pipe' solution may be the only viable one because the problem is centralized in a location where it can be dealt with by relatively few people and a large amount of equipment. As Rawlings says, 'policy "borrowed" from post industrial societies with vastly different political cultures, legislative frameworks and infrastructure development will prove to be inappropriate for Vietnam' (Rawlings 1994:12).

To what extent do 'ecologically sound' waste treatment systems depend on having a well-organized (i.e. a relatively highly developed) society? The Vietnamese were quite famous, in the days of the cooperative system for some of their ecologically sound agricultural practices — the use of organic fertilizer, the development of the VAC system of farming, the primary health care campaigns in the countryside.[6] These have been rightly praised for the results they achieved within the context of a war-torn country with a very low per capita GDP. Their success, however, relied upon high levels of mass mobilization, often overriding individual preferences. The dismantling of the cooperative system of agricultural production and the new emphasis on individual incentives has seen the parallel collapse of many of these programs. Nowadays, instead of having an underdeveloped planned economy, Vietnam has an underdeveloped market economy — I am using the term 'underdeveloped' to mean not only low income levels, but also low levels of institutional development.[7]

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[6] VAC refers to the combination of gardening, animal husbandry, and water-fowl and fish raising.

[7] Another example is provided by a recent oil tanker collision which resulted in the spilling of thousands of tonnes of oil into the Saigon river. *Thoi Bao Kinh Te Viet Nam* (1994[34][25-31 August]:11) pointed out that, according to some sources, with the

As remarked by a leading Vietnamese personality commenting on the question of the level of actual regulation of the economy in Vietnam: 'What we do here is much less than in the US, but they [the Vietnamese Communists] think that because they are socialists they do a lot more'.

If Vietnam's market institutions (including regulatory institutions) are underdeveloped, how is it going to achieve the level of social organization necessary to provide 'state-of-the-art' environmental controls?

On the basis of the admittedly limited evidence available about the Hanoi waste water problem, I would like to propose two general hypotheses. One is that cost-benefit analyses are necessarily value-laden. They are biased towards utilizing the costs which can be easily measured in terms of market prices. Moreover, they assume the possibility of aggregating individual preferences in a way which is impossible where conflicts of interest occur or where the decisions of one individual are contingent upon those of another. Thus the position that the present and future benefits to (some) Thanh Tri farmers and Hanoi citizens of current waste water usage practices, based on their market-place decisions, are unambiguously higher than the social costs is not supported. In fact it is a culturally relativist position. Conflicts of interest are inevitable, which is basically why we do have states to impose solutions to these conflicts. The state, however, cannot represent the interests of everybody. Whose interests does it represent?

The second hypothesis concerns the appropriateness of technology. The concept 'technology' does not merely involve lumps of equipment, but depends crucially on social organization. What seems like a good 'clean' technology in the West, where it has emerged within rather highly developed institutional frameworks, may be impossible to apply successfully in Vietnam. Under the 'socialist' system, those 'clean' technologies that were applied depended on high levels of mobilization by the party and mass organizations. At the

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currently available educational facilities it would take twenty years to provide adequate training for all Vietnamese river pilots.

same time, organization of the state-run industrial sector was based on the principle that 'nature' could be treated as a free resource (Beresford and Fraser 1992:11; de Bardeleben 1985:241). The dominant institutional cultures of the Vietnamese market economy are still emerging and it remains very hard to say how they will define concepts like 'pollution' and 'resource'.[8]

Environmental protection has received some attention in the reorganization of the Vietnamese state apparatus which has accompanied the process of reform. Within the State Planning Committee (SPC), which holds responsibility for preparing national plans and determining external assistance requirements, an environmental unit has been established as part of the Department of Science and Education. An independent committee, with cross-ministerial membership has also been established to vet foreign investment proposals for their technological and environmental impact on Vietnam and the reports of this committee are supposed to be taken into account by the SPC in formulating its plans. There is also a National Environment Agency within the Ministry for Science, Technology and the Environment (MOSTE), while at the provincial and city levels there are committees for Science, Technology and the Environment (COSTE) responsible to the local people's committees. Temporary guidelines for environmental impact statements have also been developed, but not yet incorporated into formal regulations. While Hanoi and Ho Chi Minh City have developed regulations for control of such things as air and water pollution as well as waste disposal, there are no nationwide criteria established and there remain many problems with implementation. Provinces are allowed to set their own standards, but most seem to be waiting for central guidance before taking any steps (GoV/UNDP 1994:11).

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[8] Although some people have made up their minds: viz. the bland optimism of those commentators who talk about the 'normalisation' of the Vietnamese economy versus the pessimistic outlook of a commentator like Gerard Greenfield (1994).

An institutional framework for environmental protection is therefore in the process of creation. In fact a list of environmental institutions compiled by the National Research Program on Environment contains 163 organizations under four categories. These are:

- *Environmental management*: 26 (including 18 at the central government level, 5 local government, 3 central offices at local level);
- *Environment control and planning*: 17 (11 central, 4 local, 2 offices);
- *Education, training and research*: 75 (32 central, 5 people's committees, 13 national scientific centres, 24 universities, 1 non-government organization [NGO]);
- *Research, information, consultancy*: 56 (24 central, 1 people's committee, 30 national scientific centres, 1 provincial medical centre) (*ibid.*: 13).

However, these organizations do not necessarily carry real political weight. The tendency to override environmental concerns in favour of other objectives is still prevalent in the actual decision making processes in Vietnam. Moreover, there is scarcely any evidence from recent political developments within the Communist Party that environmental protection is yet on the agenda at the highest levels. Party Secretary General Do Muoi, in delivering the political report to the Mid Term National Conference of the party held in January 1994, enumerated four basic challenges facing the country today:

> The challenges lie in: the danger of our economy falling further behind those of other countries in the region and the world due to our low starting point, our still low unstable growth rate and the fact that we have to develop in an environment of tough competition; the possibility of our going astray from the socialist orientation if we fail to correct deviations from the path laid down for its implementation; corruption and other social evils; "peaceful evolution" schemes and activities undertaken by hostile forces (CPV 1994:24).

Among the 'social evils' which are discussed elsewhere in the report, environmental damage does not rate any discussion, although some lip service is paid to a list of factors such as 'research and development in science and technology, education and training, health care and environmental protection, in order to meet development needs in the short and long term' (*ibid.*:28). But this is basically a motherhood statement and the environment receives no further attention. In fact the whole tone of the report is to stress economic growth and efficiency in production. The 'abundance' of Vietnam's natural resources is several times noted in an unproblematic way.

In the practical field, there are numerous pieces of evidence that the Vietnamese state, or at least some of its various branches, is prepared to adopt solutions to environmental problems which favour those with market power. We can cite, for example, the recent construction of golf courses in supposedly protected forest areas and national parks (Hiebert 1993c:58) while sport and recreational facilities for the bulk of the population are almost completely lacking; Hanoi city's overriding its own height limits on buildings around Hoan Kiem lake in favour of a Hong Kong developer; the adoption of user-pays principle in a recent contract for a water purification plant in Ho Chi Minh City which will result in the city buying water from the foreign investor at US$0.20 per cubic metre (*Indochina Digest* 1994[33]), equivalent to an annual per capita charge of US$11-15 per annum.[9] Unless the city plans to subsidize the distribution of clean water, it seems that even this is likely to become a preserve of the well off.

The Foreign Investment Law of Vietnam promulgated in late 1987 specified environmental protection as one of the key areas in which foreign investment would be encouraged. However, a number of critics have suggested that the State Committee on Cooperation and Investment, which is charged with approving foreign investment projects is 'only interested in issuing

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[9] Based on an estimated demand of 150-200m^3 per day (*Thoi Bao Kinh Te Viet Nam* 1994[33][18-24 August]:15).

licences' and actually pays little or no attention to the social and environmental impact of foreign investment activity. There is also a specialist national-level committee which examines the potential social and environmental impacts of imported technologies and reports to the State Planning Committee prior to investment projects receiving approval.[10] However, its recommendations can be easily overridden if other objectives are seen to be more important by the SPC.

