



MINISTRY OF JUSTICE



GOVERNMENT OF SWEDEN



UNITED NATIONS
DEVELOPMENT PROGRAMME

PRELIMINARY ASSESSMENT OF THE REGULATORY FRAMEWORK ON RESPONSIBLE BUSINESS PRACTICE IN VIET NAM



October 2020

The Preliminary Assessment of the Regulatory Framework on Responsible Business Practice in Viet Nam is undertaken as part of the Responsible Business Project of UNDP Viet Nam, in collaboration with the Ministry of Justice, in partnership with the Government of Sweden.

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ACKNOWLEDGEMENTS

The Research Team would like to express their gratitude to the United Nations Development Programme (UNDP) in Viet Nam for leading this Preliminary Assessment of the Regulatory Framework on Responsible Business Practice in Viet Nam. We would also like to sincerely thank the Government of Sweden for supporting this Assessment, and the Department of Civil and Economic Law, Ministry of Justice of Viet Nam, for their support and coordination in the development of this Assessment.

In particular, the Research Team would like to thank Mr. Nguyen Thanh Tu and Ms. Luu Huong Ly from the Department of Civil and Economic Law, Ministry of Justice of Viet Nam, and Ms. Catherine Phuong, Ms. Phung Thi Thu Ha and Mr. Dinh Sy Thang from UNDP Viet Nam, for their comments and support for this study.

The study could not be completed without the comments from expert representatives from agencies of the United Nations in Viet Nam, including ILO, IOM, UN Women, UNICEF, UNIDO and UNACT.

Finally, the Research Team would like to thank all members of the Technical Advisory Group established for the development of this Assessment, including representatives from business, the legal profession, academia and research, and NGOs in Viet Nam, who provided inputs to the overall design of the Preliminary Assessment.

The Research Team

LIST OF ABBREVIATIONS

ACCP	ASEAN Committee on Consumer Protection
ASEAN	Association of Southeast Asian Nations
B+HR	Business and Human Rights in Asia
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
CERD	United Nations Convention on the Elimination of Racial Discrimination
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CMSC	Commission for the Management of State Capital at Enterprises
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CSI	Corporate Sustainability Index
CSR	Corporate social responsibility
DAG	Domestic Advisory Group
EPZs	Export Processing Zones
ESG	Environmental, Social and Governance
EVFTA	Viet Nam – European Union Free Trade Agreement
FDI	Foreign direct investment
FWF	Fair Wear Foundation
FPIC	Free, prior, and informed consent
GCNV	Global Compact Network Vietnam
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	Gross domestic product
GRI	Global Reporting Initiative
HNX	Hanoi Stock Exchange
HOSE	Ho Chi Minh City Stock Exchange
HRC	United Nations Human Rights Committee on Civil and Political Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
IHRL	International Human Rights Law
ILO	International Labour Organization
ILS	International Labour Standards
IOM	International Organization for Migration
JSC	Joint Stock Company
LGBTI	Lesbian, gay, bisexual, transgender or intersex
LLC	Limited Liability Company

MNE Declaration	Multinational Enterprises Declaration
MOLISA	Ministry of Labour, Invalids and Social Affairs
MONRE	Ministry of Natural Resources and Environment
NAPs	National Action Plans
NCP	National Contact Point
NGOs	Non-Government Organizations
NHRI	National Human Rights Institution
OECD	Organization for Economic Cooperation and Development
OHCHR	United Nations Office of the High Commissioner for Human Rights
OSH	Occupational Safety and Health
PWDs	Persons with disabilities
SDGs	Sustainable Development Goals
SMEs	Small and Medium-sized Enterprises
SOEs	State-Owned Enterprises
SRI	Socially Responsible Investing
SSC	State Security Commission of Vietnam
TAG	Technical Advisory Group
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UNWG	United Nations Working Group on Business and Human Rights
UPR	Universal Periodic Review
VBCSD	Vietnam Business Council for Sustainable Development
VCCI	Vietnam Chamber of Commerce and Industry
VGCL	Vietnam General Confederation of Labour
WEPs	Women's Empowerment Principles
WHO	World Health Organization

EXECUTIVE SUMMARY

The economic success story of Viet Nam has been largely based on the Government's strong commitment to increased trade and closer collaboration with businesses in economic policy and planning. Businesses play an important role in the economic development of Viet Nam through contributions to tax revenue, employment, and by improving standards of living for large numbers of Vietnamese people. However, rapid business-led economic growth brings with it a unique set of not only opportunities but also risks of negative impacts on social and environmental development. These impacts extend across workers, consumers, communities, and natural resources critical for local livelihoods. Where business is free to pursue its economic interests without effective regulation, respect for social and environmental standards can be undermined. Key to finding the balance between Viet Nam's continued economic growth, and sustainable development, is the promotion of responsible business practice.

The Preliminary Assessment of the Regulatory Framework on Responsible Business Practice is undertaken as part of the Responsible Business Project of UNDP Viet Nam, in collaboration with the Ministry of Justice, in partnership with the Government of Sweden. The aim of the Project is to advance responsible business practice in Viet Nam, including through the development of a National Action Plan on Responsible Business Practice. The Assessment is the first step in this regard, providing a preliminary analysis of laws and policies as they pertain to upholding international social and environmental standards in the context of business activity. The Assessment adopts a number of different international frameworks to conduct the analysis but is primarily guided by the UN Guiding Principles on Business and Human Rights (UNGPs). Therefore, the two main

objectives of this Preliminary Assessment are to: firstly, assess alignment of regulatory framework in Viet Nam with implementation of the UNGPs and other international commitments related to responsible business practice through desktop analysis of relevant existing legislation, regulation, and policies, and; secondly, identify relevant gaps and propose recommendations for the Government of Viet Nam to focus and guide efforts towards the development of a National Action Plan on responsible business practice.

Viet Nam has ratified a number of key international treaties and agreements which outline commitments to upholding minimum standards on responsible business practice to be introduced and implemented in domestic law. Viet Nam has developed an extensive and wide ranging framework of laws, regulations and policies to protect individuals, communities and the environment from the adverse impacts of business activity, which taken together demonstrate the Government's commitment to ensuring responsible business practice. While the general regulatory framework on responsible business practice is quite strong, this assessment has identified a number of key areas where alignment with international standards could be further strengthened.

With regards to corporate law and investment, a number of key laws have been enacted in recent years which have strengthened responsible business practice, namely the Law on Securities (2019), the Law on Enterprises (2020) and the Law on Investment (2020). Critical to ensuring these laws effectively address the negative impacts of business activity on society will be the issuance of guiding documents, which should be developed in line with international standards. Furthermore, corporate law in Viet Nam should recognize

the specific duty of businesses to society.¹ To monitor responsible business practice, corporate law should include mandatory non-financial reporting to assess businesses' impact on society on an ongoing basis. Requirements to assess the potential and actual impact of investment projects should be strengthened to include assessment of adverse impacts on international social and environmental standards.

The newly adopted Labour Code in 2019 introduces a number of key provisions to protect the rights of workers and advance responsible business practice. Key to the effectiveness of such changes in the Code will be the alignment of guiding documents with international agreements, including those outlined in the EVFTA and CPTPP, such as the ILO Right to Organise and Collective Bargaining Convention (No. 98). Viet Nam has now ratified seven of the eight core ILO conventions, and should continue to ratify other key conventions, including ILO Convention on Violence and Harassment (No. 190) to ensure a world of work free from gender-based violence and harassment.

Irresponsible business behaviour can impact on people and communities in a variety of different ways. Issues related to land continue to be one of the leading causes of civil disputes, thus the legal system in Viet Nam should be strengthened to effectively handle grievances and complaints about land acquisition, compensation, support, recovery and resettlement. The Law on Environmental Protection (2014) recognizes the role of individuals in monitoring and reporting environmental degradation by businesses, but further guidance should be issued to both promote and protect this role. For consumers, complaint handling systems should be strengthened to protect their rights in law, including by providing for class

1 Human Rights Council, Seventeenth session (UNHRC), Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 'Report of the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – Addendum: Human rights and corporate law: trends and observations from a cross-national study.' UN Doc A/HRC/17/31/Add. 2, 2011. Available at: <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#srepresentative>. Accessed on 24 August 2019. Appendix III – 'Research template'. Paragraph 7.

action complaints to be taken in relation to consumer protection cases. The Law on Anti-Corruption (2018) introduced for the first time legislation to deal with corruption in the private sector. To ensure its effective implementation and alignment with the UN Convention against Corruption the Government should issue further decrees and circulars and practical toolkits, in particular to support businesses to promote and implement the Law. Across these issues, communities should be engaged on activities that affect them. The law in Viet Nam should include the principle of the free, prior, and informed consent (FPIC) in relation to business activities which may impact upon local communities.

Certain individuals and groups may be at heightened risk due to their marginalization or vulnerability in society, and risks of these impacts may also differ between women and men. Workers in the informal economy are often exposed to greater risks due to lack of legal protection. Social protection should be extended to workers in the informal economy, especially women, through a mix of contributory and non-contributory schemes. Ethnic minority groups are considered at risk to the negative impacts of business activity due to discrimination they face and their proximity to natural resources. The draft Law on Supporting the Development of Ethnic Minorities and Mountainous areas should be progressed and include provisions ensuring the protection of the rights of ethnic minorities against irresponsible business activity. Migrant workers can be vulnerable to exploitation when seeking to travel and work overseas. The Law on Vietnamese People Working Abroad under Contracts must prohibit the charging of fees and related costs in the recruitment process for migrant workers, ensuring alignment with ILO Private Employment Agencies Convention (No. 181). Despite strong progress in protecting the rights of children in business, including on reducing child labour, more targeted provisions in law are needed on the responsibility of business to respect the rights of children, including in enterprise, investment, advertisement and environmental law. Participation of

women in the labour force is relatively high compared to global averages. Despite this, women's representation in leadership roles in business remains low, and State-Owned Enterprises should lead by example in increasing women's representation in senior management and director roles. Persons with disabilities (PWDs) play an important part in driving economic growth. Viet Nam should take effective measures to protect the right to work of PWDs by improving the quality and accessibility of employment training for PWDs, to allow them to access the labour market. For LGBTI persons, the workplace is among the top three environments where they experience discrimination the most. Sexual orientation and gender identity should be included as prohibited grounds for discrimination in law, including but not limited to the Labour Code.

The UNGPs call on States to take “appropriate steps to ... investigate, punish and redress” violations of key social and environmental standards “through effective policies, legislation, regulations and adjudication.”² In this regard, Viet Nam should explore becoming an adhering country to the OECD Guidelines for Multinational Enterprises, and establish a National Contact Point (NCP), to promote the Guidelines and resolve issues that arise under the specific instances procedures. Viet Nam should also promote the establishment of enterprise-level grievance mechanisms, in alignment with the effectiveness criteria set out under the UNGPs, by ensuring accessibility, transparency and basing such processes on consultation and dialogue.³

The regulatory framework provides a strong foundation on which to begin building a coherent and coordinated plan for advancing responsible business practice in Viet Nam. Revisions to the framework should be prioritized focusing on groups who are at higher risk of abuses by businesses, in particular against vulnerable groups. The implementation of sustainability provisions in recently ratified free trade agreements, the implementation of newly enacted corporate, investment and labour law, the ongoing drafting of environmental and land legislation, and the development of policies to build forward better in the context of COVID-19 recovery, taken together, provide a unique opportunity to strengthen alignment of the regulatory framework in Viet Nam with international standards on responsible business practice. This assessment provides a starting point on identifying areas for priority focus in the development of a National Action Plan on Responsible Business Practice, and should be supplemented with a more comprehensive assessment of the regulatory framework, together with analysis of the enforcement of the regulatory framework and its impact on the rights of persons in Viet Nam.

² Office of the High Commissioner for Human Rights (OHCHR), ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, (2011). Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. Accessed on 30 August 2020.

³ Ibid. Principle 31.

CHAPTER 1

INTRODUCTION



Viet Nam's economic and political reform under 'Doi Moi' since 1986 has resulted in a remarkable transformation, seeing the country rise from one of the poorest nations in Asia to a lower middle-income country and one of the fastest growing economies in the Asia-Pacific region. With astute long-term economic planning, political stability, and a strong domestic workforce, Viet Nam has become an attractive destination for foreign direct investment (FDI) and a major exporting country to global supply chains, helping to further integrate the country into the global economy. In 2019, the real gross domestic product (GDP) grew by about 7 per cent, which is one of the fastest growth rates in the region.⁴

Critical to Viet Nam's continued economic success in recent years has been the Government's strong commitment to increased international trade and closer collaboration with both domestic and multinational companies in economic policy and planning. The business sector has been central to the economic development of Viet Nam through contributions to tax revenue, employment, and by improving standards of living for large numbers of Vietnamese people. Particularly, the jobs created by businesses have made a significant contribution to the 'economic miracle' of Viet Nam, with the national labour force reaching almost 57 million workers in 2019,⁵ and extreme poverty rates falling to below 6 per cent in 2019 from a rate of 70 per cent in 2002.⁶

Rapid business-led economic growth brings with it a unique set of not only opportunities but also risks to social and environmental development through both direct and indirect adverse impacts of business activity. These impacts extend across workers, consumers, the communities in which businesses operate, and natural resources critical for local livelihoods. When left unchecked, where business is free to pursue its economic

interests without effective regulation, clear guidance, or the appropriate mix of incentives and deterrents, the respect for social and environmental standards can be undermined.

Incorporating respect for social and environmental standards into business practice is not a new idea, yet it has been developed with new understanding that responsible business practice is not only about compliance with national law, but also ensuring that such laws and policies protect people against harm caused by business enterprises, and that those affected have access to justice through credible and effective grievance mechanisms. In particular, the growing reach and impact of business enterprises has given rise to increased interest in the responsibility of their behaviour, and to the establishment of 'responsible business practice' as a priority issue of international concern.

In this regard, the United Nations (UN) has made responsible business practice a key component of its work worldwide. This includes offering support to States to implement the UNGPs,⁷ amongst other means, through the development of National Action Plans (NAP). The UN defines a NAP as an "evolving policy strategy developed by a State" to advance responsible business practice in conformity with the UNGPs.⁸

Since the adoption of the UNGPs, 23 UN Member States have already produced NAPs, while a further 24 States are either already in the process of developing a NAP or have committed to developing one.⁹ These include several countries in the Asia-Pacific region, such as India, Japan, and Mongolia, including the Association of Southeast Asian Nations (ASEAN) member states such as Malaysia, Myanmar, and Thailand, with Thailand becoming the first country in the region to publish a NAP in

4 World Bank, 'The World Bank in Vietnam – Overview'. Available at: <https://www.worldbank.org/en/country/vietnam/overview>. Accessed on 30 August 2020.

5 World Bank, 'Labor force, total – Vietnam'. Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=VN>. Accessed on 30 August 2020.

6 World Bank in Vietnam – Overview (n. 4).

7 UNGPs (n. 2).

8 United Nations Working Group on Business and Human Rights (UNWG), 'Guidance on National Action Plans on Business and Human Rights', (2016). Available at: https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf. Accessed on 30 August 2020. Page 3.

9 OHCHR, 'State national action plans on Business and Human Rights'. Available at: <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>. Accessed on 30 August 2020.

October 2019.¹⁰ The UN Human Rights Council (UNHRC) has mandated a Working Group to promote implementation of the UNGPs (UNWG).¹¹

In support, the United Nations Development Programme (UNDP) is implementing the 'Business + Human Rights in Asia' (B+HR) regional project to provide advocacy, policy development, technical support, and capacity building for, amongst others, States, private actors, and Non-Government Organizations (NGOs), to accelerate implementation of the UNGPs.¹² Viet Nam is one of the countries benefiting from the B+HR project. One of the key workstreams of the B+HR project is to: "Provide technical and advisory support to governments to develop NAPs or similar policy frameworks in furtherance of UNGPs implementation".¹³ This 'Preliminary Assessment of the Regulatory Framework on Responsible Business Practice in Viet Nam' was conducted by the research team outlined above, under UNDP Viet Nam's Responsible Business project and in the context of UNDP's B+HR regional project.

1.1 Responsible Business Practice in Viet Nam

In Viet Nam, efforts at promoting responsible or sustainable business practice have been driven through the lens of corporate social responsibility (CSR). Therefore, it is more appropriate to focus on CSR to assess the current state of play on incentives for enterprises toward more responsible business practices, and deterrents against irresponsible behaviour. In this regard, CSR can be understood as an umbrella term that aims to capture the responsibilities of

businesses to other actors in society.¹⁴

The modern concept of CSR was first introduced to Viet Nam by transnational corporations in the mid-nineties through codes of conduct or labour standards passed on to local suppliers, with particular focus on the Vietnamese garment and textile industries.¹⁵ Since then, CSR has continued to grow, primarily in the form of voluntary codes of conduct, philanthropic activities and programmes for compliance with social and environmental standards, which are often set up and monitored by foreign corporations doing business in Viet Nam. In many cases, compliance with CSR standards set by transnational corporations, based in Europe and the United States of America (US) in particular, throughout this period has often driven domestic businesses to go beyond minimum requirements under domestic law. The strengthening of CSR through transnational corporations was also supported by business representative organizations in Viet Nam, such as the European and American Chambers of Commerce, by including minimum CSR standards in investment negotiations.¹⁶

Currently, the institution in Viet Nam taking responsibility for driving CSR, among Vietnamese businesses, is the Vietnam Chamber of Commerce and Industry (VCCI). The Global Compact Network Vietnam (GCVN), founded in 2007 by VCCI and the UN in Viet Nam, was developed to be the national corporate social responsibility centre of excellence.¹⁷ Despite strong progress initially, in building membership to over 90 businesses, the GCVN has slowed in recent years in terms of implementing activities to promote CSR, with membership reduced to 19 in 2020.¹⁸

¹⁰ Ibid.