Within the SOE sector, there are mixed signals. The government can still, post-*doi moi*, make essentially political decisions like the one to build a transmission line from north to south. This has led to renewed power shortages in the north of the country, on the one hand forcing villages in the region around the Hoa Binh power station to buy small Chinese generators (*Indochina Digest* 1994[15]) and, on the other hand, provoking a discussion about reopening the Pha Lai thermal power station in Quang Ninh province, which was earlier closed on account of its highly polluting character. Other, similar, power stations are still in production (like the one in Ninh Binh town). In the Viet Tri industrial area (Vinh Phu province) fossil fuel emissions were recently reported to be from 20 to 120 times the legal limit (*Thoi Bao Kinh Te Viet Nam* 1994[34][25-31 August]:5). While Vietnam still has one of the lowest rates of forest depletion in the Southeast Asian region and a comparatively high rate of reafforestation (Hirsch 1993:53), the government's efforts to preserve the country's forest cover are not without some irony. Domestic wood-product manufacturers were recently asked to import timber from neighbouring countries in order to help preserve Vietnam's own forests (*Indochina Digest* 1994[22]).

One of the major causes of pollution and bad health among workers is the widespread and unregulated private small-scale mining activity. This is another case of the free market activity being anti-environment. The only major attempt to control it so

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[10] According to Chinese specialists at a recent roundtable conference on Science and Technology Policy in Hanoi (September 1994), no such national-level body exists in China.

far has been a classic case of administrative intervention. The government announced recently that all coal operations in Quang Ninh would be compelled to join a new national Coal Corporation, comprising the existing state-owned companies, a new army coal company, and a new provincial coal company. All other enterprises are required to cease operations and dissolve immediately (*Thoi Bao Kinh Te Viet Nam* 1994[33][18-24 August]:2). In the absence of complementary measures to improve employment opportunities and incomes, the measure seems hardly likely to succeed.

On the other hand, I do not want to be overly pessimistic about this. There are some signs in Vietnam, for example in a spate of recent newspaper articles in *Nhan Dan* and *Ha Noi Moi*, that pressures are arising for more effective monitoring and enforcement of environmental protection provisions. Moreover Vietnam has a strong history of scientific research, including on environmental issues (State Science and Technology Committee 1982; Nguyen Duc Ngu *et al.*1991). These need to be supported by both formal organizational set-ups and, most importantly public awareness and means of expression for public interests. In Vietnam at the present time, despite the existence of a number of EP authorities, public awareness is low, except in areas where, for example, pollution directly impinges on people's living conditions as in the case of the coal-washing plant in Hon Gai (Bach Tan Sinh 1994). And in such cases, public activity is on an *ad hoc* basis. The type of coalition which formed to fight the coal-washing plant may easily dissolve once the particular issue is resolved.

The example of the coal-washing plant can also be used to make another important point about the politics of environmental protection in Vietnam. In this case, a petition of some 14,000 signatures was initiated by local residents to prevent the establishment of a new coal-washing plant (belonging to the Ministry of Energy's Hon Gai Coal Company) in the centre of Hon Gai town on the site where the French Société des Charbonnages du Tonkin had built its original plant. The workers argued that they had enough pollution in their daily working lives without having it at home too. The

local authorities strongly supported their case and the prime minister was compelled to visit the town in order to help resolve the dispute. Eventually the plant, already under construction at the original site, had to be moved to a new location outside the town (*ibid.*). The consequences of not having a wide public discussion on environmental issues before a new project is initiated are well illustrated by this case. In fact the new coal-washing plant was to be a 'state-of-the-art' clean technology. Although an environmental impact statement was prepared, it was submitted only to the Ministry of Energy, not to the local authority's COSTE and, of course, the worker-residents did not see it at all. There were clear potential conflicts among the three parties involved: the workers were concerned to protect their residential environment, the local government had an interest in the development of the tourist industry in the area, and the coal company wanted to take advantage of economies associated with having the coal-washing plant close to the port. Since the residents and local authorities were given no opportunity to monitor the project during the early stages of development, these potential conflicts turned into open conflict.

Institutionalized means of expression are still scarce and, as Rawlings (1994:9) points out, mainly based on the urban, educated elite rather than on working class or peasant organization. Examples include a recently formed NGO, the Institute of Ecological Economics (*Vien Kinh Te Thai Sinh*), Hanoi University's Centre for Research on Environment Studies (CRES) and the Environment Centre at the Institute for Science Management. In the absence of organized public pressure for EP — for example through elected representatives, NGO activities, mass organizations of peasants, workers, etc. — the existing bureaucratic structures are unlikely to be effective. On the one hand they will not have the resources (material, information and labour) to form an effective countervailing force to key industrial polluters like the Ministry of Energy. On the other hand the EP institutions themselves may become the instruments of sectional interests. For example, in the Hon Gai case the local authorities, who supported the workers' protests,

may have been more interested in the future of the Ha Long Bay tourism industry which, unlike coal mining and processing, is under their own control. It does not always follow that local government will be more sensitive to environmental issues than central government.

So far, we have little evidence to suggest the growth of grass roots social organizations to counteract the destructive influence of the traditional 'socialist' model of treating natural resources and the environment as 'free goods'. Existing NGOs (or 'QUANGOs'[11]), while capable of achieving significant benefits, will need to build a capacity for wider social organization in the longer term.[12] There is evidence of *ad hoc* popular organization (the Hon Gai protest and the unsuccessful protests against the construction of the Thu Duc golf course in supposedly protected national forest (Hiebert 1993c:58), but it is too early to say whether these can develop into sustained programs of environmental awareness. On the other hand, there is also evidence of activity by the Vietnam General Confederation of Labour (VGCL) in the area of occupational health and safety in the coal mining region. If the experience of other Southeast Asian countries is anything to go by, the development of stronger ties between the urban-based organizations and popular struggles and continued development of public pressure on the quasi-state organizations (like the VGCL, Peasants' Association, etc.) and other government instrumentalities are essential preconditions for more consistent improvement in environmental conditions.

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[11] Quasi-non-government organizations.

[12] An example given to me recently was an irrigation scheme organized by members of the Institute of Science Management's Environment Centre in an area of resettlement of households displaced by the Da River dam. The project was initially organized by the ISM, paid for by the Australian ambassador, and designed and implemented by the villagers themselves.

Conclusion

If the definition of what is a resource and what constitutes pollution are essentially questions of culture, then questions of how resources are exploited become questions of conflict of interest between different cultures within given systems of social relations. We have seen that under 'actually existing socialism' in Vietnam and other countries before the late 1980s, relations of power ensured that resource exploitation served the ends of centrally planned industrialization, as well as the creation of a welfare system, with little regard for the social costs. In the process of making the transition to a market economy, elements of the earlier system are still very visible and there seems to have been little let up in the rate of environmental damage.

Some solutions to environmental problems may emerge in Vietnam in a 'top down' way, especially as problems like lack of clean water supply are seen to be a hindrance to productivity and/or a disincentive to foreign investors. But in the long run, sustained pressure for improvements in the environment will come from organization at grassroots levels which elevates the political costs of continuing environmental destruction to unacceptable levels. There are some signs that this sort of public pressure is starting to emerge in Vietnam and, given that the Vietnamese state has shown itself to be more sensitive to popular discontent than some other regional governments, this is a hopeful sign for the future.

Chapter 5

Recent Developments in the Commercial Legal System

John Gillespie

Background

The Communist Party of Vietnam (CPV) recently indicated that economic development is Vietnam's most urgent national goal. Unless Vietnam can rapidly increase its industrial and technological base, party leaders fear the economy will fall further behind those of its neighbours (Central Committee 1994; Le Phuoc Tho 1994:3). Foreign and domestic investment are key elements of this development strategy (Cao Duy Ha 1994:7), but they are impeded by Vietnam's legal system. The need for law reform is now well accepted and focuses on three areas: (a) the legislative mechanism, (b) enactment of a body of commercial law and (c) dispute resolution and enforcement.[1] This chapter is primarily concerned with laws regarding structural reform of the domestic market; the foreign investment regime is already well reported (Furniss 1994:238; Taylor 1994:469).

Law reform in Vietnam is preoccupied with two legal models, often discussed as if they were irreconcilable. The first is a rational rights-based legal structure, often assumed to be the only one that provides the degree of systematization required for a modern industrial state. Property and contractual rights are considered to be of primary importance; they must be defined by objective rules of law and protected by

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1 See Appendix for a summary of recently promulgated legislation.

an independent judiciary. Not surprisingly, this 'rule of law' model is familiar to and advocated by Western legal commentators since it underlies the market economies in most industrialized countries (Lichtenstein 1994:1-2, 5, 43-44, 60-61; Hoang Phuoc Hiep and Bergling 1994: 37-38, 116).

The second is a socialist legal system, which the bureaucracy and judiciary in the Vietnam were trained to administer. Consequentially these administrative agencies often have neither an academic nor cultural understanding of the key concepts underpinning the right based legal model (Sidel 1993:223-228). Rather than mapping a public commercial space, legislation in the main reinforced the existing interlocking system of administrative licences that are a legacy of Vietnam's socialist legal system (Feinerman 1994:227-234). Considerable effort is now being made to enact legislation that will form the basis of a law-governed society. Reforms have been hindered by poor legal drafting and overlapping ministerial responsibilities (Hoang The Lien 1994:33-36). But even well-drafted laws must eventually be implemented by administrators and judges who in the recent past have displayed little regard for market mechanisms. The dilemma facing law makers in Vietnam is whether land and other commercial transactions should continue to be almost exclusively regulated by the subjective authority of the bureaucracy or should a greater role be given to objective rules of law.

There is broad agreement in Vietnam that the essentially Soviet legal structure already in place is no longer appropriate for the emerging 'mixed market' economy (Sidel 1994:173, 174). In an attempt to make the legal system more compatible law makers have borrowed laws on an *ad hoc* basis, particularly from China. This practice is now being seriously questioned as it has been found that particularly laws derived from norm-based legal systems cannot readily be adapted to suit Vietnamese political, economic and legal conditions. The more so as Vietnamese law makers and bureaucrats frequently do not pay sufficient regard to the role played by concepts such as natural rights, liberalism and the sharing of legal rights between

individuals and the state, that underpin rights based legal systems (Bottomley 1991: Chapter 2).

Law makers are also re-examining the theoretical justification for law-based governance. Debate has polarized around two antagonistic principles, rule of law (*Rechtsstaat*) and socialist legality (sometimes termed 'state legal rights'). Both theories insist on strict legal obedience, but the rule of law also requires a shift of law-making power from the administrative apparatus to democratic legislative assemblies (Dicey 1885:218; Jowell and Oliver 1984: Chapter 1).[2] In other words, in the rule of law model, the legal system is highly differentiated from the political process. Socialist legality, on the other hand, is primarily concerned with social compliance and does not differentiate between the sources of law, their form or content. A legal system without private commercial rights, entirely regulated by administrative licences, would not offend socialist legality, provided the bureaucracy and citizens strictly complied with all licensing conditions. This undifferentiated construction of the law-based society was recently endorsed by the Mid Term National Party Conference, 20 January 1994 (*Saigon Giai Phong,* 19 March 1994:2).

At the same time, although state institutions are still controlled by the party, the use of *ad hoc* party directives to govern society has been virtually abandoned. Constitutional reform now officially requires all organizations of the CPV to operate within the framework of the law (Constitution 1992, Art. 4). According to this theoretical formula, policy is exclusively determined by the Communist Party, while state institutions transpose it into law, administer the legal system and resolve disputes. Superficially, Vietnamese law makers appear to be regularizing the socialist legal system through the introduction of governance by law. It will be argued, however, that this reform is limited to the legislative arm of the state and does not appear to affect the executive and judiciary.

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[2] In the West the Diceyan view of the rule of law has given way to a comprehensive theory which includes a greater role for the state.

Legislative reform

Structural changes

Law makers have identified structural inefficiencies within the law-making process as one of the major impediments to the development of a law-based society (*Saigon Giai Phong* 3 August 1993:2 [Nguyen Van Thao]). After the CPV relinquished its direct legislative role, no other state institution has gained sufficient authority to coordinate legislative development. The recent explosion of commercial regulations for example, rather than indicating good health, is a symptom of a lack of coordination between legislative bodies. Some argue that the National Assembly, as Vietnam's most democratic and supreme legislative institution, is well suited to perform this key 'filtering' function. Somewhat ambitiously, the Ministry of Justice (MOJ) has attempted to maintain systematic drafting standards and avoid legislative duplication, but lacks the expertise and political power to influence line ministries. By mid 1994 this role had been assumed by the Office of Government. Success, however, is far from assured.

The National Assembly stands at the apex of the legislative pyramid (Constitution 1992, Art. 84[1]). This body sits for a relatively short period (two to four weeks) twice a year so its heavy work schedule may hamper systematic review of legislation (Do 1993:116, 117-120). Such a review has to some extent been delegated to the Law Commission, which, with the assistance of the Law Committee, evaluates draft laws and sets the legislative agenda for the National Assembly. In the past, draft laws submitted by line ministries were adopted by National Assembly delegates with little debate. Recently, however, the National Assembly has attempted to improve the quality of legislation, and as a consequence, the rejection rate for draft laws has noticeably increased. This newly acquired selectivity is not entirely a function of improved drafting standards. Politically assertive factional interests within the National Assembly reportedly block laws that might adversely affect their client base. The numerous redrafts, compromises

and delays plaguing the enactment of the Law on State Enterprises provides a case in point.

Legislative renovation has not only improved the mechanical quality of drafting in Vietnam, but has also regularized the transformation of policy into law. All new laws must now be accompanied by a memorandum explaining the policy under administration and enforcement of substantive provisions. Ironically, factional disagreements within the National Assembly are routinely resolved through political compromises that reduce national law to little more than a framework of broad hortative principles. Policy intended to balance public and private rights is as a consequence often determined by the executive arm of the state creating a rapidly proliferating mass of uncoordinated subordinate legislation and quasi-legal administrative instruments such as ministerial circulars, people's committee decisions and business licences. In many ways the executive bodies continue to play the dominate legislative role they performed under the pre *doi moi* legal system (Hoang The Lien 1994:34).

Coordination of the system would be vastly simplified by the enactment of a law that authoritatively defined the hierarchical status of legislative instruments and established a conflict of laws regime. The government, for example, not uncommonly passes subordinate legislation that purports to vary rights created by the constitutionally superior National Assembly.[3] Rivalries between key economic ministries have led to overlapping portfolios, making it difficult to determine which ministry's rules apply to a particular issue (*Euromoney* September 1993:4). The system is further complicated by the complex political and legal interrelationship between central and provincial authorities which requires local government to 3enforce and observe national legislation, and at the same time allows it to develop localised legal regimes (Law on the

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[3] For example the Law on Private Enterprise 1990 allows a maximum of 30 days for the issue of a licence to carry on a business, but the government increased this waiting period to 60 days by Decree No. 34, 28 January 1992.

Organization of People's Committees 1992; Law on the Organization of People's Councils 1994).