¹¹ OHCHR, 'Working Group on the issue of human rights and transnational corporations and other business enterprises - Overview'. Available at: <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>. Accessed on 30 August 2020.

¹² United Nations Development Programme (UNDP), Regional, 'Business and Human Rights in Asia: Promoting Responsible Business Practices through Regional Partnerships (B+HR Asia)'. Currently, the "B+HR Asia" project provides UNGP implementation support in the following countries: Bangladesh, India, Indonesia, Malaysia, Sri Lanka, Thailand, and Viet Nam. Available at: <https://bizhumanrights.asia-pacific.undp.org/content/bizhumanrights/en/home.html>. Accessed on 30 August 2020.

¹³ Ibid. 'Our Work'.

¹⁴ Nguyen, M., Bensemann, J., Kelly, S., 'Corporate social responsibility (CSR) in Vietnam: a conceptual framework', *International Journal of Corporate Social Responsibility*, (2018). Available at: <https://doi.org/10.1186/s40991-018-0032-5>. Accessed on 31 August 2020.

¹⁵ Vietnam Business Links Initiative (VBLI) and German Development Service (DED), 'The Current Status of "Corporate Social Responsibility" (CSR) in Vietnam', (2007).

¹⁶ Hamm, B., 'Corporate Social Responsibility in Vietnam - Integration or mere adaptation?', *Pacific News*, (2012). Available at: http://www.pacific-geographies.org/wp-content/uploads/sites/2/2017/06/PN38_BH.pdf. Accessed on 31 August 2020.

¹⁷ Global Compact Network Vietnam (GCVN). Available at: <http://en.vbcsvn/detail.asp?id=197>. Accessed on 31 August 2020.

¹⁸ United Nations Global Compact (UNGC), 'Viet Nam: Overview'.

Another major initiative by the Office for Business Sustainable Development of VCCI is the foundation of a business-led organization, the Vietnam Business Council for Sustainable Development (VBCSD) in 2010.¹⁹ With over 50 members, including many multinational and foreign invested enterprises, VBCSD has been playing a leading role in growing CSR activities in Viet Nam through research, developing international cooperation, training for businesses, and communications and outreach. Since 2018, the VBCSD has held the 'CSI 100' awards, using the Corporate Sustainability Index (CSI) to rank one hundred sustainable businesses in Viet Nam based on a number of different indicators with regards to a company's corporate governance structure, environmental impact, and compliance with labour and social standards, including the incorporation of the Sustainable Development Goals (SDGs) to their business.²⁰ Another initiative under VCCI incentivized by the concept of social inclusion and promotion of women participation in the world of work, is the Vietnam Women Entrepreneurs Council, which was established in 2001 to promote gender equality in business enterprises in Viet Nam.²¹

Currently, the concept of responsible business practice remains largely unknown in the CSR ecosystem in Viet Nam. A human centred approach to corporate responsibility demands businesses to go beyond national laws and regulations and to take measures to assess risks to individuals, society and the environment, address such potentially adverse impacts, including where possible prevention, or mitigation and, where appropriate, remediation following abuses of the relevant standards, as outlined in the UNGPs.²²

Available at: <https://www.unglobalcompact.org/engage-locally/asia/viet%20nam>. Accessed on 31 August 2020.

19 Vietnam Business Council for Sustainable Development (VBCSD), About. Available at: <http://en.vbcسد.vn/about.asp>. Accessed on 31 August 2020.

20 Ibid. Program on Benchmarking and Announcing Sustainable Companies in Vietnam.

21 Vietnam Chambers of Commerce and Industry, Vietnam Women Entrepreneurs Council. Available at: <http://vwec.com.vn/>. Accessed on 18 July 2020.

22 UNGPs. Guiding Principle 11, Foundational Principle A (n. 2).

While the Government of Viet Nam has paid strong attention to strengthening the rights of many groups, there has been welcome focus given to the rights of workers, in particular by ratifying seven of the eight Core Conventions of the International Labour Organization (ILO).²³ Thus, a strong rights-based approach has developed in the context of regulating business activity for the enforcement of labour standards. Other UN agencies have advanced a rights-based approach to corporate responsibility through programmes such as the 'Better Business for Children',²⁴ run by UNICEF (United Nations Children's Fund), promoting gender equality through the revision of the Labour Code, led by UN Women,²⁵ and protecting the rights of migrant workers through the regional 'Corporate Responsibility in Eliminating Slavery and Trafficking' developed by the International Organization for Migration (IOM).²⁶ Since 2017, UNDP have focused on working with Government agencies in Viet Nam to advance responsible business practice by training government officials, connecting agencies to international initiatives, and aiming to strengthen the wider regulatory framework on responsible business practice.²⁷

Viet Nam's recent accession to international trading agreements, such as the EU-Vietnam Free Trade Agreement (EVFTA)²⁸ and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),²⁹ has

23 International Labour Organization (ILO), 'Ratifications for Viet Nam'. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORM-LEXPUB:11200:0::NO::P11200_COUNTRY_ID:103004. Accessed on 31 August 2020. For more on labour rights in Viet Nam see Chapter 3 of the Assessment below.

24 UNICEF Vietnam, 'Better Business for Children'. Available at: <https://www.unicef.org/vietnam/better-business-children>. Accessed on 31 August 2020.

25 United Nations Vietnam, 'Promoting gender equality through revision of the Labour Code', (2018). Available at: <https://vietnam.un.org/en/4162-promoting-gender-equality-through-revision-labour-code>. Accessed on 31 August 2020.

26 International Organization for Migration, 'Corporate Responsibility in Eliminating Slavery and Trafficking (CREST)'. Available at: <https://crest.iom.int/>. Accessed on 31 August 2020.

27 UNDP, 'First Business and Human Rights training for Government Officials in Viet Nam', (2018). Available at: <http://www.vn.undp.org/content/vietnam/en/home/presscenter/articles/2018/04/18/first-business-and-human-rights-training-for-government-officials-in-viet-nam.html>. Accessed on 31 August 2020.

28 European Commission, Viet Nam – European Union Free Trade Agreement (EVFTA), (2020). Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>. Accessed on 10 August 2019.

29 Government of New Zealand, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), (2018). Available at: <https://www.mfat.govt.nz/assets/Free-trade-agreements/CPTPP/>

resulted in increased focus on responsible business practice. To advance responsible business, it is important to also understand why businesses globally, and increasingly in Viet Nam, are integrating responsibility into their operations.

1.2 Business Drivers for Responsible Business Practice

A major catalyst in the growth of CSR initiatives both globally and in Viet Nam is the increasing awareness around the 'business case' for corporate responsibility, or how strengthening respect for social and environmental standards can help protect against risks to the business, expand into new markets, build your customer base and ensure sustainable business growth. There is growing consensus among businesses to adopt the 'triple bottom line' framework to ensure sustainable business growth, which aims to measure the financial, social and environmental performance of the business.³⁰

Firstly, and often most importantly for bigger brands, there is a growing base of ethical consumerism which is demanding more from companies on how products are produced, and services are delivered. In this case, large brands are exposed to significant reputational risk where they are connected to irresponsible behaviour. This trend is particularly pertinent in Viet Nam, with a 2015 study carried by Nielsen showing that 86 per cent of consumers in Viet Nam are willing to pay higher for products and services that come from companies who are committed to positive social and environmental impacts, the highest in Southeast Asia.³¹

Secondly, investors are also increasingly cautious in terms of assessing future financial returns by adopting the

Environmental, Social, and Governance (ESG) framework which focuses financial analysis on the ESG factors of an investable business. The increased attention on ESG factors by investors is particularly relevant where developing countries are seeking to attract foreign direct investment, and there may be perceived or existing risks related to corporate abuses of social and environmental standards which may affect returns on the investment.

Thirdly, many governments have recognized the potential risks posed by irresponsible business behaviour to society and the environment, and have sought to better regulate corporate practice, for example the Modern Slavery Act, 2015,³² from the UK, and the Corporate Duty of Vigilance Law, 2017,³³ from France. Furthermore, as governments deepen partnerships with the private sector to achieve sustainable development targets, including through public-private partnerships, closer scrutiny is required to regulate businesses where they are engaged in activities aimed at supporting local communities. For example, the 2030 Agenda for Sustainable Development (the 2030 Agenda) calls for the fostering of a dynamic business sector, that contributes to sustainable development, but that does so in accordance with international standards, including, among others, the UNGPs.³⁴

Increased awareness among NGOs, media and trade unions of corporate abuses of social and environmental standards, together with the ease of exchange of information online, has put extra pressure on businesses to behave responsibly. Many industry associations have recognized the above risks and developed corporate sustainability initiatives to protect the reputation of their industry, such as the Responsible Labour Initiative led by the Electronic Industry

CPTPP-Text-English.pdf. Accessed on 10 September 2020.

30 The Economist, "Triple Bottom Line", (17 November 2009). Available at: <https://www.economist.com/news/2009/11/17/triple-bottom-line>. Accessed on 31 August 2020.

31 Nielsen, 'Sustainability Continues to Gain Momentum Among Singaporeans and Southeast Asian Consumers', (2015). Available at: <https://www.nielsen.com/sg/en/press-releases/2015/sustainability-continues-to-gain-momentum-among-singaporeans-and-south-east-asian-consumers/>. Accessed on 31 August 2020.

32 Modern Slavery Act, UK Public General Acts, c. 30, (2015). Available at: <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>. Accessed on 6 September 2020.

33 Law on the Corporate Duty of Vigilance, Trade and Industry Code of France, Law No. 2017-399, (2017). Available at: <http://www.respect.international/french-corporate-duty-of-vigilance-law-english-translation/>. Accessed on 6 September 2020.

34 United Nations (UN), 'Transforming our world: the 2030 Agenda for Sustainable Development'. Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>. Accessed on 14 January 2020.

Citizenship Coalition (EICC)³⁵ and the paper on the implications of the UNGPs on the corporate and investment banking sector by the Thun Group of Banks.³⁶

The evidence in support of the ‘business case’ for corporate responsibility is becoming more difficult for businesses to ignore. A study led by Harvard Business School Professor, Robert G. Eccles, published in 2014, looked at the performance of ‘High Sustainability’ business firms against that of ‘Low Sustainability’ firms in the United States of America over an 18 year period. The High Sustainability firms outperformed the Low Sustainability ones in terms of both stock market and accounting measures.³⁷

In relation to human capital, McKinsey & Company estimates that “companies in the top quartile for gender diversity are 15 per cent more likely to have financial returns above their respective national industry medians.”³⁸ In terms of investments, assets screened for investment using ‘Socially Responsible Investing’ (SRI) criteria grew by 25 per cent across the world from 2014-16, with a total value of USD 23 trillion.³⁹ There is huge potential for growth of SRI assets in Asia as the region continues to develop, as does the consumer base, including the growth of the ethical millennial consumer.

Given the increasing ‘business case’ for responsible business practice, many governments hungry to attract responsible foreign direct investment have identified the importance of setting clear laws and

policies to uphold international standards. This gives business leaders the clarity they need to establish the long-term economic growth objectives of a country, and the assurances they need to make larger and longer-term investments. By exploring the regulatory framework in Viet Nam related to responsible business practice, we can identify the potential gaps in law and policy which may be hindering this new driver for economic growth and ensure the country remains economically competitive while upholding international social and environmental commitments.

1.3 Purpose and Objectives

The overall purpose of the Preliminary Assessment is to assess the current status of laws, regulations, policies, and programmes, in Viet Nam in the context of the UNGPs. To this end, the Preliminary Assessment is using the UNGPs as the primary basis framework to analyse and assess existing laws, regulations, and policies in order to identify the gaps and measures required to ensure effective implementation of the UNGPs in Viet Nam. As such, the Preliminary Assessment presents initial technical information intended to support the relevant government agencies in Viet Nam to develop a National Action Plan on Responsible Business Practice.

As set out in the official guidance issued by the UNWG, one of the “essential criteria” for NAP processes is that: “NAPs need to be context-specific and address the country’s actual and potential” responsible business risks.⁴⁰ To this end, the UNWG advises that three of the initial steps that States should take towards developing a NAP are to: “Get an understanding of adverse business-related human rights impacts ... Identify gaps in State and business implementation of the UNGPs ... [and] Consult stakeholders and identify priority areas.”⁴¹ The Preliminary Assessment is intended to make an initial contribution towards these steps for the development of Viet Nam’s NAP.

35 Responsible Business Alliance, ‘Responsible Labor Initiative’. Available at: <http://www.responsiblebusiness.org/initiatives/rli/>. Accessed on 31 August 2020.

36 Thun Group of Banks, ‘Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context’, (2017). Available at: <https://www.business-humanrights.org/en/thun-group-of-banks-releases-new-discussion-paper-on-implications-of-un-guiding-principles-for-corporate-investment-banks>. Accessed on 31 August 2020.

37 See Eccles, R.G., Ioannou, J., Serafeim, G., ‘The Impact of Corporate Sustainability on Organizational Processes and Performance’, *Management Science*, Volume 60, Issue 11, (2014). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1964011. Accessed on 31 August 2020. Pages 2835-2857.

38 Hunt, V., Layton, D., Prince, S., McKinsey & Company, ‘Why diversity matters’, (2015). Available at: <https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Organization/Our%20Insights/Why%20diversity%20matters/Why%20diversity%20matters.pdf>. Accessed on 31 August 2020.

39 Global Sustainable Development Alliance (GSIA), ‘Global Sustainable Investment Review’, (2016). Available at: http://www.gsi-alliance.org/wp-content/uploads/2017/03/GSIR_Review2016.F.pdf. Accessed on 22 September 2020. Page 7.

40 UNWG, ‘Guidance on National Action Plans on Business and Human Rights’. Page 3 (n. 8).

41 Ibid.

The Preliminary Assessment aims to identify salient social and environmental issues related to business activity in Viet Nam, including specific and differentiated issues for particular vulnerable groups. The Preliminary Assessment outlines recommendations to focus and guide efforts and identify key elements for Viet Nam's prospective NAP. In particular, the two specific objectives of the Preliminary Assessment are to:

1. Assess alignment of regulatory framework in Viet Nam with the implementation of the UNGPs and other international commitments related to responsible business practice through desktop analysis of relevant existing legislation, regulation, and policies.
2. Identify relevant gaps and propose recommendations for the Government of Viet Nam to focus and guide efforts towards development of a National Action Plan on responsible business practice.

The assessment is not intended to be comprehensive nor is the assessment intended to be a substitute for a 'National Baseline Assessment' (NBA), as recommended by the UNWG.⁴² Rather, the intention is that the findings and recommendations of the assessment will provide helpful background information to support dialogue between stakeholders and to guide a Government-led process of developing a NAP in Viet Nam.

1.4 Methodology

The methodology for this Preliminary Assessment is aligned with the guidance on the development of NAPs issued by the UNWG.⁴³ Additionally, the methodology for the Preliminary Assessment draws upon available international good practice guidance on the development of NAPs and related baseline assessments.⁴⁴

42 Ibid. Page 7.

43 Ibid.

44 Including, in particular: The Danish Institute for Human Rights (DIHR), the International Corporate Accountability Roundtable, 'The National Action Plans on Business and Human Rights Toolkit' (2017 Edition). Available at: <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/01/national-action-plans-on-business-and-human->

Normative framework

The normative framework for the Preliminary Assessment is provided by the UNGPs. The Preliminary Assessment takes note that the official guidance on NAPs published by the UNWG specifies as one of its "essential criteria" that: "NAPs need to be founded on the UNGPs. As an instrument to implement the UNGPs, NAPs need to adequately reflect a State's duties under international law to protect against adverse business-related impacts and provide effective access to remedy."⁴⁵

Unanimously endorsed by the UNHRC in 2011, the UNGPs are the authoritative global standard on responsible business practice. The UNGPs have been incorporated into key international frameworks for responsible business practice, such as the ILO Multinational Enterprises Declaration (MNE Declaration),⁴⁶ Organization for Economic Cooperation and Development (OECD) Guidelines,⁴⁷ the ISO 26000 standard issued by the International Organization for Standardization,⁴⁸ the International Finance Corporation (IFC) Sustainability Framework and IFC Performance Standards,⁴⁹ the sustainability reporting guidelines issued by the Global Reporting Initiative (GRI),⁵⁰ and the UN Global Compact (UNGC),⁵¹ amongst others.