Drafting problems

Technical problems such as the failure to repeal earlier statutes after the enactment of consolidating legislation plague the law-making system. For example, the only new provisions introduced by the recently enacted Labour Code 1994 are the right to strike (Arts. 173[2] and [3] - 179) and official recognition of tripartite representation drawn from government, unions and employee groups (*Saigon Giai Phong* 28 May 1994: 1, 3). The remaining issues were already enshrined in various decrees, ordinances and circulars. Admittedly the Labour Code 1994 (Art. 197) repealed all prior conflicting provisions. Because it failed to repeal all consolidated provisions, however, conflicting interpretations may arise, particularly where different wording is used to describe similar subject matter.

In other circumstances, a statutory instrument may lie dormant awaiting the establishment of a body to administer its provisions. With considerable French assistance a superb Maritime Code was enacted by the National Assembly in June 1990. Unfortunately, not one of its 244 well-drafted and conceptually coherent articles have been enforced. The sophisticated institutions required to administer the Code, such as the National Registry Book of Seagoing Ships (Maritime Code 1990, Arts. 8[3], 14,) and the Vietnam Maritime Shipping Inspection Board (Arts. 17, 18,) have not yet been established. A critical lack of resources and trained personnel within the responsible ministry (Ministry of Transport, Telecommunications and Post) are favoured explanations for legislative inaction. For similar reasons, twelve months after the enactment of the Law on Protection of the Environment 1993, the Ministry of Science, Technology and Environment (MOSTE) has not established the State Environment Protection Authority (Arts. 13, 37, 39). Compounding the delay, the government has yet to enact provisions governing the preparation and approval

of environmental impact statements (Arts. 18, 55). Until these pivotal implementing regulations are promulgated, the environmental impact of foreign and domestic investment continues to be assessed on an *ad hoc* basis by provincial and city people's committees, or in the case of large developments by the prime minister.[4]

On a more fundamental level, the delay between enactment of enabling statutes and implementing regulations may be traced to uncertainty regarding the likely course of business development. Unlike their Western counterparts, who may empirically observe business practices before drafting law, Vietnamese law makers are faced with the twin problems of an ill-defined and rapidly changing commercial culture. It is difficult enough in any jurisdiction to respond to current commercial needs and anticipate future developments, but the task is particularly onerous in Vietnam where law makers often have little knowledge of market laws (Sidel 1993:221, 223-228) and far less business practice. If this were not enough, economic development in Vietnam cannot meaningfully be compared with reforms in other countries in the region, with perhaps the highly qualified exception of the People's Republic of China (Cohen1990:43).

For these reasons line ministries have been extremely careful to avoid the enactment of inappropriate or redundant rules. They cautiously evaluate the probable impact legislation may have upon business development; inaction is preferred to an enduring record of legislative incompetence. Consider for example, the long awaited Law on Business Bankruptcy 1993 which was due to commence operation on 1 July 1994 (Art. 51). Continuing political uncertainty over the future status of state

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[4] So-called 'group C' projects are assessed by the State Committee for Cooperation and Investment and by people's committees. See Regulations on Evaluation of Projects with Foreign-owned Capital, see Arts. 2, 12, issued with Decision No. 366 HDBT Council of Ministers, 7 November 1991; Law on Promotion of Domestic Investment 1994, Art. 13[6]; Law on Private Enterprises 1990, Art. 8; Law on Companies 1990, Art. 14[5].

enterprises has reportedly delayed the issue of implementing regulations and the establishment of the administrative bodies (Law on Business Bankruptcy 1993, Chapter III), which were to have presided over the liquidation of private and state business organizations. The Supreme Court and MOJ similarly failed to enact technical rules elucidating bankruptcy procedure and debt enforcement respectively. Legislative inaction, however, can only be a short-term response; social tensions requiring state supervision will only increase as the pace of economic reform accelerates.

Recent legislation

This chapter cannot attempt an exhaustive survey all new commercial legislation. During 1994 alone at least 100 statutory instruments were enacted, this number would swell to many hundreds if provincial and city level subordinate legislation were included. Instead, this paper discusses some of the major legislative changes in land laws and especially corporate regulations, guided by the rubric of statutory versus bureaucratic regulation.

Land law

The Democratic Republic of Vietnam (DRV) land management policy rejected the colonial notion of inalienable private rights in favour of the socialist view that rights should be restricted for the public good.[5] This general premise continued after the establishment of the Socialist Republic of Vietnam in 1975-76 and still underlies post-*doi moi* land legislation (*Vietnam Investment Review* 16 March 1993:18 [Nguyen Van Phu]). All private occupiers of land borrow their rights from the state and, with the exception of agricultural workers, must pay an annual land tax as 'rent' (Ordinance on Residential Housing-Land Tax, Arts. 2, 3, 29 June 1991).

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[5] The Agrarian Law 1952 (DRV) authorized the nationalization of land according to the class category of the owner.

The Law on Land 1993, which revised the Land Law 1988, crystallized the limited private rights cited in the 1992 Constitution. The 1993 law recognizes rights to land use, transfer and inheritance. It pays particular attention to defining rights in rural land, without going so far as to allow outright ownership of land (*Voice of Vietnam* [14 July], FBIS-EAS 93-134 15 July 1993:54). These developments are important, because ownership and transfer rights are fundamental to private sector development. They engender confidence, promote investment and can assist efficient resource allocation.

Although not entitled to full ownership, private companies and individuals wishing to develop land have available to them various lesser interests in land (Law on Land 1993, Art. 26). The highest of these is known as a land use right. Land use rights are not created equally, as many of their qualities, such as duration or ability to be transferred or bequeathed, depend upon the purpose for which the land is to be used. Land allotted for domestic housing, for instance, exists for an unspecified period of time, perhaps in perpetuity, provided the state does not need to recover the land for an official purpose (Art. 28).[6] A land tenure certificate issued by a people's committee may be freely transferred, bequeathed (Art. 3[3]), or mortgaged (Arts. 3[3], 77[2]), and in most respects behaves much like a Western fee simple estate. Consequently land use rights allotted for domestic purposes, if not conveying factual ownership, at least entitle an occupier to a quite extensive right of disposition. In contrast, land allotted for commercial use, such as a hotel, is available for a limited duration and cannot be transferred without the approval of the appropriate provincial or city-level people's committee.[7]

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[6] Land management authorities will not specify the duation length of an urban land use right, however. Unless an occupier infringes a provision of the law, or the land is acquired under compulsory acquisition, there is no legislative impediment to a perpetual duration. See Law on Land 1993, Arts. 3, 20, 73, 79.

[7] Law makers generally regard the transfer of land used for commercial purposes as a sale of a business. As there is no specific

Land use rights are also shaped by the legal status of an occupier. With the exception of urban residential and forestry land (Decree No. 2-CP), where no legal distinction is made between the state, corporations, individuals and households (Decree No. 60-CP, Arts. 1, 2, 6, 7), all other land rights reflect the legal status of the occupier. For example, agricultural land (Decree No. 64-CP, Art. 1) can be allotted to individuals or households by district level people's committees, whereas an allotment made to a private company is strictly limited by the specific criteria inserted into its business licence (Circular No. 472 PMDSKJ MOJ, Art. 2[vii], 20 May 1993; Law on Land 1993, Arts. 3[3], 56). Similar rules apply when companies use urban land for non-residential purposes. Disputes concerning land use rights are likewise adjudicated according to the legal status of the litigants. All those concerning companies or organizations, for example, must be resolved by city or provincial people's committees (Law on Land, Art. 38).