[rights-toolkit-2017-edition.pdf](#). Additional general reference has been made to the reports of the UNWG's official country visits, (available at: <https://www.ohchr.org/EN/Issues/Business/Pages/WGCountryVisits.aspx>) as well as the series of 'Human Rights and Business Country Guides' developed by the Danish Institute for Human Rights, (available at: <https://globalnaps.org/human-rights-and-business-country-guides/>). Accessed on 31 August 2020.

45 UNWG on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights'. Page. 3 (n. 8).

46 ILO, 'Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration)', 5th Edition, (2017). Available at: https://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm. Accessed on 31 August 2020.

47 Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises'. Available at: <https://mneguidelines.oecd.org/guidelines/>. Accessed on 31 August 2020.

48 International Organization for Standardization, 'ISO 26000 - Social responsibility'. Available at: <https://www.iso.org/iso-26000-social-responsibility.html>. Accessed on 31 August 2020.

49 International Finance Corporation, 'Sustainability Framework', (2012). Available at: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability+framework. Accessed on 31 August 2020.

50 Global Reporting Initiative (GRI). Available at: <https://www.global-reporting.org/Pages/default.aspx>. Accessed on 31 August 2020.

51 UNGC. Available at: <https://www.unglobalcompact.org/>. See further Report of the twenty-ninth session of the UNHRC, (2015) UN Doc A/HRC/29/28. Available at: <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>.

In South-East Asia, a baseline analysis carried out in 2014 by the ASEAN Intergovernmental Commission on Human Rights (AICHR) referred to the UNGPs as the key internationally recognized framework that should guide developments in the ASEAN region.⁵² In other regions, the European Commission endorsed the UNGPs in 2011 and committed to supporting their implementation, calling on all European Union (EU) Member States to develop NAPs⁵³ The Committee of Ministers of the Council of Europe,⁵⁴ the Organization of

American States (OAS),⁵⁵ and the African Union (AU) have all declared support for or committed to supporting implementation of the UNGPs.⁵⁶

The UNGPs are based on three pillars: (1) The duty of States to protect against human rights abuses by business enterprises including through appropriate policies, regulation, and adjudication; (2) the responsibility of all business enterprises to respect human rights; and (3) greater access by victims of business-related harm to effective remedy, both judicial and non-judicial (see figure, below).

Accessed on 31 August 2020.

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS- PROTECT, RESPECT AND REMEDY FRAMEWORK		
Protect	Respect	Remedy
State Duty to Protect Human Rights	Corporate Responsibility to Respect Human Rights	Access to Remedy
States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms.	The role of business enterprises as organs of society performing various functions, required to comply with all applicable laws and to respect human rights.	The need for rights and obligations to be matched to appropriate and effective remedies when breached.

Research questions

The Preliminary Assessment seeks to answer the following key research questions:

1. What laws, regulations and policies have been adopted that have the aim or effect of regulating business conduct with respect to salient responsible business practice issues in Viet Nam?
2. What laws, regulations and policies are in place to protect specific vulnerable groups in Viet Nam from adverse business-related impacts?
3. What State-based judicial and non-judicial, and non-state-based, grievance mechanisms are available in Viet Nam to provide effective remedy to victims of business-related harm?
4. How have such regulations and policies aligned with Viet Nam's international commitments on responsible business practice?

⁵² ASEAN Intergovernmental Commission on Human Rights, 'Baseline Study on the Nexus between Corporate Social Responsibility and Human Rights in ASEAN', (2014). Available at: <https://www.asean-csr-network.org/c/images/ASEANBaselineStudyonCSRandHRFINAL.pdf>. Accessed on 12 September 2020.

⁵³ European Commission, 'Communication on Corporate Social Responsibility'. (Document 52011DC0681), (2011). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-3A52011DC0681>. Accessed on 31 August 2020.

⁵⁴ Council of Europe, 'Declaration of the Committee of Ministers on the UN Guiding Principles on business and human rights', (2014). Available at: https://search.coe.int/cm/Pages/result_details.aspx?Objectid=09000016805c6ee3. Accessed on 31 August 2020.

⁵⁵ Organization of American States, 'Declaration on the Promo-

tion and Protection of Human Rights in Business', AG/RES. 2840 (XLIV-O/14), (2014). Available at: https://www.oas.org/en/sla/dil/docs/AG-RES_2840_XLIV-O-14.pdf. Accessed on 31 August 2020.

⁵⁶ OHCHR, "UN and AU commit to advance business and human rights agenda in Africa", Press Release, (18 September 2014). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15053&LangID=E>. Accessed on 31 August 2020.

5. What areas should be prioritized to revise regulation and policy to strengthen alignment with international commitments on responsible business practice?

Sources

Research for the Preliminary Assessment is being undertaken based on desktop review of publicly-available sources, including both primary sources such as relevant Government of Viet Nam laws, regulations, policies, and programmes, as well as relevant secondary literature, such as reports issued by various UN specialized agencies. Reference is made to Viet Nam's relevant international commitments under International Human Rights Law (IHRL), International Labour Standards (ILS), and other relevant international instruments, as well as relevant provisions of international trade agreements to which Viet Nam is a party, such as the CPTPP and the EVFTA. Consultations were held with experts to inform the overall direction of the Preliminary Assessment and on subsequent drafts.

Structure

Chapter 2, on Corporate and Investment Law, is structured based on the report submitted by the UN Special Representative of the Secretary-General, namely the addendum on 'Human rights and corporate law: trends and observations from a crossnational study conducted by the Special Representative'.⁵⁷ Corporate and securities law are reviewed, together with investment law, in relation to how these areas of law advance responsible business practice. The structure of Chapter is: firstly, a review of the regulatory framework in Viet Nam, including incorporation and listings, director's duties, and reporting; secondly, the institutional framework governing these areas is reviewed, including competent government ministries and agencies with responsibility for governing areas related to responsible business practice under corporate and investment law, and; thirdly, recommendations are made

⁵⁷ UNHRC, 'Human rights and corporate law' (n. 1).

on strengthening the regulatory framework on responsible business practice.

Chapters 3, on Labour Rights, 4, on Business in the Community, 5, on Responsible Business Practice and Vulnerable Groups, and 6, on Access to Remedy, follow the same structure: firstly, international commitments on advancing responsible business practice relevant to Viet Nam are reviewed, including international treaties, conventions and other frameworks; secondly, the regulatory framework in Viet Nam as it pertains to responsible business practice is reviewed, including laws, regulations and guiding legal documents; thirdly, the institutional framework is reviewed, including competent government ministries and agencies with responsibility for governing areas related to responsible business practice, and; fourthly, recommendations are made on strengthening the regulatory framework on responsible business practice.

Process

The official guidance on NAPs issued by the UNWG advises as one of the "essential criteria" for NAP processes that: "NAPs need to be developed in inclusive and transparent processes. Relevant stakeholders need to be allowed to participate in the development ... of the NAP and their views need to be taken into account. Information needs to be shared transparently at all stages of the process."⁵⁸ As mentioned above, iterative consultations with relevant experts on responsible business practice were undertaken in the development of this Preliminary Assessment. UNDP established a Technical Advisory Group (TAG) comprising of selected key stakeholders to guide the development of the Assessment.

⁵⁸ UNWG, 'Guidance on National Action Plans on Business and Human Rights' (n. 8).

CHAPTER 2

CORPORATE AND INVESTMENT LAW



2.1 Corporate Law

The UNGPs set out that States should ensure that “laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights.”⁵⁹ This section assesses corporate law in Viet Nam from the perspective of the UNGPs. In particular, this section seeks to identify whether, how, and to what extent corporate law in Viet Nam encourages or impedes responsible business practice. From this perspective, and as mentioned above, this section examines incorporation and listing requirements, corporate and securities regulators, stock exchanges, directors’ duties, and corporate reporting regulations, by first examining the regulatory framework then the institutional framework governing corporate law.

Regulatory framework

The Constitution of Viet Nam (2013) provides the legal basis for everyone to enjoy “freedom of enterprise,”⁶⁰ and specifies that the State provides favourable conditions for enterprises “to invest, produce, and do business.”⁶¹ The Constitution requires that economic actors “cooperate and compete in accordance with the law.”⁶²

The general legislative sources of corporate law are the Law on Enterprises (2014, revised 2020),⁶³ the Law on Investment (2014, revised 2020)⁶⁴ and the Law on Securities (2019).⁶⁵

59 UNGPs. Principle 3 (n. 2).

60 Constitution of Vietnam, adopted by the National Assembly on 28 November 2013. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94490&p_country=VNM&p_classification=01.01. Accessed on 26 August 2019. Article 33.

61 Ibid. Article 51(3).

62 Ibid. Article 51(2).

63 Law on Enterprises, (2014), Law No. 68/2014/QH13. Available at: <http://vbpl.vn/TW/Pages/vbpgen-toanvan.aspx?ItemID=1103>. Accessed on 10 July 2020; Law on Enterprises, (2020), Law No. 59/2020/QH14. Available at: <https://english.luatvietnam.vn/law-on-enterprises-no-59-2020-gh14-dated-june-17-2020-of-the-national-assembly-186272-Doc1.html>. Accessed on 10 July 2020.

64 Law on Investment, (2014), Law No. 67/2014/QH13. Available at: <https://investmentpolicy.unctad.org/investment-laws/laws/152/law-on-investment>. Accessed on 11 July 2020.; Law on Investment, (2020), Law No. 61/2020/QH14. Available at (unofficial translation): <https://english.luatvietnam.vn/law-on-investment-no-61-2020-gh14-dated-june-17-2020-of-the-national-assembly-186270-Doc1.html>. Accessed on 23 September 2020.

65 Law on Securities, (2019). Law No. 54/2019/QH14. Available

The Law on Enterprises regulates the establishment, organization of management, reorganization, dissolution and related activities of enterprises including limited liability companies, joint stock companies, partnerships, private enterprises and corporate groups.⁶⁶ The revised Law on Enterprises was approved by the National Assembly in June 2020 and will come into force from 1 January 2021.

The Law on Investment applies to investors, other organizations and individuals involved in business investment, and deals with both business investments in Viet Nam as well as outward business investments originating from Viet Nam.⁶⁷ The revised Law on Investment was approved by the National Assembly in June 2020 and will come into force from 1 January 2021.

The Law on Securities (2019) regulates securities activities, rights and obligations of organizations and individuals engaged in securities activities, organization of the securities market, state management of securities and the securities market itself.⁶⁸ The Law was adopted by the National Assembly in November 2019 and will come into force from 1 January 2021.⁶⁹

• State-Owned Enterprises

The UNGPs set out that: “States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies ... including, where appropriate, by requiring human rights due diligence.”⁷⁰ The UNGPs further elaborate that: “Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the

at (in Vietnamese): <http://vbpl.vn/TW/Pages/vbpbq-van-ban-goc.aspx?ItemID=139885>.

66 Law on Enterprises, (2014), Article 1; Law on Enterprises, (2020), Article 1 (n. 63).

67 Law on Investment, (2014), Articles 1 and 2; Law on Investment, (2020), Articles 1 and 2 (n. 64).

68 Law on Securities, (2019) (n. 65).

69 Ibid.

70 UNGPs. Principle 4 (n. 2).

State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights. Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented."⁷¹

The Law on Enterprises provides for the establishment and operation of State-Owned Enterprises (SOEs).⁷² SOEs operate under the oversight of a Members' Council that has various decision-making obligations, including those set out in the Law on Management and Use of State Capital Invested in Production and Business in Enterprises (2014).⁷³ Amongst others, the Law on Management and Use of State Capital (2014) requires that "investment, management and utilization of state capital in an enterprise ... must comply with the international agreements to which Vietnam is a signatory."⁷⁴

Members of the Members' Council of an SOE have, among others, the responsibility: "To exercise their rights and perform their obligations in an honest, prudent and best manner in order to best protect the lawful interests of the company and the State."⁷⁵ The agency that represents the State as the owner of the enterprise can appoint, remove, dismiss, reward or discipline any Member of the Members' Council of an SOE,⁷⁶ including in cases where the company fails to complete objectives or targets in annual plans, or where the member "acts dishonestly" in performing his or her rights

and obligations.⁷⁷ The Law on Enterprises does not specify gender representation or representation of stakeholders such as employees or community members in respect of the Members' Councils of SOEs.

Chairpersons of SOEs are appointed by the agency that represents the State as the owner of the enterprise.⁷⁸ The obligations of the Chairperson of an SOE include the obligation to act in accordance with the Law on Management and Use of State Capital.⁷⁹ The Chairperson of an SOE must, if necessary, "organize the solicitation of opinions of domestic and foreign consultants before making decisions on important matters" within their authority.⁸⁰

The supervisor or Supervisory Board of an SOE is appointed by the agency that represents the State as the owner of the enterprise,⁸¹ and has the authority to "supervise and assess the effectiveness and degree of compliance with the internal auditing regulations, risk management and prevention regulations, reporting regulations and other internal management regulations of the company."⁸² The Law on Enterprises requires SOEs to periodically report certain types of information but does not require SOEs to disclose ESG information.⁸³ The Law on Enterprises does not require any specific recognition of a duty to society in the context of the establishment or operation of SOEs.⁸⁴

• *Joint Stock Companies*

The Law on Enterprises provides for the establishment and operation of joint stock companies (JSCs).⁸⁵ The General Meeting of

71 Ibid.

72 Law on Enterprises, (2014). Chapter IV; Law on Enterprises, (2020). Chapter IV (n. 63).

73 Ibid.

74 Law on Management and Utilization of State Capital Invested in the Enterprise's Manufacturing and Business Activities, (2014), Law No. 69/2014/QH13. Available at: <https://www.economica.vn/Portals/0/Documents/69-2014%20Law%20on%20Management%20of%20State%20Capital.pdf>. Accessed on 26 August 2019. Article 5(8).

75 Law on Enterprises, (2014). Article 96(2); Law on Enterprises, (2020). Article 97 (n. 63).

76 Law on Enterprises, (2014). Article 90(2); Law on Enterprises, (2020). Article 90(2) (n. 63).

77 Law on Enterprises, (2014). Article 93; Law on Enterprises, (2020). Article 93(2) (n. 63).

78 Law on Enterprises, (2014). Article 98(1); Law on Enterprises, (2020). Article 97(1) (n. 63).

79 Law on Enterprises, (2014). Article 98(2); Law on Enterprises, (2020). Article 99 (2) (n. 63).

80 Law on Enterprises, (2014). Article 98(4); Law on Enterprises, (2020). Article 99(4) (n. 63).

81 Law on Enterprises, (2014). Article 102(1); Law on Enterprises, (2020). Article 103(1) (n. 63).

82 Law on Enterprises, (2014). Article 102(2); Law on Enterprises, (2020). Article 104 (n. 63).

83 Law on Enterprises, (2014). Article 108; Law on Enterprises, (2020). Article 109 (n. 63).

84 See further UNHRC, 'Human rights and corporate law'. Paragraph 7 (n. 1).

85 Law on Enterprises, (2014). Chapter V; Law on Enterprises, (2020). Chapter V (n. 63).

Shareholders, being the highest decision-making body of a JSC, has the rights and obligations to set “the developmental orientations of the company; elect and remove members of the Board of Management and inspectors; and make investment decisions.”⁸⁶ Shareholders in JSCs have the rights to attend, express opinions at, and vote during General Meetings of Shareholders.⁸⁷ Major shareholders have the additional rights to request the convening of a General Meeting of Shareholders if the Board of Directors commits a serious breach of the rights of shareholders or the obligations of managers.⁸⁸ Shareholders also have the right to initiate legal actions for civil liability against any member of the Board of Directors or the Director who commits a breach of their legal obligations, or who fails to “properly exercise the vested powers and perform the assigned obligations.”⁸⁹

The Board of Directors of a JSC have the “full competence to make decisions in the name of the company” for all matters that do not fall within the authority of the General Meeting of Shareholders.⁹⁰ The Law on Enterprises requires the Board of Directors of a JSC to comply with the provisions of law when implementing its functions, rights and obligations.⁹¹ In cases where the Board of Directors pass a resolution that is contrary to law or the charter of the company, thereby causing loss to the company, the members of the Board that agreed to pass the resolution shall be personally jointly liable and must compensate the company for loss.⁹² The Law on Enterprises does not specify gender representation or representation of stakeholders such as employees or community members in respect of the Board of Directors of JSCs.