Another dimension to the problem arises from the ongoing struggle between the public interest, as it is interpreted by the state, and individual rights. Subject to the vagaries of political fashion, there is a general consensus in Western countries that in a just society the notional boundaries that delineate individual rights must at times be respected and only under unusual circumstances be breached by the state for the public good (Cotterrell 1992:130-133). In Vietnam, on the other hand, superior community interests have traditionally overwhelmed individual rights, so that the individual dissolves into the community (Tuong Lai 1993:10, 13-14; Jamieson 1993:39-40). Today, factors such as the demand for land, nature of terrain, urban character, social utility and above all the efficient use of land are evaluated by people's committees during the allotment process (Law on Land 1993, Arts. 8, 20). Put another way, private land rights exist at the discretion of bureaucrats, who

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legislation on this point, regulatory authorities base their interpretation upon an inference drawn from Law on Private Enterprise 1990, Art. 15, and Law on Companies 1990, Art. 21, that transfer is not allowed without people's committee approval.

look beyond individual needs to broader community ones. For example, an allocation of land to a household may be resumed by the state not only when tenure expires or the land has been abandoned, but when land is used for a purpose other than that for which it was allotted or exceeds the amount stipulated for each household (Decree No. 64-CP, Art. 13), or when duties contained in a land tenure certificate are not followed (Law on Land 1993, Art. 26).[8]

This latter provision in particular goes well beyond the powers usually vested in Western land management officials.

Corporate regulation

A distinguishing feature of Vietnam's commercial legal system is a heavy reliance on administrative licensing, in preference to rights-based laws to control business formation and practices. Such administrative measures fill the many gaps left by legislation. As previously discussed, the allotment and transfer of rural and commercial land must be approved by bureaucrats. Administrative control is most complex when it regulates company (private enterprise) incorporation and business licensing. Some idea of the cost and difficulties of the incorporation process may be gauged from the formation of Song Thu Ltd, a company established in Ho Chi Minh City to operate a mini hotel. The incorporation process took eight months. During this time the company promoters submitted 40 documents requiring 83 official seals and 107 signatures to 26 different official bodies. Although the Laws on Companies 1990 and Private Enterprises 1990 became operational in 1991, recent implementing circulars that changed the incorporation process makes the incorporation process a topical area of law reform. The present process may be summarized as follows.

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[8] For maximum residential areas Law on Land 1993, Art. 54, (rural residential); specific regulations governing urban residential use have not yet been issued.

Incorporation. An application to establish a privately owned company must first be lodged with the district people's committee where the promoters are domiciled (Law on Companies 1990, Art. 2) or private enterprise (Law, on Private Enterprise 1990, Art. 2). It should be accompanied by a curriculum vitae certified by the district police verifying that the applicant is entitled to reside in that locality and is not subject to current criminal charges or an undischarged sentence (Circular No. 472 PMDSKJ, MOJ, Art. 1[ii]), 20 May 1993). Once this initial hurdle is overcome, the application together with supporting documentation must be forwarded to the local city or provincial people's committee (assessment department). Required information includes names, ages and permanent address of the founding members (Law on Companies 1990, Art. 14[1]), the name and address of the proposed head office (Art. 14[2]), objectives, branches and areas of business of the company (Art. 14[3]), chartered capital and method of contributing capital (Art. 14[4]), environmental impact statement (Art. 14[5]), feasibility plan (Art. 14[6]), medical certificate (Circular No. 472, Art. 5, 29/9/93, MOJ) and educational qualifications (Circular No. 472, Art. 6, 29/9/93, MOJ).

The wide discretion exercised by assessment departments during the approval process is increasingly being guided by prescriptive rules issued by line-ministries (222 HDBT, Art. 1, 23 July 1991). In key sectors of the economy, tourism for example (Decree No. 09/CP 5 February 1994; Circular No. 715/TCD2, 9 July 1994), prescriptive rules have been promulgated to govern aspects of the management and minimum capital requirements for companies. The discretion to increase capital requirements remains with the assessment department; this mechanism is widely used to discourage investment in activities that fall outside of the broad policy directives issued by the party (Resolution of the Seventh Session of the CPV 1994) and government.

Although there are many grounds for rejecting applications the preferred modus operandi of assessment departments is to apply indirect pressure to modify, delay or withdraw

disfavoured proposals. If an applicant is unresponsive, the responsible people's committee may delay an application; charge excessively for relocation, compensation and infrastructure improvement; or impose highly restrictive environmental controls. However, it is important to realize that businesses wishing to invest in priority areas of the economy are most unlikely to encounter major difficulties and may, on the contrary, receive financial assistance from people's committees.

Certification. Every document submitted to an assessment department must first be certified by a designated authority (Circular No. 472 PMDSKJ, Art. 1[iii]-2[vii], 20 May 1993). This process is particularly rigorous in the case of capital contributions. In addition to stipulating minimum capital requirements, an assessment department may also determine the ratio of fixed to liquid assets. In contrast to the favourable conditions enjoyed by foreign investors, who may borrow an approved proportion of their invested capital subject to approval by the State Committee for Cooperation and Investment (SCCI) (Decree No. 18 CP, Art. 27), domestic investors cannot contribute capital in the form of borrowings. Only bank accounts or state bonds may be used to contribute the liquid asset component of working capital. A certificate verifying ownership of liquid assets must be issued by the appropriate bank or bond issuing agency. Certification of fixed capital is more complicated, since it requires an evaluation certificate issued by the finance department of the district people's committee where the asset is located. The valuation also must be certified by a notary public (Circular No. 472, Art. 2[v], PMDSKJ). Certification is also required for health, education, criminal and residency reports. Fees charged for these services vary significantly among provinces.

The company register. Once a business licence has been issued by a people's committee, promoters are required to register the company with a planning department which is supervised by the State Planning Committee but is attached to

people's committees (Law Amending a Number of Articles of the Law on Companies, Art. 1[i], National Assembly, 22 June 1994; Law Amending a Number of Articles of the Law on Private Business, 1994). Registration used to be performed by state economic arbitrators (Law on Companies 1990, Art. 17), until they were disbanded on 1 July 1994. All the staff directly involved in registration were transferred to the State Planning Committee, the remainder went to the Supreme Court (Decree No. 355/TTg, Prime Minister, 11 July 1994).

In the past, provided documents conformed to official requirements state economic arbitrators treated the registration process as a purely mechanical procedure and registration was rarely refused. More recently, planning departments have begun to re-examine the merits of an application, looking beyond the four corners of certified documentation. This practice most commonly occurs where capital is to be invested in a low priority economic sector (e.g. hotel development).

The reasons for transferring registration to the State Planning Committee in preference to the MOJ remain unclear. The decision is particularly surprising as the MOJ already had considerable corporate expertise, having drafted the Law on Companies and most subsequent subordinate legislation in this area. Moreover it already controls an administrative network of justice departments in every province, whereas not every provincial government has a planning department. In addition to these structural advantages, same degree of procedural neutrality may have been expected from the MOJ. Since it is not primarily concerned with economic planning, it may have refrained from revisiting policy decisions already taken at the local government level. Possibly economic neutrality may have been a political disadvantage in this case; the State Planning Committee possibly was given control over company registration so that it could strengthen central policy implementation at the local level (Do Muoi 1994c:67-68).[9]

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[9] This policy objective would bring Vietnam into line with the Chinese company registration system, presided over by the State Administration for Industry and Commerce (Epstein 1994:26-28).

National registration. As Vietnam is a unitary state, companies registered in one province are recognized nationally as juridical entities and may trade in every province. However, where a company wishes to open a branch or representative office in another province, it is required to lodge a new registration application (Law on Companies 1990, Art. 20; Circular No. 472 PMDSKJ, MOJ, 20 May 1993). This must include a certified copy of the company registration and an application setting out details of the proposed business and raw material, labour and utility requirements. If a supervising people's committee decides that local infrastructure cannot support the proposed endeavour, an application may be deferred or refused. Documents evincing ownership or a leasehold over a suitable premises are also required (Le Hong Heng 1992:25, 26). These regulations highlight fragmentation within Vietnam's legal system. Where local governments pursue different development strategies, a company registered in one province may be precluded from establishing a branch office in a neighbouring locality. Such localism hampers the central government's attempts to coordinate (*Saigon Giai Phong* 19 March 1994:2).