Directors of JSCs have the authority and responsibility to make decisions on all

86 Law on Enterprises, (2014). Article 135; Law on Enterprises, (2020). Article 138 (n. 63).

87 Law on Enterprises, (2014). Article 114; Law on Enterprises, (2020). Article 115 (n. 63).

88 Ibid.

89 Law on Enterprises, (2014). Article 161; Law on Enterprises, (2020). Article 166 (n. 63).

90 Law on Enterprises, (2014). Article 149; Law on Enterprises, (2020). Article 153 (n. 63).

91 Ibid.

92 Ibid.

issues relating to the day-to-day business operations of the company, as well as appoint and discharge managers, and recruit employees.⁹³

The Supervisory Board has the rights and obligations, amongst others, to “inspect the reasonableness, legality, truthfulness and prudence in the management and administration of business operations” and to “inspect and evaluate the effect and efficiency of internal control, internal audit, risk management and early warning systems of the company.”⁹⁴ The Law on Enterprises requires JSCs to disclose certain types of information, including through annual reporting, but does not require JSCs to disclose ESG information,⁹⁵ although public listed companies are required by Circular 155/2015/TT-BTC of the Ministry of Finance to disclose ESG information on an annual basis.⁹⁶ The Law on Enterprises does not require any specific recognition of a duty to society in the context of the establishment or operation of a JSC.⁹⁷

• *Limited Liability Companies*

The Law on Enterprises provides for the establishment and operation of limited liability companies (LLCs).⁹⁸ LLCs established under the Law on Enterprises are distinct legal entities that are separate from their owners, who enjoy limitations on the extent to which they can be held liable for the company’s losses.⁹⁹

However, members of LLCs still bear personal liability when, in the name of the company, they breach the law, or when they conduct “business or other transactions not for the

93 Law on Enterprises, (2014). Article 157; Law on Enterprises, (2020). Article 162 (n. 63).

94 Law on Enterprises, (2014). Article 165; Law on Enterprises, (2020). Article 170 (n. 63).

95 Law on Enterprises, (2014). Articles 170-171; Law on Enterprises, (2020). Articles 175-176 (n. 63).

96 Circular No. 155/2015/TT-BTC on disclosure of information on the securities market, dated 6 October 2015. Available at (in Vietnamese): <http://vbpl.vn/TW/Pages/vbpg-van-ban-goc.aspx?ItemID=91233>. Accessed on 24 August 2019. Appendix 4, Part II, paragraph 6.

97 UNHRC, ‘Human rights and corporate law’. Paragraph 7 (n. 1).

98 Law on Enterprises, (2014). Chapter III; Law on Enterprises, (2020). Chapter III (n. 63).

99 Law on Enterprises, (2014). Article 47; Law on Enterprises, (2020). Article 46 (n. 63).

interest of the company ... [thereby] causing damage to other persons.”¹⁰⁰ The Members’ Council of a LLC has various decision-making obligations regarding the company.¹⁰¹ As with JSCs, the Law on Enterprises does not specify gender representation or representation of stakeholders such as employees or community members in respect of the Members’ Councils of LLCs.¹⁰²

Directors of LLCs have obligations to make decisions on all matters relating to the day-to-day business operations of the company, issue rules on internal management of the company, recruit employees and managers, and enter into contracts on behalf of the company.¹⁰³ Responsibilities of the Chairperson of the Members’ Council, director, legal representatives, inspectors, and managers of LLCs include the responsibility to “exercise the assigned rights and perform the assigned obligations in an honest, prudent and best manner in order to best protect the lawful interests of the company.”¹⁰⁴ Any member of a LLC may initiate a lawsuit against the Chairperson of the company’s Members’ Council, the company’s director, legal representative or any manager who has committed a breach of this duty or who has failed “to properly and sufficiently exercise the assigned rights and perform the assigned obligations.”¹⁰⁵ Supervisors supervise the Board of Directors and the Director or Director General of the company and are responsible for checking “the lawfulness, honesty and prudence” in business administration.¹⁰⁶ The Law on Enterprises does not require any specific recognition of a duty to society in the context of the establishment or operation of LLCs.¹⁰⁷

100 Law on Enterprises, (2014). Article 51; Law on Enterprises, (2020). Article 50 (n. 63).

101 Law on Enterprises, (2014). Articles 55-56; Law on Enterprises, (2020). Articles 54 and 55 (n. 63).

102 UNHRC, ‘Human rights and corporate law’. Paragraph 7 (n. 1).

103 Law on Enterprises, (2014). Article 64; Law on Enterprises, (2020). Article 63 (n. 63).

104 Law on Enterprises, (2014). Article 71; Law on Enterprises, (2020). Article 71 (n. 63).

105 Law on Enterprises, (2014). Article 72; Law on Enterprises, (2020). Article 72 (n. 63).

106 Law on Enterprises, (2014). Article 82; Law on Enterprises, (2020). Article 170 (n. 63).

107 UNHRC, ‘Human rights and corporate law’. Paragraph 7 (n. 1).

• *Social Enterprises*

The Law on Enterprises provides for the establishment of social enterprises, defined as an enterprise “operating for the purpose of resolving social or environmental issues in the interest of the community” and that uses at least 51 per cent of its total annual post-tax profit to re-invest for the purpose of implementing its registered social or environmental objectives.¹⁰⁸

Legally recognizing social enterprises made Viet Nam one of the few countries in the region to afford such recognition and many countries have since followed suit, including in Thailand through the Social Enterprise Promotion Act, which was passed in 2019. A unique legal characteristic of a social enterprise is that it is permitted to receive donations or financial contributions in order to fund the businesses operations.¹⁰⁹ The Government issued Decree No. 96/2015/ND-CP to allow for social enterprises to enjoy investment incentives, as well as receive foreign non-governmental aid for achieving the purpose of solving social and environmental issues in accordance with regulations on receipt of foreign non-governmental aid.¹¹⁰ Since the legal recognition of social enterprises came into force in 2015 an estimated 80 enterprises have registered as social enterprises.¹¹¹

• *Small and Medium-sized Enterprises*

According to the General Statistics Office of Viet Nam, more than 97 per cent of approximately 610,000 business enterprises operating in Viet Nam in 2018 were Micro, Small or Medium-sized Enterprises.¹¹² Thus the potential impact of this sector on

108 Law on Enterprises (2014). Article 10; Law on Enterprises, (2020). Article 10 (n. 63).

109 Ibid.

110 Decree No. 96/2015/ND-CP on detailing a number of articles of the Law on Enterprises, dated 19 October 2015. Available at: <http://vbpl.vn/TW/Pages/vbpgen-luocdo.aspx?ItemID=11053>. Accessed on 31 August 2020.

111 UNDP, National Economics University of Vietnam, ‘Fostering the Growth of the Social Impact Business Sector’, (2018). Available at: <https://www.vn.undp.org/content/vietnam/en/home/library/SIB.html>. Accessed on 27 August 2020. Chapter 3.

112 General Statistics Office of Viet Nam, “Press Release: 2020 Enterprises White Book”, (28 March 2020). Available at (in Vietnamese): <https://gso.gov.vn/default.aspx?tabid=382&idmid=2&ItemID=19594>. Accessed on 24 September 2020.

promoting responsible business practice is significant. The Law on Support for Small and Medium-sized Enterprises (SMEs), 2017 defines SMEs as enterprises with an average number of employees that contribute to social insurance per year not exceeding 200 and that either have a total investment capital not exceeding VND 100 billion, or total annual revenue of not more than VND 300 billion.¹¹³ Under the SME Law, SMEs are subject to a lower tax rate than the prevailing corporate tax rate, and benefit from certain non-tax incentives including lower fees for use and rental of land and access to credit, which is in line with market rules, legal provisions and international treaties to which Viet Nam is a party.¹¹⁴

- *Communication, reporting, and disclosure*

The UNGPs set out that States should “encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”¹¹⁵ The UNGPs further elaborate that this communication can range from of informal engagement with affected stakeholders to formal public reporting.¹¹⁶ Such requirements to communicate can be particular appropriate where the nature of business operations or operating contexts pose a significant risk to social and environmental standards.¹¹⁷ Furthermore, the UNGPs outline that financial reporting requirements should clarify that social and environmental impacts in some instances may be “material” or “significant” to the economic performance of the business enterprise.¹¹⁸

In Viet Nam, public listed companies are required to disclose ESG information on an annual basis.¹¹⁹ Specifically, pursuant

to Circular No. 155/2015/TT-BTC on guidelines for information disclosure on securities market, public companies must prepare an annual report that includes information relating to the “impact of the Company on the environment and society.”¹²⁰ Such information includes the management of raw materials, energy consumption, water consumption, compliance with the law on environmental protection, policies related to employees, and report on responsibility toward local communities. Furthermore, listed companies are required to disclose other ESG-related information, including: corporate objectives with regard to environment, society and community sustainability;¹²¹ average wages of workers;¹²² labour policies to ensure health, safety and welfare of workers;¹²³ number of times the company was fined for failing to comply with laws and regulations on environment;¹²⁴ the risks likely to affect the production and business operations or the realization of the company’s objectives, including environmental risks, and;¹²⁵ assessment of the Board of Management on the Company’s operation, including an assessment related to environmental and social responsibilities.¹²⁶

There are no corresponding ESG reporting requirements for JSCs that are not publicly listed, nor for LLCs, or SOEs.

- *Institutional framework*

The Ministry of Planning and Investment (MPI) has responsibility over developing domestic and foreign investment, policies for economic management, and development of enterprises.¹²⁷ The Business Registration Management Agency, under MPI, has responsibility for the state

113 Law on Support for Small and Medium Sized Enterprises, (2017), Law No. 04/2017/QH14. Available at: <http://vbpl.vn/TW/Pages/vbpgen-luocdo.aspx?ItemID=11095>. Accessed on 26 August 2020. Article 4.

114 Ibid. Article 5.

115 UNGPs. Principle 3 (n. 2).

116 Ibid.

117 Ibid.

118 Ibid.

119 Circular No. 155/2015/TT-BTC. Appendix 4, Part II, paragraph 6 (n. 96)

120 Ibid. Appendix 4, Part II, paragraph 6.2.

121 Ibid. Appendix 4, Part I, paragraph 4.

122 Ibid. Appendix 4, Part II, paragraph 6.5(a).

123 Ibid. Appendix 4, Part II, paragraph 6.5(b).

124 Ibid. Appendix 4, Part II, paragraph 6.4(a).

125 Ibid. Appendix 4, Part I, paragraph 5.

126 Ibid. Appendix 4, Part IV, paragraph 1.

127 Decree No. 86/2017/ND-CP providing mandate, function, responsibilities, and organizational structure of the Ministry of Planning and Investment, dated 25 July 2017. Available at: <http://vbpl.vn/bokehoachvadautu/Pages/vbpg-toanvan.aspx?ItemID=130308>. Assessed on 12 September 2020.

management of enterprise registration as prescribed in the law.¹²⁸ The Agency is responsible for drafting law and policy for business registration, and monitoring such registration, including the operation of the National Information System on business registration.

The Commission for the Management of State Capital at Enterprises (CMSC) is mandated to exercise the rights and responsibilities as the representatives of the State of SOEs.¹²⁹ The CMSC has taken over the role of state capital representative at 19 SOEs, including in the areas of mining, telecommunications and finance.¹³⁰ The CMSC has responsibility for developing strategies on investment and development of enterprises under their management.

The Enterprise Development Agency under MPI has responsibility for innovation in and development of SOEs.¹³¹

The SME Development Promotion Council, chaired by the Prime Minister, is the main entity responsible for formulating and coordinating SME policies and programmes.¹³² In terms of policy implementation, the Enterprise Development Agency under MPI is the main responsible entity.

- *State Securities Commission*

The State Securities Commission of Viet

Nam (SSC), established under the Ministry of Finance, is charged with the regulation of securities and securities markets.¹³³ The SSC, in cooperation with the IFC published the 'Environmental and Social Disclosures Guide' to provide a collection of recommendations on best corporate governance practices primarily for Vietnamese public companies.¹³⁴

In 2019, the SSC, jointly with the IFC, published the 'Vietnam Corporate Governance Code of Best Practices', which includes a number of recommendations on best corporate governance practices for Vietnamese public companies, and advocates for the adoption of standards that go beyond compliance with national legislation and regulations in Viet Nam.¹³⁵ The Code makes a number of recommendations to Boards of public listed companies, including:

- Monitor the effectiveness of the company's governance, environmental and social policies and practices, and adhere to applicable laws.¹³⁶
- Regularly monitor implementation of the company's strategy and discuss business risks, and ensure that sufficient time is devoted to discussing risk-management strategy, including social and environmental risks, activities and outcomes, at Board meetings.¹³⁷
- Ensure disclosure of key non-financial information, including environmental and social reporting, and that the company discloses information on its significant environmental and social impacts in accordance with globally accepted standards, such as the International Integrated Reporting Council (IIRC),

128 Decision No. 1888/QĐ-BKHDT providing mandate, function, responsibilities, and organizational structure of the Business Registration Management Agency, dated 22 December 2017. Available at: <https://thuvienphapluat.vn/van-ban/dau-tu/Quy-yeu-dinh-1888-QĐ-BKHDT-2017-chuc-nang-co-cau-to-chuc-Cuc-Quan-ly-dang-ky-kinh-doanh-397126.aspx>. Accessed on 12 September 2020.

129 Decree No. 131/2018/ND-CP defining the functions, tasks and powers and organizational structure of the State Capital Management Committee in Enterprises, dated 29 September 2018. Available at: <https://thuvienphapluat.vn/van-ban/doanh-nghiep/Nghi-dinh-131-2018-ND-CP-co-cau-to-chuc-cua-Uy-ban-Quan-ly-von-nha-nuoc-tai-doanh-nghiep-376933.aspx>. Accessed on 12 September 2020.

130 Vietnam Economic Times, "Committee for Management of State Capital established", (1 October 2018). Available at: <https://www.vneconomicstimes.com/article/vietnam-today/committee-for-management-of-state-capital-established>. Accessed on 30 August 2020.

131 Decision No. 1881/QĐ-BKHDT on function, mandate, and organizational structure of the Agency for Enterprise Development, dated 22 December 2017. Available at: <http://www.mpi.gov.vn/Pages/tinbai.aspx?idTin=2638&idcm=36>. Accessed on 12 September 2020. Article 2.3.

132 Organisation for Economic Co-operation and Development (OECD), 'SME Policy Index: ASEAN 2018', (2018). Available at: <https://www.oecd-ilibrary.org/sites/9789264305328-25-en/index.html?itemId=/content/component/9789264305328-25-en>. Accessed on 15 September 2019. Chapter 21.

133 State Securities Commission of Viet Nam (SSC), 'About SSC - Functions and Tasks - Status and functions'. Available at: <https://bit.ly/3ntCoDW>. Accessed on 24 August 2019. Paragraph 1.

134 State Securities Commission of Viet Nam (SSC), International Finance Corporation (IFC), 'Environmental Social (E&S) Disclosure Guide', (2016). Available at: https://sseinitiative.org/wp-content/uploads/2014/08/20161212_ES-Disclosure-Guideline-ENGLISH.pdf. Accessed on 24 August 2019. Page 4.

135 State Securities Commission of Viet Nam (SSC), International Finance Corporation (IFC), 'Vietnam Corporate Governance Code of Best Practices', (2019). Available at: https://viod.vn/wp-content/uploads/2019/08/Vietnam-CG-Code-of-Best-practices_v1.0_EV.pdf. Accessed on 24 August 2019.

136 Ibid. Paragraph 1.1.3.

137 Ibid. Paragraph 7.4.1.

the GRI or the Sustainable Assurance Standards Board.¹³⁸

- Develop a whistle-blowing mechanism that would enable employees and stakeholders to make early disclosures about wrongdoings. Employees should be protected from possible reprisals or any form of retribution as well as the risk of losing their job as a result of reporting an alleged wrongdoing.¹³⁹
- Consider and respect the interests of all stakeholders who are affected by company's operations in its decision-making, including local communities and key non-governmental organizations".¹⁴⁰
- Ensure that company's social and environmental requirements are incorporated into requirements for contractors.¹⁴¹

Meanwhile, the Code recommends that: "Board members should fully understand their fiduciary duties to act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders, while taking into account the interest of the company's relevant stakeholders."¹⁴²

- *Stock exchanges*

Viet Nam has two stock exchanges the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX).¹⁴³ Both stock exchanges joined the UN Sustainable Stock Exchanges (SSE) initiative in 2015.¹⁴⁴ There is no requirement for listing on either stock exchange of a specific recognition of a duty to society.¹⁴⁵

The Ho Chi Minh City Stock Exchange (HOSE) became operational in 2000 pursuant to Decree No. 48/1998/ND-CP on stock and securities market.¹⁴⁶ According to the latest available SSE data, the HOSE has 344 listed companies with a combined domestic market capitalisation of approximately USD 116,657 million.¹⁴⁷ The Viet Nam Sustainability Index measures the performance of the top 20 listed companies on the HOSE.¹⁴⁸ The HOSE has delivered trainings on environmental and social aspects and corporate governance.¹⁴⁹ The HOSE is a member of the Sustainability Working Group of the World Federation of Exchanges.¹⁵⁰ The HOSE does not have a listing segment for sustainability bonds, and does not publish a stand-alone sustainability report,¹⁵¹ although it did include some sustainability reporting information in its 2016 annual report.¹⁵²

Commencing operations in 2005, the Hanoi Stock Exchange (HNX) officially adopted its current name and was restructured in 2009 as a State-owned single-member LLC managed by the Ministry of Finance following Decision No. 01/2009/QD-TTg.¹⁵³ As a regulator of the securities market, the HNX organizes trade and operates markets for government bonds, shares in listed companies, unlisted public companies, and derivatives.¹⁵⁴ According to the latest available SSE data, the HNX has 366 listed companies with a combined domestic market capitalization of USD 49,000 million.¹⁵⁵ The HNX is a member of the World Federation of Exchanges, the Asian and Oceanian Stock Exchanges Federation,

138 Ibid. Paragraph 8.3.3.

139 Ibid. Paragraph 7.1.6.

140 Ibid. Paragraph 10.1.1.1.

141 Ibid. Paragraph 10.1.5.

142 Ibid. Principle 1.2.

143 See further Hanoi Stock Exchange website. Available at: <https://hnx.vn/en-gb/>. Accessed on 24 August 2019.

144 Sustainable Stock Exchanges Initiative (SSE), 'Ho Chi Minh Stock Exchange (HOSE)'. Available at: <https://sseinitiative.org/stock-exchange/hsx/>. Accessed on 24 August 2019; and Sustainable Stock Exchanges Initiative (SSE), 'Hanoi Stock Exchange (HNX)'. Available at: <https://sseinitiative.org/data/hnx/>. Accessed on 24 August 2019.