Production registration. Once a company has received a business permit from the vice chairman of a people's committee and a company registration certificate from a planning committee, it may commence business. Where this involves manufacturing, all products must be registered with the General Department of Standards, Weights, Measurement and Quality (Ordinance on the Quality of Goods, Art. 7, 1 July 1991) before they can be distributed on the domestic and international markets. The Science, Technology and Environment Departments (Ordinance on the Quality of Goods, Arts. 4, 7, 1, July 1991) attached to each provincial/city people's committee have been delegated the authority to determine whether products comply with national standards (e.g. Decree No. 382-QD; Decree No. 130-QD; Decree No. 47-QD).

As few national standards have been promulgated, applicants are often required to submit their own standards.

These are usually based on guidelines supplied by the manufacturers of plant and equipment used during the production process. In addition to attracting civil (Ordinance on the Quality of Goods, Art. 34, COM, 1 Jul 1992) and criminal penalties (Penal Code 1986, Arts. 116-168), the sale of unregistered goods or those that do not conform to stipulated quality and technical standards constitutes a breach of an economic contract (Ordinance on Economic Contracts 1989, Art. 13).

Incorporation fees. The preceding discussion reveals a regulatory system that is preoccupied with the meticulous details of company membership, capital contributions, business activities and product standards. Complex licensing provisions impose costs on applicants and raise monies for the bureaucracy. A licensing system originally intended to control private capital has become a means of generating revenue as numerous arms of the bureaucracy charge fees to exercise their discretion to grant approvals or certify documents. The 40 documents, 83 seals and one hundred and seven signatures required to incorporate Song Thu Ltd are indicative of the number of agencies that may profit from the licensing system.

In some instances, such as a company registration fees, the amount is prescribed by legislation is generally in line with the expenses prevailing throughout Vietnam. Documents certified by notary publics such as hospital health records and educational qualifications are also assessed at predetermined rates (Circular No. 84 TT/CB; Decree No. 45 HDBT). The amount for other fees is determined at the local level on an *ad hoc* basis, subject to a general administrative authority to levy imposts. Police at the district level, for example, have a general discretion to charge fees for services rendered. Not surprisingly fee structures vary considerably among localities. In the case of asset valuation this may amount to tens of millions of dong. When the costs of drafting and lodging documentation, and negotiating administrative fees are added to official imposts, the total cost of incorporating a company may range between

seven to thirty million dong, an enormous expense by Vietnamese standards.

The uncoordinated imposition of fees concerns the central government. In the recently promulgated Resolution No. 38 CP on Administrative Reform (4 May 1994), Article 2 stipulates that ministries, heads of ministerial-level organs, heads of government organs, and the chairmen of provincial and city people's committees directly under the central authority must initiate a drive to scrutinize all stipulations now in force governing administrative procedures and fees in areas under their responsibility, including those stipulations promulgated by lower echelon officials. This is to restrict unauthorized administrative stipulations and procedures and to supplement and revise those procedures no longer compatible with commercial practices, which are disrupting the activities of state institutions inconveniencing the public.

Regulating economic contracts. The discussion so far suggests that once a company has been formed, it may expand its business objectives and in the process create a contractual bubble of commercial freedom (Law on Companies 1990, Art 12). It is true that compared to Western contractual regimes, economic contracts in Vietnam are remarkably unencumbered by statutory controls (Ordinance on Economic Contracts 1989, Art. 1).[10] But it is equally true that the state uses bodies such as the Market Control Board and Tax Department to police business standards and objectives and their administrative interpretation of standards in some ways approximates the functions of normative rules in the West.[11]

Only registered businesses may enter a legally binding economic contract (Ordinance on Economic Contracts 1989, Arts. 2, 8). In theory at least, unregistered traders are not permitted to form contracts over income-producing property

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[10] Contracts concerning commercial matters are defined by statute as economic contracts.

[11] For an account of classical legal though see Kennedy 1980:3; c.f. the legal realists, e.g. (Cohen 1935:809).

with each other and can only enter into legally enforceable economic contracts with registered entities (Decree No. 11 TT-PL, Art. 1). Special provision is made for scientists, technicians, artists, owners of household business, private farmers and fishermen to enter economic contracts (Ordinance on Economic Contracts 1989, Art. 42) but according to Art. 8 (Ordinance on Economic Contracts 1989), contracts will be invalid unless they are registered. Yet to be decided is whether individual traders or family units may enter economic contracts. On the one hand, Ordinance on Civil Contracts 1991, Art. 57[1], states that even if the purpose of an agreement is commercial, it will be deemed a civil contract when individual traders or family units are the contracting parties. On the other hand, the Decree on Signing and Carrying Out of Economic Contracts 1992, Art. 2, states that where the transaction is for business purposes, registered individuals or family units may enter economic contracts. Those who deliberately enter an economic contract in contravention of these rules may be liable for administrative penalties or criminal prosecution (Ordinance on Economic Contracts 1989, Art. 39[3]; Penal Code 1986, Art. 168).[12] In reality scant regard is given to official sanctions and commercial activity continues to flourish in the household economy (Hoang Kim Giao 1992:10-14) even though it is still a criminal offence to trade without a permit (Penal Code 1986, Art. 168). In contrast, all may enter civil contracts, which often involve income producing activities (Ordinance on Civil Contracts 1991, Art. 3).

Once a company enters an economic contract, remarkably few external normative rules govern business behaviour. Legislation is overwhelmingly devoted to regulating the mechanics of contractual formation (Ordinance on Economic Contracts 1989, Chapter II, Decree No. 17 HDBT, Art. 7), penalties for non-performance (Ordinance on Economic Contracts 1989, Chapter III and IV), and the jurisdiction and procedures governing dispute resolution (e.g. Decree No. 70-

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[12] Non-custodial reform two years or less, or imprisonment three months to two years.

HDBT; Directive No. 40-TT-PC; Circular No. 67-TT-PL; Circular No. 67-TT-PL; Circular No. 125-TT-PC; Regulation No. 293-TT-PC). As previously noted, in the rare instances where goods are covered by a National Product Standard, quality is regulated administratively by the Department of Standards, Weights, Measurement and Quality (Ordinance on Economic Contracts 1989, Art. 13; Law on Companies 1990, Art. 13[3]). In all other circumstances, contractual standards, including expressed or implied warranties of fitness for purpose, are absolutely binding. In other words contracts may be used to create their own legal universe (Decree No. 17 HDBT, Art. 14), virtually free of external normative rules that in Western countries would govern matters such as contractual fairness, equality of bargaining, extra contractual representations, abuse of market dominance, and retail price maintenance. These aspects of commercial behaviour will not be regulated by normative rules until the Civil Code (currently in drafting) (Civil Code Drafting Committee 1994:3) and Commercial Code are enacted to fill the gaps left by the existing patchwork of laws and subordinate rules. According to the head of the Drafting Committee for the Commercial Code, Professor Luu Van Dat, only a remote possibility exists that the code will be introduced within the next five years. In the meantime administrative control over economic contracts is made possible by the previously described network of licences.

Domestic investment. Responding to complaints from domestic business and encouragement from the United Nations Development Program, the National Assembly enacted on 22 June 1994 the Law on Promotion of Domestic Investment.[13] This law is designed to create a regulatory framework that will operate in conjunction with business licences to promote efficient uses of capital, labour, natural and other resources by mobilizing domestic investment. Domestic as opposed to foreign investment must be contributed by Vietnamese citizens,

[13] The law will come into effect on 1 January 1995 and will supersede all prior inconsistent legislation.

overseas Vietnamese, long-term foreign residents and Vietnamese organizations, including private companies (Law on Promotion of Domestic Investment 1994, Art. 2). In accordance with the Constitution, domestic investment and profits are protected and guaranteed by the state (Art. 5). There can be no compulsory acquisition without compensation (Art. 6).