145 See further UNHRC, 'Human rights and corporate law'. Paragraph 7 (n. 1).

146 SSE Initiative, 'HOSE' (n. 144).

147 Ibid.

148 Ibid.

149 Ibid.

150 Ho Chi Minh Stock Exchange, 'HOSE - Sustainable Development'. Available at: <https://www.hsx.vn/Modules/CMS/Web/View-Article?id=438348bb-bbf9-45cb-b9cb-1263c1904218&fid=91ec7f-4ca1c34be6b569389f070c1e51>. Accessed on 24 August 2019.

151 SSE Initiative, 'HOSE' (n. 144).

152 Ho Chi Minh Stock Exchange, 'Annual Report 2016'. Available at: <https://www.hsx.vn/Areas/Desktop/Web/DownloadAnnualReport?ownerId=ae7ecbef-06a1-42e1-a178-a23cec0a0de1&langId=10dd075f-c751-46d2-b598-022850e517f6>. Accessed on 25 August 2019.

153 Hanoi Stock Exchange, 'Milestones'. Available at: <https://hnx.vn/en-gb/gioi-thieu-hnx-lspt.html>. Accessed on 24 August 2019.

154 Ibid.

155 SSE Initiative, 'HNX' (n. 144).

and ASEAN Exchanges.¹⁵⁶ As a listing rule, the HNX requires ESG reporting by listed companies.¹⁵⁷ The HNX published 'Guidance on ESG Disclosure for listed companies' in 2016 in accordance with the sustainability reporting requirements set out in Circular No. 155/2015/TT-BTC.¹⁵⁸ The HNX has recently conducted training workshops on the information disclosure standards of the GRI,¹⁵⁹ sustainability reporting for public listed companies, and international practices on investor relations.¹⁶⁰ The HNX is not covered by any sustainability-related index, does not have a listing segment for sustainability bonds, and does not publish a sustainability report.¹⁶¹

Recommendations

1. Conduct a thorough review of the recently enacted Law on Investment (2020), the Law on Enterprises (2020) and the Law on Securities (2019) to assess compatibility with the UNGPs and other relevant international standards, and undertake regulatory revisions as necessary to ensure alignment in the implementation of these laws through guiding documents.
2. Ensure independent separation of responsibilities between oversight for and ownership of SOEs to further ensure autonomy of both responsibilities, including in terms of distinct institutional structures, as well as ensuring adequate budgeting, and human resource allocations for regulators of SOEs.¹⁶²
3. Require SOEs to publicly disclose ESG information on an annual basis, taking into account the relevant provisions of the UNGPs, in particular Principles 3, 4, and 21.¹⁶³

4. Ensure effective implementation of Circular No. 155/2015/TT-BTC on guidelines for information disclosure on securities markets.
5. Actively promote utilisation by public listed companies of the 2019 SSC/IFC Vietnam Corporate Governance Code of Best Practices,¹⁶⁴ including by creating persuasive incentives for its implementation.
6. Actively promote utilisation by public listed companies of the 2016 SSC/IFC Environmental and Social Disclosure Guide,¹⁶⁵ including by creating persuasive incentives for its implementation.
7. Require the HNX and HOSE to issue annual sustainability reports, in line with the SSE initiative.¹⁶⁶
8. Require HNX to develop a sustainability index, in line with the SSE initiative.¹⁶⁷
9. Require the HNX and HOSE to establish listing segments for sustainability bonds, in line with the SSE initiative.¹⁶⁸
10. Promote the recognition of a specific duty to society as a requirement for the establishment and operation of LLCs, SOEs, and JSCs in line with international good practices identified in by UN Special Representative of the Secretary-General SRSG 'Corporate Law Project'.¹⁶⁹
11. Develop incentives for enterprises to specify a minimum balance of gender representation,¹⁷⁰ as well as minimum requirements of the representation of stakeholders such as workers and community members in respect of the Members' Councils of LLCs; Members' Councils of State Owned Enterprises

156 Hanoi Stock Exchange, 'International Cooperation' (n. 143).

157 SSE Initiative, 'HNX' (n. 144).

158 Ibid.

159 See further SSE Initiative website. Available at: <https://sseinitiative.org/data/hnx>. Accessed on 24 August 2019.

160 SSE Initiative, 'HNX' (n. 144).

161 Ibid.

162 See further the corresponding recommendation set out in OECD, 'Investment Policy Reviews: Viet Nam 2018', (2018). Available at: <https://www.oecd.org/countries/vietnam/oecd-investment-policy-reviews-viet-nam-2017-9789264282957-en.htm>. Accessed on 15 September 2019. Page 45.

163 UNGPs. See Principles 3, 4 and 21 (n. 2).

164 SSC and IFC, 'Vietnam Corporate Governance Code of Best Practices', (2019) (n. 135).

165 SSC and IFC, 'Environmental Social (E&S) Disclosure Guide', (2016). Page 4 (n. 134).

166 SSE Initiative (n. 159).

167 Ibid.

168 Ibid.

169 See further UNHRC, 'Human rights and corporate law' (n. 1).

170 For example, the Women's Empowerment Principles (WEPs) recommend that all business enterprises: "Assure sufficient participation of women – 30% or greater – in decision-making and governance at all levels and across all business areas." Available at: <https://www.weps.org/>. Accessed on 26 August 2019. Principle 2.

(SOEs); and the Boards of Management of JSCs.¹⁷¹

12. Promote adoption by business enterprises of international good practices for non-financial disclosures and reporting, including information and policies related to environmental protection, social responsibility, anti-corruption, and diversity on company boards.¹⁷²

2.2 Investment Law

As noted by the OECD, FDI inflows in Viet Nam are at record levels and growing.¹⁷³ As shown in UN Conference on Trade and Development (UNCTAD) data, inward flows of FDI in 2018 were USD 15.5 billion and outward FDI flows were USD 598 million.¹⁷⁴ Announced greenfield investment projects in 2018 totalled USD 29 billion.¹⁷⁵ As of 2014, foreign-owned enterprises accounted for more than 6 per cent of employment, 16 per cent of GDP, and 38 per cent of economic growth.¹⁷⁶

International commitments

The UNGPs set out that: “States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.”¹⁷⁷ The UNGPs note that: “Economic agreements concluded by States, either with other States or with business enterprises – such as bilateral investment treaties ... can ... affect the domestic

policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements.”¹⁷⁸

The UNGPs further highlight the importance of States “supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices ... including those responsible for ... investment ... to be informed of and act in a manner compatible” with the Governments’ international obligations on ensuring responsible business practice.¹⁷⁹ The UNGPs also set out that that States should protect against abuses by business enterprises that are owned or controlled by the State such as export credit agencies and official investment insurance or guarantee agencies, including by requiring due diligence on social and environmental standards.¹⁸⁰ Meanwhile, as noted by the UNGPs, performance standards covering social and environmental aspects are required by certain institutions that support overseas investments.¹⁸¹ The Performance Standards of the IFC are an important example.¹⁸² Meanwhile, Viet Nam is party to a number of multilateral investment and trade agreements as well as more than 60 bilateral investment treaties with various provisions of relevance to responsible business practice.¹⁸³

Regulatory framework

Investment in Viet Nam is primarily regulated by the Law on Investment. The Law on

171 UNHRC, ‘Human rights and corporate law’. Paragraph 23 and 24 (n. 1).

172 See further the recommendation set out in OECD, ‘Investment Policy Reviews: Viet Nam 2018’, (2018). Page 45 (n. 162). See also examples of non-financial reporting from the EU non-financial reporting directive (NFRD), Directive 2014/95/EU.

173 OECD, ‘Investment Policy Reviews: Viet Nam 2018’. Page 29 (n. 162).

174 United Nations Conference on Trade and Development (UNCTAD), ‘World Investment Report 2019: Special Economic Zones, Country Fact Sheet: Viet Nam’. Available at: <https://worldinvestmentreport.unctad.org/world-investment-report-2019>. Accessed on 15 September 2019.

175 Ibid.

176 OECD, ‘Investment Policy Reviews: Viet Nam 2018’. Page 30 (n. 162).

177 UNGPs. Principle 9 (n. 2).

178 Ibid.

179 Ibid. Principle 8.

180 Ibid. Principle 4.

181 Ibid. Principle 2.

182 International Finance Corporation (IFC), ‘Performance Standards’. Available at: https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards. Accessed on 15 September 2019.

183 OECD, ‘Investment Policy Reviews: Viet Nam 2018’. Page 41 (n. 162).

Investment regulates both foreign and domestic investment, as well as outward investment from Viet Nam.¹⁸⁴ The Law on Investment sets out a ‘negative list’ of sectors in which investment, both foreign and domestic, is banned namely: narcotic substances, specific chemicals and minerals, specific specimens of wild flora and fauna or animals; human trafficking; prostitution; trade in human tissues and body parts, and human cloning.¹⁸⁵ The Law on Investment provides for the definition of a further set of sectors to conditional investment “for reasons of national defense and security, social order and security, social ethics, or public health.”¹⁸⁶

- *Approval of new investments*

Under the Law on Investment, investments of certain types are subject to varying levels of approval. Approval of the Prime Minister is required for investment projects, regardless of capital source, of the following types: Projects in highlands areas that require relocation of more than 10,000 people or more; projects in all other areas that require relocation of more than 20,000 people; Construction of airports; air transport and national seaports; petroleum exploration, extraction, and refinery; betting and casino services; telecommunications services with network infrastructure; afforestation; publishing and journalism.¹⁸⁷ Approval of the National Assembly is required for investment projects “that have significant effects on the environment or potentially have seriously affect the environment”, including nuclear power plants, projects that change the purpose of land in mountainous areas that require the relocation of more than 20,000 people, and projects that require relocation of more than 50,000 people in all other areas.¹⁸⁸

184 Law on Investment, (2014). Article 1 and 13; Law on Investment, (2020). Article 1 and 13 (n. 64).

185 Law on Investment, (2014). Article 5; Law on Investment, (2020). Article 5 (n. 64).

186 Law on Investment, (2014). Article 6 and Annex 4; Law on Investment, (2020). Article 6 and Annex 4 (n. 64).

187 Law on Investment, (2014) Article 31; Law on Investment, (2020). Article 31 (n. 64).

188 Law on Investment (2014). Article 30; Law on Investment (2020). Article 30 (n. 64).

- *Responsibilities of investors*

Foreign investors as well as foreign majority-owned investors are required to apply for an Investment Registration Certificate (IRC) as well as an Enterprise Registration Certificate (ERC). Domestic investors are not required to apply for an IRC. All investment proposals must specify an “assessment of [the] socio-economic effects of the project”, demand for land use, and its projected labour demand.¹⁸⁹ In addition, for projects subject to the Prime Minister’s approval or approval of the National Assembly, investors must submit a land clearance and relocation plan, as well as a “preliminary assessment of environmental impacts” and “environmental protection measures.”¹⁹⁰ Appraisal of an application for investment registration by the investment registration agency includes an evaluation of conformity of the investment project with the general master plan for socioeconomic development, the master plan for development of an industry and zoning for land use, and evaluation of the impact and socio-economic efficiency of the project.¹⁹¹ During project implementation, investors and the business organizations executing investment projects are required to submit periodic reports to registry offices and local statistical agencies on the project execution, which specify: capital; investment results; employees; payment to government budget; investment in R&D; environmental protection, and; other professional indicators.¹⁹²

- *Regulation of active investment projects*

Progress of investments, assessing the results of investments and resolving actions taken against violations of investment agreements all fall under the Law on Investment.¹⁹³

189 Law on Investment, (2014). Article 33; Law on Investment, (2020). Article 33 (n. 64).

190 Law on Investment, (2014). Articles 34 and 35; Law on Investment, (2020). Articles 34 and Article 35 (n. 64).

191 Law on Investment, (2014). Article 33; Law on Investment, (2020). Article 33 (n. 64).

192 Law on Investment, (2014). Article 71(2)(a); Law on Investment, (2020). Article 72(2)(a) (n. 64).

193 Law on Investment, (2014), Chapter IV; Law on Investment, (2020). Chapter IV (n. 64).

Active investment projects may be suspended in part or in whole or terminated altogether by the investment authority on several grounds including: the protection of historical remains, relics, antiques, national treasures according to the Law on Cultural Heritage; for environmental recovery at the request of an environment authority, and; for implementation of occupational safety measures at the request of a labour authority.¹⁹⁴

Investments made within Viet Nam's territory must comply with other relevant laws, where sanctions for violations are not limited to suspension of investment projects. For example, the Law on the Environmental Protection also stipulates the responsibility of investors to pay compensation for environmental degradation caused.¹⁹⁵

Upon the expiration of investment project, investors who wish to continue executing their investments must not use obsolete technology, potentially causing environmental pollution or natural-resource intensive projects.¹⁹⁶

- *Investment incentives and support*

Various forms of investment incentive and support are set out in the Law on Investment, including reduced corporate and import tax rates, exempted or reduced land rentals and support on levies, infrastructure, training, market development, R&D, and access to credit.¹⁹⁷ Eligible investment categories are specified under the Law, including projects with capital investment exceeding VND 6,000 billion, projects in rural areas that employ more than 500 workers, high-technology and Information Technology (IT) investments, and business lines including renewable energy and energy efficiency projects, agriculture, waste, infrastructure, education, healthcare, social services for children, projects in disadvantaged

geographic areas, projects in industrial parks, export-processing zones (EPZs), high-tech zones, and economic zones.¹⁹⁸ The Law on Investment also provides for the development of infrastructure of industrial parks, EPZs, hi-tech zones, economic zones,¹⁹⁹ as well as for the development of housing, public facilities and amenities for workers employed in industrial parks.²⁰⁰ The Law provides a stabilisation clause under which investors are entitled to enjoy the incentives not lower than which they were entitled to prior to regulatory change, with the important exemption of not applying where "regulations of law are changed for reasons of national defense and security, social order and security, social ethics, public health, or environmental protection."²⁰¹

Institutional framework

MPI is responsible for promulgating subsidiary regulations pertaining to the management of investments in Viet Nam as well as outwards investments, and for developing investment strategies, plans, and policies, maintaining the National Investment Information System, inspecting investments, requesting competent authorities to decide the suspension of projects that are approved or adjusted ultra vires or against regulations of law on investment; management of industrial parks, EPZs, and economic zones, investment promotion, negotiating international investment agreements.²⁰² Provincial People's Committees of provinces, the Department of Planning and Investment, management boards of industrial parks, EPZs, hi tech zones, economic zones also have respective delegated responsibilities regarding investment projects.²⁰³

194 Law on Investment, (2014). Articles 47 and 48; Law on Investment (2020). Articles 47 and 48 (n. 64).

195 Law on Environmental Protection (2014), Law No. 55/2014/QH13. Available at: <http://extwprlegs1.fao.org/docs/pdf/vie64190.pdf>. Accessed on 12 September 2020. Article 112(1)(d).

196 Law on Investment, (2020). Article 44.4 (n. 64).

197 Law on Investment, (2014). Article 15 and Article 19; Law on Investment, (2020). Articles 15 and 18 (n. 64).

198 Law on Investment (2014). Article 15; Law on Investment, (2020). Articles 15 and 16 (n. 64)

199 Law on Investment (2014). Article 20; Law on Investment, (2020). Article 19 (n. 64).

200 Law on Investment (2014). Article 21; Law on Investment, (2020). Law (2020). Article 77(9) (n. 64).

201 Law on Investment (2014). Article 13(3); Law on Investment, (2020). Article 13(3) (n. 64).

202 Law on Investment (2014). Article 68; Law on Investment, (2020). Article 6 and Annex 4 (n. 64).

203 Ibid.

Recommendations

Issue subsidiary regulations to establish a specific requirement that the actual and potential adverse impacts of investment projects on international social and environmental standards be assessed and addressed, ensuring integration of responsible business practice in the scope, content, and process of environmental and social impact assessment, monitoring, reporting, remediation, and remedy at all significant steps of the investment project cycle.²⁰⁴

Ensure responsible business expectations are included in FDI attraction efforts by central and provincial investment promotion authorities and facilitate exchange of information between foreign and domestic companies on responsible business practices, including by providing guidance for provincial authorities on screening for responsible investments.²⁰⁵

204 Danish Institute for Human Rights (DIHR), International Petroleum Industry Environmental Conservation Association (IPIECA), 'Integrating human rights into environmental, social and health impact assessments. A practical guide for the oil and gas industry', (2013). Available at: <http://www.ipieca.org/resources/good-practice/integrating-human-rights-into-environmental-social-and-health-impact-assessments-a-practical-guide-for-the-oil-and-gas-industry>. Accessed on 15 September 2019.

205 UNGPs. Principle 8 (n. 2). See further the corresponding recommendation set out in OECD, 'Investment Policy Reviews: Viet Nam 2018', (2018). Chapter 9 (n. 162).

CHAPTER 3

LABOUR RIGHTS



This chapter provides an overview of the regulatory framework in Viet Nam with respect to labour rights and is organised into four thematic sections: Industrial Relations; Working Conditions; Forced Labour, Human Trafficking, Debt Bondage and Forced Marriage, and; Child Labour. The UNGPs emphasize that labour laws, regulations and means of adjudication are important means through which States can meet their duty to protect against business-related harm,²⁰⁶ and highlight the important role that labour departments and agencies have to play in ensuring that States act in a manner compatible with their international obligations.²⁰⁷ The UNGPs cite labour tribunals as a key example of the means through which States can fulfil their duty to take appropriate steps to ensure that when business-related abuses occurs those affected have access to effective remedy,²⁰⁸ further reinforcing the important role of legitimate trade unions in addressing labour-related disputes.²⁰⁹ The UNGPs further specify that responsible business practice refers, at a minimum, to the ILO's Declaration on Fundamental Principles and Rights at Work, in addition to key instruments of IHRL.²¹⁰

The relevant Goal of the SDGs is Goal 8, on decent work and economic growth, which aims to: "Promote ... employment and decent work for all."²¹¹ Specific targets include: "By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value" and "Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment."²¹²

206 UNGPs. Principle 1 and Principle 3 (n. 2).

207 Ibid. Principle 8.

208 Ibid. Principle 25.

209 Ibid. Principle 29.

210 Ibid. Principle 12.

211 UN, 'Sustainable Development Goals', 'Goal 8: Decent work and economic growth'. Available at: <https://www.un.org/sustainabledevelopment/economic-growth/>. Accessed on 6 September 2019.

212 Ibid. Targets 8.5 and 8.8.

3.1 Industrial Relations

Industrial relations refers to institutions and processes of collective dialogue and bargaining between employees and representative organisations, trade unions, workers' organisations, employers' organizations, for: the determination of working conditions; terms of employment; relations between workers and employers and their respective organizations, and; the settlement of industrial disputes, within frameworks established by the State.²¹³ Under international law, freedom of association and the effective recognition of the right to collective bargaining have the status of fundamental principles and rights at work.²¹⁴ Collective bargaining is further considered to be an "enabling right" since it provides a means by which other conditions of work can be negotiated between trade unions and employers.²¹⁵ As an instrument of good governance, sound industrial relations foster cooperation and economic performance, helping to create an enabling environment for the realisation of improved conditions of work at enterprise, sectoral, and national levels.²¹⁶ As such, the ILO has identified freedom of association and collective bargaining as being indispensable means to ensure the long term economic and social sustainability of any development process.²¹⁷

International commitments

Viet Nam's relevant international commitments regarding industrial relations are set out in ILS, IHRL, and international trade agreements recently concluded by Viet Nam, notably the CPTPP and the EVFTA. Both agreements use ILO Fundamental Principles and Rights at Work

213 ILO, 'Collective Bargaining: A Policy Guide', (2015). Available at: https://www.ilo.org/travail/whatwedo/instructionmaterials/WCMS_425004/lang--en/index.htm. Accessed on 24 September 2020. Page 2.

214 Ibid. Page 2. See further ILO, 'ILO Declaration on Fundamental Principles and Rights at Work'. Available at: <https://www.ilo.org/declaration/lang--en/index.htm>. Accessed on 22 September 2020.

215 Ibid.

216 ILO, 'Decent Work for Sustainable Development', (2017). Available at: <https://sustainabledevelopment.un.org/content/documents/14618ILO.pdf>. Accessed on 10 September 2019.

217 Ibid.

of 1998,²¹⁸ that covers all the eight core labour standards.

International Labour Standards

ILO member States, are obligated to respect, promote and realize the “freedom of association and the effective recognition of the right to collective bargaining.”²¹⁹ Specific ILS on industrial relations cover freedom of association and collective bargaining, tripartite social dialogue, and the peaceful resolution of labour disputes, amongst others. The two fundamental ILO conventions that form the basic international law on this subject are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).²²⁰

Convention No. 98, ratified by Viet Nam in 2019,²²¹ requires Viet Nam to establish machinery for the purpose of ensuring respect for the right to organise and to take measures to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.²²² Viet Nam is provisionally scheduled to submit its First Report to the ILO under Convention No. 98 in 2021, followed by its first Regular Report to the ILO in 2025.²²³

Viet Nam has committed to ratifying Convention No. 87 by 2023.²²⁴ Convention

No. 87 sets out the rights of workers and employers to establish and join organizations of their own choosing without previous authorization, the right of such workers’ and employers’ organizations to organize freely and not be liable to be dissolved or suspended by administrative authority, the right of such organizations to establish and join federations and confederations, and the right of such federations and confederations to affiliate with international organizations of workers and employers.²²⁵ Viet Nam has communicated to the ILO that the possibility of ratifying additional relevant ILO Conventions, specifically the Collective Bargaining Convention, 1981 (No. 154), and the Labour Relations (Public Service) Convention, 1978 (No. 151), will be examined at a later date,²²⁶ and has requested technical assistance from the ILO in that connection.²²⁷

The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), emphasises the need for States to establish dispute resolution procedures that are inexpensive, expeditious, and, where appropriate, that include equal representation of employers and workers.²²⁸ Meanwhile, a number of other ILO Conventions and Recommendations provide further ILS relevant to industrial

218 ILO, ‘Declaration on Fundamental Principles and Rights at Work and its Follow-up’, (1998). Available at: <https://www.ilo.org/declaration/lang-en/index.htm>. Accessed on 19 May 2020.

219 Ibid. (Annex revised 15 June 2010) Page 1.

220 Rodgers, G., Lee, E., Swepston, L., Van Daele, J. ‘The International Labour Organization and the Quest for Social Justice 1919-2009’, (2009). Geneva-Ithaca: ILO-Cornell University Press. Available at: https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_104643/lang-en/index.htm. Accessed on 18 August 2019. Page 49.

221 ILO, ‘Ratifications for Viet Nam’ (n. 23).

222 ILO, ‘Right to Organise and Collective Bargaining Convention, 1949’ (No. 98). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243. Accessed on 12 July 2020. Article 3, 4.

223 ILO, ‘Requested reports and replies to CEACR comments: Viet Nam’. Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:14000:0::NO:14000:P14000_COUNTRY_ID:103004. Accessed on 28 July 2019.

224 ILO, ‘ILO welcomes Viet Nam’s vote to ratify ILO fundamental

convention on collective bargaining”, (14 June 2019). Available at: https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_710542/lang-en/index.htm. See also, European Commission, ‘EU-Viet Nam free trade agreement - Joint press statement by Commissioner Malmström and Minister Tran Tuan Anh’ (30 June 2019). Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2041>. The UN Committee on Economic, Social and Cultural Rights (CESCR) has invited Viet Nam to ratify Convention No. 87. See further UNHRC, Working Group on the Universal Periodic Review, Thirty-second session, 21 January–1 February 2019, ‘Compilation on Viet Nam – Report of the Office of the United Nations High Commissioner for Human Rights’, (2018). UN Doc A/HRC/WG.6/32/VNM/2. 15 November 2018. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/VNindex.aspx>. Accessed on 20 August 2019. Section II, paragraph 6.

225 ILO, ‘International Labour Standards on Freedom of association’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang-en/index.htm>. Accessed on 18 August 2019.

226 ILO, ‘Report III(1B): Collective bargaining in the public service: a way forward’, General Survey of the Committee of Experts on the Application of Conventions and Recommendations (2013) concerning labour relations and collective bargaining in the public service, (2013). Available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/102/reports/reports-submitted/WCMS_205518/lang-en/index.htm. Accessed on 20 August 2019. Paragraphs 505, 532.

227 Ibid.

228 ILO, ‘Voluntary Conciliation and Arbitration Recommendation, 1951’ (No. 92). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R092. Accessed on 5 September 2019.

relations²²⁹ such as ILO recommendation on Collective Agreements Recommendation, 1951 (No. 91),²³⁰ Examination of Grievances Recommendation, 1967 (No. 130).²³¹ SDG Indicator 8.8.2 is: “Level of national compliance with labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation, by sex and migrant status.”²³²

- *International Human Rights Law*

The Universal Declaration of Human Rights (UDHR) states that: “Everyone has the right to form and to join trade unions for the protection of his interests”;²³³ “Everyone has the right to freedom of peaceful assembly and association”;²³⁴ and that: “No one may be compelled to belong to an association.”²³⁵ The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Viet Nam, requires States Parties to: undertake to ensure the right to freely form and join trade unions; the right of trade unions to function freely; the right to strike; the right of trade unions to establish national federations or confederations; and the right of such federations or confederations to form or join international trade union organizations.²³⁶ The International Covenant on Civil and Political Rights (ICCPR), ratified by Viet Nam, sets out the right to freedom of association, including the right to form and

join trade unions,²³⁷ and specifies that: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”²³⁸

- *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*

The CPTPP addresses industrial relations within its Chapter 19 entitled “Labour”²³⁹ which requires Viet Nam to adopt and maintain in its laws, regulations, and practices, the right to “freedom of association and the effective recognition of the right to collective bargaining” as stated in the ILO Declaration on Fundamental Principles and Rights at Work.²⁴⁰ The CPTPP sets out specific related requirements regarding enforcement measures,²⁴¹ public awareness,²⁴² promoting CSR initiatives on labour issues,²⁴³ public submissions,²⁴⁴ CPTPP “Labour Council”,²⁴⁵ and CPTPP “Contact Points.”²⁴⁶

In terms of domestic enforcement measures, the CPTPP prohibits Viet Nam from failing to “effectively enforce its labour laws”, and specifies that decisions relating to the provision of resources for enforcement “shall not excuse” any such failure.²⁴⁷ Viet Nam is further required to “promote public awareness of its labour laws” by ensuring that information relating to its labour laws and enforcement and compliance procedures is publicly available.²⁴⁸ At the same time, Viet Nam is prohibited from waiving or otherwise

229 ILO, A helpful annotated list of some of the most relevant of these Conventions and Recommendations is provided in the ILO’s ‘Collective Bargaining: A Policy Guide’, (2015). Pages 12-13 (n. 213).

230 ILO, ‘Recommendation on Collective Agreements Recommendation, 1951’ (No. 91). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312429:NO. Accessed on 19 May 2020.

231 ILO, ‘Examination of Grievances Recommendation, 1967’ (No. 130). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312468:NO. Accessed on 19 May 2020.

232 UN, ‘SDG Indicators: Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development’. UN Doc A/RES/71/313; E/CN.3/2018/2; E/CN.3/2019/2. Available at: <https://unstats.un.org/sdgs/indicators/indicators-list>. Accessed on 6 September 2019.

233 Universal Declaration of Human Rights, proclaimed by the UN General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A). Available at: <https://www.un.org/en/universal-declaration-human-rights>. Accessed on 18 August 2019. Article 23(4).

234 Ibid. Article 20(1).

235 Ibid. Article 20(2).

236 International Covenant on Economic, Social and Cultural Rights (ICESCR), (1966). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>. Accessed on 18 August 2019. Article 8.

237 International Covenant on Civil and Political Rights (ICCPR), (1966). Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed on 18 August 2019. Article 22(1).

238 Ibid. Article 22(2).

239 CPTPP (n. 29).

240 Ibid. Article 19.3.1.

241 Ibid. Articles 19.4 and 19.5.

242 Ibid. Article 19.8.

243 Ibid. Article 9.7.

244 Ibid. Article 19.9.

245 Ibid. Article 19.12.

246 Ibid. Article 19.13.

247 Ibid. Article 19.5.

248 Ibid. Article 19.8.

derogating from its statutes or regulations relating to the rights to freedom of association and the effective recognition of the rights to collective bargaining, including with respect to special trade or customs areas, such as economic zones.²⁴⁹

In terms of enforcement measures established under the CPTPP itself, other parties to the CPTPP seeking to establish a violation of an obligation under the agreement would need to demonstrate that Viet Nam had “failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties.”²⁵⁰ Any Party to the CPTPP may request “Cooperative Labour Dialogue” with any other party on any matter arising under the Labour chapter of the CPTPP. Such Cooperative Labour Dialogue may result in the development of an action plan including specific and verifiable steps, such as on labour inspection, investigation or compliance; independent verification of compliance or implementation; as well as cooperative programmes and capacity building.

The CPTPP provides for the receipt and consideration of “Public Submissions” by persons or organisations, and requires Viet Nam to provide a timely response, in writing as appropriate, and make the submission available to the other Parties to the CPTPP and the public, as appropriate.²⁵¹ The CPTPP establishes a “Labour Council” composed of senior governmental representatives that shall “provide a means for receiving and considering the views of interested persons”, as well as “Contact Points” within the labour ministries of each Party.²⁵²

- *Viet Nam – European Union Free Trade Agreement (EVFTA)*

As a Party to the EVFTA, Viet Nam has reaffirmed its commitment, in accordance with its obligations under the ILO Declaration on Fundamental Principles and Rights at

249 Ibid. Article 19.4.

250 Ibid. Article 19.3.

251 Ibid. Article 19.9.

252 Ibid. Articles 19.2 and 19.3.

Work, including to respect, promote and effectively implement the right to freedom of association and the effective recognition of the right to collective bargaining.²⁵³ In particular, the EVFTA requires Viet Nam to “make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions,” which include, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), not yet ratified by Viet Nam and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Viet Nam in 2019, as well as to “consider the ratification of other conventions that are classified as up to date by the ILO.”²⁵⁴

In terms of domestic enforcement, Viet Nam has reaffirmed its commitment under the EVFTA to “effectively implement in its domestic laws and regulations and practice the ILO conventions ratified by Viet Nam.”²⁵⁵ As a Party to EVFTA, Viet Nam has further acknowledged that “weakening the levels of protection in ... labour areas is detrimental” and that “it is inappropriate to encourage trade and investment by weakening the levels of protection afforded in domestic ... labour law.”²⁵⁶ The EVFTA prohibits Viet Nam from waiving or derogating from its labour laws, in a manner affecting trade and investment between the Parties,²⁵⁷ and from failing “through a sustained or recurring course of action or inaction ... to effectively enforce its environmental and labour laws, as an encouragement for trade and investment.”²⁵⁸

Regulatory framework

The Constitution enshrines “the right to freedom of opinion and speech, freedom of the press, to access to information, to assemble, form associations and hold

253 EVFTA (n. 28).

254 CPTPP, Article 13.4.3 (n. 29); A list of such conventions is maintained by the ILO at: ILO, ‘Up-to-date Conventions and Recommendations’. Available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12020:0::NO>. Accessed on 18 August 2019.

255 EVFTA. Article 13.4.4 (n. 28).

256 Ibid. Article 13.3.1.

257 Ibid. Article 13.3.2.

258 Ibid. Article 13.3.3.

demonstrations” and specifies that: “The practice of these rights shall be provided by the law.”²⁵⁹ The Constitution defines “Trade Union” as “the socio-political organization of the working class and the toiling people, created on the voluntary basis, [that] represents the workers, looks after and protects the legitimate and legal rights and interests of the workers; participates in state administration and social management; participates in the control, inspection, and supervision of the activity of State organs, organizations, units, and enterprises with respects to the matters concerning the rights and duties of the workers; propagandizes and mobilizes learning, development of the ability and professional skills, conformity of laws, and construction and defence of the Fatherland among the workers.”²⁶⁰ The Constitution further specifies that: “The Vietnam Trade Union” has the role of “represent[ing] and protect[ing] the legal and legitimate rights and interests of [its] members and cooperat[ing] with others members of the Fatherland Front, unifying the activities of the Fatherland Front.”²⁶¹

Laws that are of particular relevance to industrial relations in Viet Nam include the Law on Trade Unions (2012),²⁶² and the Labour Code (2012, revised in 2019).²⁶³ Pursuant to these statutes, a number of Decrees, Decisions, and Circulars have been adopted that guide the implementation of the Labour Code and related legislation in respect of industrial relations.²⁶⁴ The UN Human Rights Committee on Civil and Political Rights (HRC) noted in the Concluding Observations of its 125th

session in 2019 that the Committee remains concerned “about undue restrictions on the establishment, management and operation of public associations, including the right to form independent trade unions.”²⁶⁵ The UN Committee on Economic, Social and Cultural Rights (CESCR) has noted with concern that under the Law on Trade Unions, “the establishment of trade unions and participation in trade union activities are still subject to the statutes of the Viet Nam General Confederation of Labour” (VGCL).²⁶⁶ The CESCR has further noted with concern the “strict conditions for the lawful exercise of the right to strike as well as the broad definition of “essential services”, which restrict civil servants’ right to strike.”²⁶⁷ Moreover, the CESCR has indicated its concern that “participation in illegal strikes can lead to payment of compensation to employers up to the equivalent of three months’ salary.”²⁶⁸

A process to revise the Labour Code was undertaken from 2016 to 2019.²⁶⁹ The newly revised Labour Code (2019) has granted workers the legal right to join or form a representative organization of their choosing, that is not necessarily affiliated with VGCL, but only at enterprise-level; provide better protection from anti-union discrimination and interference in unions; and establish clearer processes and encouragement for collective bargaining.²⁷⁰

259 Constitution of Vietnam. Article 25 (n. 60).

260 Ibid. Article 10.

261 Ibid. Article 9(1).

262 Law on Trade Unions, (2012), Law No. 12/2012/QH13. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&isn=91648. This law currently undergoing a reform process expected to be passed by the National Assembly on its 11th General Meeting in March 2021. Accessed on 10 September 2020.