Unlike licences that can modify or prohibit investment, the law actively encourages it direct assistance that may take the form of land allotment, infrastructure, loans, equity investment, investment credits and training (Art. 7). In addition the law sets out a regime of tax incentives as follows:

- 50 per cent reduction of business income tax for one to two years, this is extended for one to five years for business income tax and one to two years for turnover tax for business located in remote areas;
- profits derived from reinvestment will be exempt from business tax;
- import duties may be waived to encourage selected investments;
- profits earned on shares purchased in privatised state enterprises are tax exempt for three years (Art. 10).

Without knowing the implementing regulations, detailed analysis is premature. Only general observations are possible. It is unclear, for example, why the incentives set out in the Domestic Investment Promotion Law 1994 differ from those contained in the foreign investment regime (Law on Foreign Investment 1987 and Decree No. 18, 1993). It is difficult to determine whether foreign or domestic investment is favoured by the investment regime because the licensing authorities have considerable latitude to adjust tax rates and other concessions. As the terms of investment licences are confidential, no records can be consulted to allow foreign investors to confirm whether the Law on Promotion of Domestic Investment 1994 has been used to tilt the 'playing field' in favour of local capital. Advantages and disadvantages apply to each regulatory regime. Foreign investors pay a lower profit tax (Decree No. 18,

Art 67) but much higher utility charges for land rent, electricity, telephone and water. Domestic investors in theory pay a higher business profit tax (Law on Business Profit Tax 1990, Art. 10) but are entitled to longer tax holidays. In reality studies demonstrate that domestic investors only rarely pay the full rate of taxation (*Vietnam News* 21 February 1994:4 [Le Dang Doanh and Nguyen Xuan Nguyen]. They are further advantaged by the idiosyncratic tax collective system.

Dispute resolution and endorsement

Courts

If a normative legal system is to co-exist with the licensing system, it requires a mechanism to enforce private commercial rights horizontally against each other. Western legal thought suggests that legal rights are not manifested until pitted in conflict against another right.[14] Vietnamese traders, however, have treated rights as passports to pursue an activity that the state might otherwise have prohibited, rather than weapons to be enforced against others. These neo-Confucian norms are rapidly changing under the proliferation of inter-provincial trading links and rapidly expanding foreign investment and trade (Ngo Ba Thanh 1994:29-30).

For these reasons considerable effort is currently devoted to reforming commercial dispute resolution structures. The institution of state economic arbitration, originally established in 1963 to manage production contracts under the centrally planned command system (Pham Thanh Vinh 1965:89-99), was abolished on 1 July 1994. Jurisdiction over economic disputes, as opposed to civil ones (Ordinance on the Procedure

[14] This narrow interpretation is predicated upon the notion that rights must be exercised to exist. This view is only satisfactory in the narrow confines of commercial law and becomes quite untenable when applied to what are commonly termed human rights.

for the Resolution of Civil Cases 1989, Art. 10[1])[15] is now vested in the economic division of the people's court (Law amending the Ordinance on the Organization of the Supreme People's Court, 1994, Arts. 3-7). Economic disputes include those arising from economic contracts between a company and its members (owners) and among the members themselves, the purchase and sale of shares and bonds and other matters to be prescribed by subordinate legislation. Apart from overcoming some minor technical problems with its procedural rules (*Vietnam Economic Times* 30 September 1994:30-31 [Sly and Deacons]), this new division of the people's court should be able to support the emergence of private commerce by enforcing horizontal contractual rights between individuals.

There is a gap, however, between legislative expectations and reality. Most judicial staff of the economic court were originally economic arbitrators (Decision No. 355/TTg). These cadres lack knowledge of market law and court procedure (Sidel 1993:223-228, 253-254), and they are generally thought to be predisposed in favour of the state sector. Their close relationship with administrative authorities arises from shared party connections and patronage links formed during their period as virtual employees of provincial/city and district level people's committees.[16] Control over inferior level people's courts has now passed to the MOJ, but it remains to be seen whether loyalty to the central level can be so easily transferred.

These structural problems can and undoubtedly will in time be resolved, particularly with the current level of foreign assistance. But this is only part of the problem. Separation of powers was never part of Vietnam's legal tradition during the pre-colonial period (Nguyen Ngoc Huy and Ta Van Tai 1987; Hooker 1986: 461-476). And after independence from France,

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[15] Civil disputes are resolved by the civil division of a people's court.

[16] Although they were at all times under the direction of the central level State Economic Arbitration Board, inferior level arbitrators were recruited, housed and paid by the people's committee at the corresponding level.

to the extent that they functioned at all, courts and the procuracy became subordinate members of a politicized legal system which was dominated by the party's security apparatus (Ginsburgs 1979: 195-198). Not surprisingly, courts still tend to be regarded as an instrument for implementing state policy, rather than a genuinely independent bulwark against state action or a protector of private commercial rights.

Enforcing judgments

Institutional reform alone is unlikely to improve the quality of judicial decisions. Judges of the newly created economic division of the people's court (Law amending the Law on the Organization of the Supreme People's Court 1994, Art. 1) undoubtedly require intensive retraining in market laws, but an abstract knowledge of law needs to be supported by practical administrative guidelines or key case summaries compiled in the annual report of the Supreme People's Court.[17] However, success in court will remain a pyrrhic victory until regulations are enacted to implement the Law on Business Bankruptcy 1993 and Ordinance on the Execution of Judgements in Civil Cases 1993. In the interim, the law continues to lack sufficient 'teeth' to make the exercise of a commercial right attractive to its holder.

The Ordinance on Economic Arbitration 1994 (Decree No. 116/CP) was recently enacted to provide a voluntary mechanism for the resolution of private commercial disputes. Provided they receive approval from the local provincial or city people's committee (Art. 7[2]), it authorises trade organizations to establish their own arbitration centres. Each centre requires at least five arbitrators, who in turn must be registered with the Council for Selection of Arbitrators, a body established under the auspices of the MOJ (Art. 8). Like most other aspects of commercial activity these centres will be tightly

[17] It should be noted that the Supreme People's Court already published a key case summary in its annual report but these rulings are only persuasive on inferior courts (Jones 1994:98-104).

regulated by the state. Nonetheless there is still scope for private investors to create their own predicable, politically independent and impartial dispute resolution fora. Ultimately, however, if a party fails to comply with an arbitral award the entire action must be reheard in an economic court (Art. 31).

Administrative review

As the preceding discussion reveals, virtually every aspect of private business activity is governed by an administrative discretion. Tight controls allow local administrators to exclude those who are undercapitalized or lack professional qualifications. They may also enable bureaucrats to favour those who enjoy patronage relationships and disadvantage others. In this regulatory environment the need for a system of judicial review of administrative action is manifest. Administrative reform has been given a high priority by the state (Resolution No. 38 CP), though its focus has been almost entirely structural (Nguyen Nien 1994:25). Faults in the system, so it is argued, may be rectified by streamlining licence approvals, improving, training and structural reorganization (Huy Duc 1994:66-67; *Saigon Giai Phong* 12 March 1994:2 [Le Huu Nghia]). Little progress has been made to extend to administrative regulation the underlying principle of legal reform that a law based society should bring greater regularity to political, economic and social life. If legal guidelines are to constrain the bureaucracy, a system of review should make officials accountable not only to their superiors, but also to those affected by their decisions.

A law governing administrative review is currently under consideration. But drafts suggest modest reforms that will not emphasize procedural protections for those adversely affected by administrative decision making. Most political actors regard diminution of administrative authority as a potential threat to political authority. Nevertheless, certain influential reformers continue to vigorously champion bureaucratic accountability. Current drafts of the Law on the Organization of the Administrative Courts envisage a highly conditional form of

review. This court must, for example, consider the nebulous 'will of the state' before individual rights. Judicial independence is further undermined by an obligation shared with the Fatherland Front and authorized mass movements, to 'struggle, prevent and fight against unlawful violations in state administrative activities'.[18]

It would be naive to assume that the creation of a judicial forum capable of reviewing the legality of administrative decisions, acts, omissions and delays will on its own bring accountability to bureaucratic decision making. The review of bureaucratic discretion will only be effective when the licensing process is framed by judicially discoverable and manageable standards. Without written guidelines that describe the criteria to be applied in the exercise of a discretion, courts will be unable to determine whether a refusal to grant a business licence falls within the limits of administrative authority and was properly made. For example, if a licence is denied because the market for the proposed products was deemed to be insufficient, the criteria used to reach this conclusion should be public documents. Unless it is framed within a knowable range of limitations the exercise of a discretion is tantamount to the formation of government policy and as such is beyond judicial review. The challenge facing law makers is to establish a system of review that is sufficiently authoritative to check abuses within the licensing system, but at the same time does not offend political autonomy.