263 Labour Code, (2012), Law No. 10/2012/QH13. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&isn=91650. Accessed on 20 May 2020; Labour Code, (2019), Law No. 45/2019/QH14. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=198540. Accessed on 20 May 2020.

264 These various Circulars and Decrees are available via ILO’s ‘NORMLEX’ platform. Available at: https://www.ilo.org/global/standards/WCMS_748754/lang--en/index.htm. Accessed on 24 September 2020.

265 UN Human Rights Committee (HRC), ‘Concluding observations - Viet Nam’, (2019), CCPR/C/VNM/CO/3. Available at: <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/VNIndex.aspx>. Accessed on 18 August 2019. Paragraph 49.

266 UN Committee on Economic, Social and Cultural Rights (CESCR), ‘Concluding observations - Viet Nam’, (2014), E/C.12/VNM/CO/2-4. Available at: <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/VNIndex.aspx>. Accessed on 28 July 2019. Paragraph 21.

267 Ibid. Paragraph 20.

268 Ibid.

269 ILO, ‘Draft revised Labour Code open for comments’. Available at: https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_551820/lang--en/index.htm. Accessed on 18 August 2019. See also ILO, Cooney, S., Tran Thi Kieu Trang, ‘Dispute Resolution in Viet Nam – A Rapid Diagnosis: A Working Paper on Possible Reforms of Provisions Relating to Industrial Relations and Dispute Settlement in the Viet Nam Labour Code 2012’ (August 2019). Available at: https://www.ilo.org/hanoi/Whatwedo/Publications/WCMS_715202/lang--en/index.htm. Accessed on 5 September 2019. Page 9.

270 ILO, ‘What’s new with draft revised Labour Code?’, (14 May 2019). Available at: https://www.ilo.org/hanoi/Whatwedo/Publications/WCMS_700942/lang--en/index.htm. Accessed on 10 September 2019.

Institutional framework

VGCL is responsible for developing/reforming the Trade Union Law. The Ministry of Labour, Invalids and Social Affairs (MOLISA) is charged with the development of labour-related laws and regulations and the implementation of these laws and of measures relating to industrial relations. The Department of Industrial Relations and Wage, under MOLISA, is the technical department responsible for administration of labour relations.

The Labour Code sets out the institutional framework for the current labour dispute resolution system, which distinguishes between individual rights and interest disputes, collective rights disputes, and collective interest disputes, and specifies that mediation can be used for all three kinds of disputes.²⁷¹ The procedure in case mediation fails then depends on the nature of the dispute. Rights-based collective disputes may be adjudicated by the People's Courts whereas all kinds of disputes interest disputes may, with the consent of the parties, be adjudicated by Labour Arbitration Councils.²⁷² In relation to the selection of arbitrators, under the Labour Code (2019) arbitrators should now be nominated by three parties, employees, employers and government, with each party selecting five arbitrators at a minimum.²⁷³

Recommendations

1. Ratify and effectively implement the Freedom of Association and Protection of the Right to Organise Convention (No. 87).
2. Revise the Trade Union Law to ensure its alignment with the Labour Code (2019) and with Conventions No. 87 and 98.
3. Effectively implement Article 22 of the ICCPR, in line with the recommendations

²⁷¹ Labour Code, (2012). Chapter XIV; Labour Code, (2019). Chapter XIV (n. 263).

²⁷² Labour Code (2012), Articles 205 and 206; Labour Code, (2019), Articles 192, 193, 197 (n. 263).

²⁷³ Labour Code, (2019). Article 185(2) (n. 263).

contained within the 2019 Concluding Observations issued by the HRC.²⁷⁴ In particular:

- Give full effect to the constitutional guarantee of freedom of association.²⁷⁵
 - Expedite the adoption of the proposed Law on Associations and ensure that its provisions, relevant regulations and practices are in conformity with Article 22 of the ICCPR. In particular, the proposed Law on Associations should respect the right of individuals to form or join a trade union of their choice.²⁷⁶
 - Ensure that the Law on Associations reflects the 'Joint UN Recommendations on the Law on Associations' issued in October 2016.²⁷⁷
4. Effectively implement the relevant labour related provisions of Chapter 19 ("Labour") of the CPTPP.
 5. Effectively implement the relevant labour related provisions of Chapter 13 ("Trade and Sustainable Development") of the EVFTA.
 6. Take necessary measures to enhance public participation in the Domestic Advisory Group, including the creation of a participatory platform with the utilization of new technologies, to monitor implementation of provisions related to labour under the EVFTA.
 7. Strengthen the system for the settlement of industrial disputes such that it is effective and aligned to ILO Conventions No. 87 and No. 98, in particular, by establishing an authoritative, efficient, and equitable labour disputes resolution institution with comprehensive jurisdictional coverage, including a focus on professionalization of the Labour Arbitration Councils, and giving arbitrators the power to make

²⁷⁴ HRC, 'Concluding observations of Viet Nam'. Paragraph 50 (n. 265).

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ UN in Vietnam, 'Joint UN Recommendations on the Law on Associations', (2016). Available at: <https://vietnam.un.org/en/14680-joint-un-recommendations-law-associations>. Accessed on 20 August 2019.

binding orders in unfair labour practices cases.²⁷⁸

3.2 Working Conditions

For the purposes of this section, 'Working Conditions' encompass all aspects of conditions of work other than those that are addressed elsewhere in the report, in particular in the sections on 'Industrial Relations', 'Forced Labour, Human Trafficking, Debt Bondage and Forced Marriage', and 'Child Labour'. Meanwhile, specific assessment of international commitments, regulatory frameworks, institutional frameworks and policy initiatives relevant to preventing discrimination in the context of work is made in the 'Responsible Business Practice and Vulnerable Groups' chapter. The present chapter therefore addresses the following topics:

- Working time
- Wages
- Maternity protection
- Occupational Safety and Health
- Social protection
- Labour inspection

International commitments

- *Working time*

ILS provide the international legal reference points regarding hours of work, overtime, daily and weekly rest periods, and annual holidays.²⁷⁹ Of the most relevant such ILS, Viet Nam has ratified only the ILO Weekly Rest (Industry) Convention (No. 14), which provides for a weekly rest period comprising at least twenty-four consecutive hours for all workers that are employed in "industrial undertakings."²⁸⁰ For the purposes of ILO

278 ILO, 'Labour dispute systems: Guidelines for improved performance', (2013). Available at: https://www.ilo.org/ifpdial/information-resources/publications/WCMS_211468/lang--en/index.htm. Accessed on 5 September 2019. Chapter 4.

279 ILO, 'International Labour Standards on Working time'. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/working-time/lang--en/index.htm>. Accessed on 28 July 2019.

280 ILO, 'C014 - Weekly Rest (Industry) Convention, 1921' (No. 14). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312159:NO.

Convention No. 14, "industrial undertakings" extends to construction, mining, quarries, manufacturing, shipbuilding, electricity generation, demolition, repair, and transport by road, rail and inland waterways.²⁸¹ Convention No. 14 does not protect workers in other sectors such as agriculture, services and commerce.²⁸² The ICESCR, ratified by Viet Nam, recognizes "the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular ... Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."²⁸³ Amongst the relevant ILO Conventions not ratified by Viet Nam are those setting out the principles of the 40-hour work week, the 48-hour work week, maximum of eight working hours per day, three working weeks of annual paid holiday, the regulation of part-time work, and the regulation of night work.²⁸⁴

- *Wages*

Wages are amongst the conditions of work that have the most tangible and direct impact on the lives of workers.²⁸⁵ ILS provide for the fixing of minimum wage levels, regular payment of wages, protection of wages in the event of the insolvency of the employer, and the principle of equal remuneration for women and men for work of equal value.²⁸⁶ Out of the "selected relevant instruments" on wages that are identified by the ILO,²⁸⁷ Viet Nam has ratified only the Equal Remuneration Convention (No. 100). Convention No. 100 requires Viet Nam to promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.²⁸⁸ However,

Accessed on 28 July 2019.

281 Ibid.

282 Ibid.

283 ICESCR. Article 7(d) (n. 236).

284 See further ILO, 'International Labour Standards on Working time' (n. 279).

285 ILO, 'International Labour Standards on Wages'. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/wages/lang--en/index.htm>. Accessed on 28 July 2019.

286 Ibid.

287 Ibid.

288 ILO, 'Equal Remuneration Convention, 1951' (No. 100). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312245:NO.

to date Viet Nam has issued no regulations detailing how it plans to enforce or monitor this equal remuneration guarantee. The ICESCR, ratified by Viet Nam, recognizes “the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular ... Remuneration which provides all workers, as a minimum, with ... Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; [and] ... A decent living for themselves and their families in accordance with the provisions of the present Covenant.”²⁸⁹ The Government of Viet Nam has indicated to the ILO that the Prime Minister has agreed on a roadmap towards the ratification of the Minimum Wage Fixing Convention (No. 131) during the 2016 – 2020 period.²⁹⁰ Convention No. 131 requires ratifying States to establish a minimum wage fixing machinery that is capable of determining and periodically reviewing and adjusting minimum wage rates that have the force of law.²⁹¹ SDG Indicator 8.5.1 is: “Average hourly earnings of female and male employees, by occupation, age and persons with disabilities.”²⁹²

- *Maternity protection*

As noted by the ILO, “pregnancy and maternity are an especially vulnerable time for working women and their families. Expectant and nursing mothers require special protection to prevent harm to their or their infants’ health, and they need adequate time to give birth, to recover, and to nurse their children. At the same time, they also require protection to ensure that they will not lose their job simply because of

pregnancy or maternity leave ... Safeguarding the health of expectant and nursing mothers and protecting them from job discrimination is a precondition for achieving genuine equality of opportunity and treatment for men and women at work and enabling workers to raise families in conditions of security.”²⁹³ The Maternity Protection Convention (No. 183) and the Maternity Protection Recommendation (No. 191) are the most up-to-date ILS on maternity protection.²⁹⁴ Viet Nam has not ratified the Maternity Protection Convention.²⁹⁵

The ICESCR, ratified by Viet Nam, recognizes that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”²⁹⁶ As a States party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Viet Nam has a legal obligation to take measures to ensure “a proper understanding of maternity as a social function”,²⁹⁷ and to prevent discrimination against women on the grounds of maternity.²⁹⁸

- *Violence and Harassment*

In 2019, the ILO adopted the Violence and Harassment Convention, 2019 (No. 190), or C190. C190 was developed to combat violence and harassment in the world of work, and aims to protect workers and employees, irrespective of their contractual status, and includes persons in training, interns and apprentices, workers whose employment has been terminated,

Accessed on 29 July 2019.

289 ICESCR, Article 7(a) (n. 236).

290 ILO, ‘General Survey of the reports on the Minimum Wage Fixing Convention, 1970’ (No. 131), and the ‘Minimum Wage Fixing Recommendation, 1970’ (No. 135) Third item on the agenda: Information and reports on the application of Conventions and Recommendations Report of the CEACR (Articles 19, 22 and 35 of the Constitution) Report III (Part 1B). Available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/103/reports/reports-to-the-conference/WCMS_235287/lang--en/index.htm. Accessed on 3 August 2019. Page 182.

291 ILO, ‘International Labour Standards on Wages’ (n. 285).

292 UN, ‘SDG Indicators’ (n. 232).

293 ILO, ‘International Labour Standards on Maternity protection’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm>. Accessed on 28 July 2019.

294 Earlier relevant ILO instruments, namely the ‘Maternity Protection Convention, 1919’ (No. 3), and the ‘Maternity Protection Convention (Revised), 1952’ (No. 103) remain in force for certain countries. See further ILO, ‘International Labour Standards on Maternity protection’ (n. 293).

295 ILO, ‘Ratifications for Viet Nam’ (n. 23).

296 ICESCR, Article 10(2) (n. 236).

297 UN, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (1979). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>. Accessed on 16 August 2019. Article 5(b).

298 Ibid. Articles 5(b) and 11(2).

volunteers, job seekers and job applicants.²⁹⁹ At the time of writing, C190 has been ratified by two countries, firstly Uruguay, and most recently Fiji in 2020.³⁰⁰ Again, at the time of assessment, Viet Nam has not announced any commitment to ratify C190.

- *Occupational Safety and Health*

The ILO Constitution sets out the principle that workers must be protected from sickness, disease and injury arising from their employment.³⁰¹ To this end, the ILO has adopted more than 40 standards specifically dealing with Occupational Safety and Health (OSH).³⁰² The ILO lists three of these instruments as representing “fundamental principles of OSH.”³⁰³ Of these three “fundamental” OSH instruments, Viet Nam has ratified: the Promotional Framework for OSH Convention, 2006 (No. 187), which requires Viet Nam to “promote continuous improvement of OSH to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme”,³⁰⁴ and; OSH Convention, 1981 (No. 155), which requires Viet Nam to “formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment” where the “aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment”, and calls for

299 ILO, ‘Violence and Harassment Convention, 2019’ (No. 190). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C190. Accessed on 18 July 2020.

300 See list of ratifications for Violence and Harassment Convention, 2019 (No. 190) at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11300:0::NO::P11300_INSTRUMENT_ID:3999810:NO. Accessed on 18 July 2020.

301 ILO, ‘International Labour Standards on Occupational Safety and Health’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>. Accessed on 28 July 2019.

302 Ibid.

303 Ibid.

304 ILO, ‘Promotional Framework for Occupational Safety and Health Convention, 2006’ (No. 187). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100::NO:12100:P12100_ILO_CODE:C187:NO. Accessed on 28 July 2019.

action to be taken both by States as well as enterprises to promote OSH.³⁰⁵

The third “fundamental” OSH instrument, the Occupational Health Services Convention, 1985 (No. 161), has not been ratified by Viet Nam.³⁰⁶ Viet Nam has ratified additional ILO instruments relevant to OSH, including the Underground Work (Women) Convention, 1935 (No. 45), and the Hygiene (Commerce and Offices) Convention, 1964 (No. 120). The ICESCR, ratified by Viet Nam, recognizes “the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular... Safe and healthy working conditions.”³⁰⁷ SDG Target 8.8 is: “Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”, and corresponding SDG Indicator 8.8.1 is: “Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status.”³⁰⁸

- *Social protection*

Social protection or social security, relates to access to health care and income security, particularly in the event of unemployment, illness, work-related injury, maternity, old age and the loss of a main income earner.³⁰⁹ As noted by the ILO: “Social security is a human right which responds to the universal need for protection against certain life risks and social needs. Effective social security systems guarantee income security and health protection, thereby contributing to the prevention and reduction of poverty and inequality, and the promotion of social inclusion and human dignity.”³¹⁰

305 ILO, ‘Occupational Safety and Health Convention, 1981’ (No. 155). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100::NO:12100:P12100_ILO_CODE:C155:NO. Accessed on 28 July 2019.

306 ILO, ‘Ratifications for Viet Nam’ (n. 23).

307 ICESCR. Article 7(b) (n. 236).

308 UN, ‘SDG Indicators’ (n. 232).

309 ILO, ‘Social protection’. Available: <https://www.ilo.org/global/topics/social-security/lang--en/index.htm>. Accessed on 6 September 2019.

310 ILO, ‘International Labour Standards on Social security’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>. Accessed on 18 August 2019.

Viet Nam's international commitment to ensure the rights of everyone to social security is recognized in the ICESCR.³¹¹ Meanwhile, the CEDAW, ratified by Viet Nam, sets out the obligation to take measures to ensure the right of rural women to benefit directly from social security programmes.³¹² The key ILO Conventions setting out the ILS framework for social protection include the Social Security (Minimum Standards) Convention (No. 102), Equality of Treatment (Social Security) Convention (No. 118), and Maintenance of Social Security Rights Convention (No. 157),³¹³ taken together with the Social Protection Floors Recommendation, 2012 (No. 202).³¹⁴ Viet Nam has not ratified any of these ILO Conventions.³¹⁵

- *Labour inspection*

As noted by the ILO: “The proper application of labour legislation depends on an effective labour inspectorate.”³¹⁶ The key ILS instruments regarding labour inspection are the Labour Inspection Convention 1947 (No. 81), and its Observations adopted in 2016 and published at the 106th International Labour Conference 2017 and the Labour Inspection (Agriculture) Convention (No. 129). Of these, Viet Nam has ratified only the Labour Inspection Convention (No. 81),³¹⁷ which requires Viet Nam to maintain a system of labour inspection for workplaces in industry and commerce, setting out a series of principles as regards the determination of the fields of legislation covered by labour inspection, the functions and organizations of the system of inspection, recruitment

311 ICESCR, Article 9 (n. 236). See further OHCHR ‘Ratification Status for Viet Nam’. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN. Accessed on 6 September 2019.