Forecasting future trends

In spite of its cost and complexity it is entirely possible that the extensive use of licences will remain an enduring feature of Vietnam's legal system. Law makers acknowledge that most of Vietnam's economically successful East Asian neighbours use

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[18] It is interesting to compare the Administrative Litigation Law of the People's Republic of China (*Chinese Law and Practice* 5, 5 June 1989:37), which introduced a modest right allowing citizens and juridicial persons to appeal administrative decisions to the courts.

administrative guidance to tilt their legal systems in favour of state-sponsored economic and social goals, at the expense of rights-based law. Notwithstanding rhetoric to the contrary and a considerable improvement in legislative drafting, little has been done in real terms to diminish administrative control over business activity. Prime Minister Vo Van Kiet's plea for 'a complete change from bureaucratic management to running the nation by law' remains unfulfilled (*Vietnam Investment Review* 3 August 1993:4).

It is widely believed that, even with substantial structural changes, rights-based laws should not become the primary means of controlling economic activity. There is a new willingness to find sources of law in local commercial practice and cultural values. This so-called 'National Characteristics Model' is expected to graft the existing licensing system onto the rights-based legal model. How this will be achieved in practice is a matter for speculation, but in theory local authorities will have greater autonomy to administer business development, relatively free from objective rules of law. There is some evidence of a policy shift in this direction, although formal acceptance of this model remains uncertain.

Licensing is not of course unique to Vietnam. Western industrial countries progressively abandoned comprehensive licensing in favour of a rights-based legal system during the second half of the nineteenth century (Steindorft 1979:8). A theoretical realignment towards *laissez faire* capitalism and practical concerns about the cost, complexity and corruption that plague licensing systems propelled the shift to normative rules. Although Vietnam's leaders remain unimpressed with unrestrained capitalism, these pragmatic considerations resonant strongly in Vietnam's commercial legal system.

The administration and enforcement of licenses imposes a heavy cost burden on the bureaucracy. Faced with a rapidly increasing number of private investors and a tangled web of interconnecting and overlapping licenses and licensing authorities, policing agencies admit that they cannot adequately enforce the law. Inadequate resources and training are only partly to blame. Licensing only creates vertical lines of

control between the state and private entities. Under this top-down system virtually the entire responsibility for policing business practices and product standards rests with the state. Until the recent creation of the economic division of the People's Court, the state had done little to encourage private enforcement of horizontal contractual rights. When they become operational, the Law on Business Bankruptcy 1993 and the Ordinance on the Execution of Judgments in Civil Cases 1993 will strengthen the court structure. In the meantime, the law continues to lack sufficient 'teeth' to make contractual enforcement commercially attractive.

Problems of cost and complexity, although substantial, can in time be remedied by structural reform. Corruption, on the other hand, is inextricably bound up with the licensing system, where each new administrative responsibility creates another opportunity for profit. The situation is sufficiently serious for the ruling elite to regard bureaucratic corruption as a threat to the authority of the party and government. In short, an unaccountable discretion creates a double edged sword. Although its flexibility may assist business regulation, it may also be the source of corruption. There is some hope that the forthcoming Law on State Enterprises will reduce the conflict of interest between administrative and commercial functions by severing the financial link between state enterprises and the bureaucracy.

Vietnam's legal system cannot be shaped by internal factors alone. Burgeoning international trading links, the forthcoming integration into ASEAN and membership of GATT (WTO) will increasingly require Vietnam to harmonize its domestic legal system with those of its trading partners (Ngo Ba Thanh 1994: 26, 29-31). Of course a balance exists between national self determination and international expectations, but the devolution of further unaccountable authority to local government can only make an already opaque system harder to understand by foreign and domestic private investors.

This chapter started by asking the question: should commercial regulation depend upon the objective authority of the bureaucracy or upon compliance with statutory rules?

Although these two methods of legal centres are set up in opposition to each other, the discussion reveals that they co-exist in Vietnam; neither system functions more effectively the other. Broad normative laws tend to unify commercial practice by establishing general comprehensive national standards, but are not particularly effective in a country unfamiliar with both the mechanism of social control through normative law and the values embedded in legislative instruments (*ibid.*:26-29). This supposition helps to explain the high rate of non-compliance with legislative rules in Vietnam. It also suggests that reform of the legal system should look beyond law-based rules towards mechanisms that inculcate moral values embedded in state policy. In fact the state is actively promoting the use of ideological apparatus such as the Fatherland Front to augment instrumental lines of control.

Licenses already provide an alternative to rights based legislation. They are capable of flexibly responding to constant shifts in state policy and local business practices. But they also often lead to excessive regulation, corruption and localism. These problems can to some extent be reduced by comprehensive normative laws, particularly ones that are vigorously enforced by the courts. Certainty is unlikely to enter the legal system until economic policies are stabilized and an independent system of administrative review becomes operational.

Appendix

Major Legislation

1992

Constitution

Law on the Organization of the National Assembly

Law on Election of Members of the National Assembly

Ordinance on Housing and Land Tax

Law on the Organization of the Government

Law on the Organization of the People's Courts

Law on the Organization of the People's Procuracy

1993

Law on Amendments to the Criminal Code

Law on Amendments to the Criminal Procedure Code

Ordinance on Enforcement of Imprisonment Sentences

Ordinance on Privileges and Immunities in Respect of Diplomat Representations, International

Organizations, Having Representative Offices in Vietnam

Ordinance on Civil Verdict Enforcement

Ordinance on the Recognition and Enforcement in

Vietnam of Civil Verdicts and Decisions Announced by Foreign Courts

Ordinance on People's Courts' Judges and Assessors

Ordinance on People's Procuracy's Procurators

Law on Tax on Agricultural Land

Law on Publishing

Land Law

Gas and Oil Law (Petroleum)

Law on Turnover Tax

Law on Special Sales Tax

Law on Projects Tax

Ordinance on Medical and Pharmaceutical Private Practising

Ordinance on the Vietnamese Representative Offices in Foreign Countries

Ordinance on Marriages and Families between Vietnamese Nationals and Foreigners

Law on Amendments to the Law on Organization of the People's Courts

Environment Protection Law

Ordinance on the Enforcement of Civil Judgements

1994

Labour Code

Law on Organization of the People's Council and People's Committee

Law on Election of the Delegates of the People's Council

Law on Promotion of Domestic Investment

Law on Taxes on Transfer of Land Use Rights

Law on Army Service

Law on the Encouragement of Domestic Investment

Law Amending a Number of Articles of the Company Law

Law Amending a Number of Articles of the Private Enterprise Law

Ordinance on Procedure of Resolution of Economic Disputes

Ordinance on Income Taxes for People Who Have High Incomes

Ordinance on Real Estate Taxes

Ordinance on Rights and Obligations of the Domestic Individuals Who Use Land in Vietnam

Ordinance on Taxes for Agricultural Land Users Who Use the Land Excess Prescribed Area

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The chapters in this book analyze political debates, environmental problems, legal reforms, and changing labour relations in Vietnam, particularly during 1994. They add depth to our understanding and knowledge of how people grapple with recent dilemmas arising from dynamic interactions between rapid changes and strong continuities that now pervade much of the nation.

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