312 CEDAW, Article 14(c) (n. 297). See further OHCHR ‘Ratification Status for Viet Nam’. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN. Accessed on 6 September 2019.

313 ILO, ‘International Labour Standards on Social security’ (n. 310).

314 ILO, ‘Social Protection Floors Recommendation, 2012’ (No. 202). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORM-LEXPUB:12100:0::NO::P12100_ILO_CODE:R202. Accessed on 6 September 2019.

315 ILO, ‘Ratifications for Viet Nam’ (n. 23).

316 ILO, ‘International Labour Standards on Labour inspection’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang-en/index.htm>. Accessed on 28 July 2019.

317 ILO, ‘Ratifications for Viet Nam’ (n. 23).

criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations, and requiring Viet Nam’s labour inspectorate to publish and communicate to the ILO an annual report indicating the general functioning of its services across a number of issues.³¹⁸

Regulatory framework

- *Constitution*

The Constitution provides that: “The State shall protect legal rights and interests of the workers and employers and provide favourable conditions for construction of progressive, harmonious, and stable labour relationship.”³¹⁹ The Constitution also provides that a worker “shall be provided equal ... conditions of work” and that “discrimination” as well as certain other practices, “are strictly prohibited.”³²⁰

- *Law on Enterprises*

Under the Law on Enterprises (2014), the obligations of enterprises include the obligation: “To ensure the lawful and legitimate rights and interests of employees in accordance with the labour law” and the obligation “not to discriminate between and offend the honour and dignity of employees in the enterprise.”³²¹ These obligations, however, are no longer provided for in the Law on Enterprises, revised in 2020, and instead are now provided for under the Labour Code revised in 2019.

- *Working time*

The Labour Code regulates working time, including working hours, rest breaks, working hours during night shifts, weekly rest, and annual leave.³²² The Labour Code (2019) specifies that “Normal working

318 ILO, ‘International Labour Standards on Labour inspection’ (n. 316).

319 Constitution of Vietnam. Article 57(2) (n. 60).

320 Ibid. Article 35.

321 Law on Enterprises, (2014). Article 8(4). Law on Enterprises, (2020). Article 8(5) (n. 63).

322 Labour Code, (2012). Chapter VII; Labour Code, (2019). Chapter VII (n. 263).

hours” shall not exceed eight hours per day or 48 hours per week, and that: “The State encourages employers to implement a 40 hours working week”,³²³ which is in line with ILS. Regarding overtime, the Labour Code restricts total normal working hours plus overtime working hours to 12 hours per day, 40 hours per month and 200 hours per year “except for some special cases as regulated by the Government, the total number of overtime working hours shall not exceed 300 hours” per year. 30-minute rest breaks³²⁴ and a minimum weekly rest break of at least 24 consecutive hours are mandated under the Labour Code, which is in line with ILO Convention No. 14 ratified by Viet Nam.³²⁵ Between 12 to 16 days of fully paid annual leave for employees that have been working for the same employer for 12 months must be provided to employees under the Labour Code.³²⁶ Various Circulars and Decrees set subsidiary regulatory requirements.³²⁷ The Labour Code provides for a 30-minute break in every working day for female employees during their menstruation period.³²⁸

- *Wages*

Viet Nam does not have a dedicated minimum wage law. The Government of Viet Nam has indicated to the ILO that the Prime Minister has agreed on the adoption of a minimum wage law.³²⁹ In the interim, the Labour Code sets out requirements regarding the minimum wage, including wage rates, forms of payment, and compensation for overtime and night work.³³⁰ In particular, the Labour Code provides for the fixing of the minimum wage by order adopted on the recommendation of the National Wage

Council.³³¹ Pursuant to Decree No. 49/2013/ND-CP detailing the implementation of a number of sections of the Labour Code on wages, the National Wage Council is a government advisory body, which includes members representing MOLISA, VGCL, and VCCI,³³² who are appointed by the competent authorities.³³³ Under the Labour Code, guided again by Decree No. 49, employers’ and workers’ organizations have equal numbers of representatives on the National Wage Council. This is in line with the relevant principle established by ILO Convention No. 131, which calls for representatives of employers’ and workers’ organizations to participate in the operation of minimum wage fixing machinery on a basis of equality.³³⁴

Minimum wages are adjusted annually.³³⁵ In this connection, the General Statistics Office publishes annually a living standards survey.³³⁶ The Government prepares a report on the country’s socio-economic development while a survey on production, wages and incomes of workers is carried out annually by MOLISA in some 1,500 enterprises.³³⁷ The Labour Code, guided by Decree No. 182/ND-CP on region-based minimum wage levels requires that not only workers’ needs, but also those of their families, be considered in fixing minimum wages. This is in line with the relevant requirement set out in ILO Convention No. 131.³³⁸ The Labour Code provides for account to be taken in general of the economic situation of the country in the determination of minimum wages.³³⁹ Viet Nam has indicated in its reporting to the ILO that considerations relating to employment, as well as the financial capacity of enterprises, are taken into account in fixing

323 Labour Code, (2012). Article 104; Labour Code, (2019). Article 105 (n. 263).

324 Labour Code, (2012). Article 108; Labour Code, (2019). Article 109 (n. 263).

325 Labour Code, (2012). Article 110; Labour Code, (2019). Article 111 (n. 263).

326 Labour Code, (2012). Article 111; Labour Code, (2019). Article 113 (n. 263).

327 ILO, NATLEX, ‘Viet Nam’. Available at: https://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=VNM. Accessed on 6 September 2019.

328 Labour Code, (2012). Article 155; Labour Code, (2019). Article 137 (n. 263).

329 ILO, ‘Report of Committee of Experts on Minimum Wage Fixing Convention’. Page 182 (n. 290).

330 Labour Code, (2012), Chapter VI; Labour Code, (2019), Chapter VI (n. 263).

331 ILO, Report of Committee of Experts on Minimum Wage Fixing Convention. Page 52 (n. 290).

332 Ibid. Pages 52 and 105.

333 Ibid. Pages 108 and 109.

334 ILO, ‘Minimum Wage Fixing Convention 1970’, (No. 131). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C131. Accessed on 3 August 2019. Article 4.

335 ILO, ‘Report of Committee of Experts on Minimum Wage Fixing Convention’. Page 136 (n. 290).

336 Ibid. Page 141.

337 Ibid.

338 Ibid. Page 129.

339 Ibid. Page 130.

the minimum wage.³⁴⁰ Under Decree No. 182/2013/ND-CP, Viet Nam is divided into four regions to which different minimum wage rates apply.³⁴¹ The Labour Code provides that sectoral minimum wages are fixed by collective agreements.³⁴²

Under the Labour Code, a reduced minimum wage applies during the probationary period. The wage paid must be equal to at least 85 per cent of the official minimum wage.³⁴³ The maximum probationary period must be short, between six and 60 days, depending on the level of training required.³⁴⁴ Decree No. 182/2013/ND-CP provides for a wage increase of at least seven per cent, in relation to the regional minimum wage for workers who have undergone vocational training, including within an enterprise.³⁴⁵

In terms of penalties for non-compliance, according to information provided by Viet Nam to the ILO, administrative penalties, including the withdrawal of the license, may be applied depending on the nature and seriousness of the offence.³⁴⁶ Under Decree No. 28/2020/ND-CP on administrative penalties for violations arising from labour, social insurance and sending Vietnamese workers abroad under contracts, workers have the right to recover the amounts due plus interest if they have been underpaid in respect of the applicable minimum wage by an employer as a remedial measure.³⁴⁷ The Department of Industrial Relations and Wage under MOLISA is responsible, among other duties, for providing information on minimum wages.³⁴⁸

340 Ibid. Pages 133 and 134.

341 Ibid. Page 73.

342 Ibid. Page 78.

343 Labour Code, (2019), Article 26 (n. 263).

344 Labour Code, (2012). Article 27; Labour Code, (2019). Article 25 (n. 263).

345 ILO, 'Report of Committee of Experts on Minimum Wage Fixing Convention'. Page 80 (n. 290).

346 Ibid. Page 157.

347 Decree No. 28/2020/ND-CP on administrative penalties for violations arising from labour, social insurance and sending Vietnamese workers abroad under contracts, dated 1 March 2020. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/bao-hiem/Decree-28-2020-ND-CP-penalties-for-violations-arising-from-labor-social-insurance-440430.aspx>. Accessed on 22 September 2020.

348 Decision No. 736/QD-LDTBXH on roles, responsibilities, duties, authorities and organization structure of department of industrial relations and wage, dated 24 May 2017. Available at: <http://english.molisa.gov.vn/Pages/About/OrganizationalDetail.aspx?To-ChuclD=2221>. Accessed on 22 September 2020.

Persons performing work in the home in the form of piecework or sub-contracting are not protected by the Labour Code (2012), including under its provisions on minimum wages.³⁴⁹ The revised Labour Code (2019) however extends minimum wage protections for all "laborers, apprentices and workers without industrial relations", namely workers who may be self-employed or those without a formal labour contract. The Government of Viet Nam has indicated its wish continue to receive ILO support for the improvement of its legislation and national policies, particularly with a view to drafting a minimum wage law.³⁵⁰

- *Maternity protection*

The Constitution provides that: "It is the responsibility of the State... to ensure care and protection for mothers and children and to carry into effect the family planning",³⁵¹ and to provide [a] favourable environment for the construction of the Vietnamese family which is well off, progressive, and happy."³⁵² Maternity protection provisions are set out in the Labour Code,³⁵³ and under the Law on Social Insurance (2014).³⁵⁴

As of 2014, Viet Nam was one of only three countries, together with China and Mongolia, out of 26 countries reviewed by the ILO that met the standards set by Convention No. 183 when all three dimensions of leave duration, level of payment and source of funding are considered together.³⁵⁵ In particular, Viet Nam provides six months of maternity leave, which meets and exceeds the international standard of 14 weeks established by Convention No. 183.³⁵⁶

349 ILO, 'Report of CEAR on Minimum Wage Fixing Convention' (n. 290).

350 Ibid. Page 180.

351 Constitution of Vietnam. Article 58(2) (n. 60).

352 Ibid. Article 60(3).

353 Labour Code, (2012). Articles 155 and 157; Labour Code, (2019), Articles 137 and 139 (n. 263).

354 Law on Social Insurance, (2014), Law No. 58/2014/QH13. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/99775/126463/F-1921723198/VNM99775%20Eng.pdf>. Accessed on 22 September 2020. Articles 30-41.

355 ILO, 'Maternity and paternity at work: Law and practice across the world', (2014). Available at: https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_242615/lang-en/index.htm. Accessed on 3 August 2019. Page 31.

356 Ibid. Page 10. This marks an increase from the previous entitle-

Maternity leave provisions include nine weeks of compulsory leave after childbirth, which exceeds the international standard of six weeks.³⁵⁷ Full earnings are provided for the entire 26 weeks.³⁵⁸ Maternity benefits are provided through social security systems, and not through employer liability.³⁵⁹ National law extends maternity leave by four weeks in the case of multiple births.³⁶⁰ Certain groups of civil servants are covered by special maternity protection regulations for the public sector.³⁶¹ The Law on Social Insurance provides for five days of paid paternity leave for workers contributing to the social insurance system.³⁶² Workers are entitled to a daily total of 60-minutes of paid nursing breaks for 12 months. The number and duration of individual breaks within this entitlement is not specified.³⁶³

A female employee who is seven months pregnant or who is nursing a child under the age of 12 months may not work at night.³⁶⁴ All women are protected from work with radiation, high temperatures, magnetic voltage and a number of other substances that might affect reproduction.³⁶⁵ A female employee performing strenuous work must be transferred to lighter work with no reduction in pay from her seventh month of pregnancy.³⁶⁶ National law provides the right to extra leave if other alternatives, such as an adaptation of working conditions or a transfer, are not feasible.³⁶⁷ A female employee may not work overtime from her seventh month of pregnancy or if she is nursing a child under the age of 12 months.³⁶⁸ Legislation provides for paid time off for medical appointments, and

pregnant women are entitled to five days of paid leave for prenatal visits.³⁶⁹

ILO Convention No. 183 calls for protection against dismissal during a period following a woman's return to work after maternity leave but leaves it to national laws or regulations to define that period.³⁷⁰ In Viet Nam, the duration of employment protection extends until the child is one year of age.³⁷¹ Dismissal is allowed during the periods of protection on the grounds that the undertaking has ceased to exist.³⁷²

ILO Recommendation No. 191 suggests that provision should be made for the establishment of facilities for nursing under "adequate hygienic conditions at or near the workplace."³⁷³ Concerning the financing of such facilities, as formulated, the Recommendation leaves open the question of whether such facilities should be established through public or private means.³⁷⁴ Viet Nam provides for statutory supply for nursing facilities.³⁷⁵ Employers have the option to pay for (i.e. reimburse) offsite childcare instead of establishing a childcare facility.³⁷⁶

• Occupational Safety and Health

The Constitution provides that a worker "shall be provided ... [with] safe conditions of work."³⁷⁷ The Law on Occupational Safety and Health (2015), provides for measures guaranteeing OSH; compensation for victims of occupational accidents and diseases; responsibilities and rights of organisations and individuals in respect of OSH; state management for OSH; and

ment of 17 weeks that had been provided for by Viet Nam law prior to 2012.

357 Ibid. Page 46.

358 Ibid. Page 19.

359 Ibid. Page 26.

360 Ibid. Page 15.

361 Ibid. Page 38.

362 Law on Social Insurance, (2014) (n. 354); ILO, 'Maternity and paternity at work', (2014). Page 66 (n. 355).

363 ILO, 'Maternity and paternity at work', (2014). Page 185 (n. 355).

364 Ibid. Pages 91 and 98.

365 Ibid. Pages 95 and 96.

366 Ibid. Pages 97 and 99.

367 Ibid. Pages 97 and 100.

368 Ibid. Page 99.

369 Ibid. Page 93.

370 ILO, 'Maternity Protection Convention, 2000' (No. 183). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C183. Accessed on 6 September 2019.

371 ILO, 'Maternity and paternity at work', (2014). Page 77 (n. 355).

372 Ibid. Page 78.

373 ILO, 'Maternity Protection Recommendation, 2000' (No. 191). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:R191. Accessed on 3 August 2019.

374 Ibid. Paragraph 9.

375 ILO, 'Maternity and paternity at work', (2014). Page 108 (n. 355).

376 Ibid. Pages 109 and 192.

377 Constitution of Vietnam. Article 35 (n. 60).

measures to prevent and control hazards.³⁷⁸ In a significant development, the OSH Law applies to all employees including contract and non-contract employees, apprentices and trainees, guest workers, and foreign employees in Viet Nam.³⁷⁹ OSH is further regulated under Labour Code.³⁸⁰ In 2015, Viet Nam adopted a Code of Conduct on Sexual Harassment in the Workplace.³⁸¹

The most recent National OSH Programme was implemented during 2016–2020 and aimed at improving working conditions; reducing pollution in the working environment; preventing occupational accidents and occupational diseases; providing healthcare for workers; raising awareness, ensuring compliance with OSH legislation, and; protect the physical safety and life of workers, State, organization and business enterprise's properties, and contributing to sustainable development.³⁸²

The CESCR has highlighted the need to promote implementation of the regulatory framework in terms of awareness of labour safety and hygiene among workers and employers, and strengthening the capacity of labour inspection.³⁸³

• *Social protection*

The Constitution provides that a “Citizen has the right to social insurance”,³⁸⁴ and further sets out that: “The state shall create equal opportunities for the citizen to enjoy social welfare, develop a system of social security, exercise a policy assisting old people, disabled, poor people, and people with other difficult circumstances.”³⁸⁵ The Constitution further provides that: “The State shall ... exercise health insurance for entire people.”³⁸⁶ As set out in Resolution No. 15-NQ/TW on social policies, adopted in 2012, Viet Nam's overall social protection plan includes four main pillars: employment and minimum income; social insurance; social assistance for particular vulnerable groups such as old age, disability, childhood, unemployment, and; basic social services.³⁸⁷

Social insurance benefits are regulated by four main laws: The Law on Social Insurance (2014); the Law on Health Insurance (2008); the Employment Law (2013, which includes provisions on unemployment insurance), and; the OSH Law (2015, which includes provisions on employment injury insurance).³⁸⁸ The Law on Social Insurance details social insurance regimes and policies for social security branches: old age pensions, sickness and maternity; the rights and responsibilities of employees and employers; agencies, organizations and individuals involved in social insurance, representative organizations of employee collectives and employers' representative organizations; social insurance agencies; social insurance funds; and procedures for social insurance implementation, and state management of social insurance.³⁸⁹ The Labour Code also includes many provisions to

378 Law on Occupational Safety and Health, (2015), Law No. 84/2015/QH13. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=99774&p_country=VNM&p_count=546&p_classification=14&p_classcount=96. Accessed on 3 August 2019. Article 1.

379 As of the most recent ILO General Survey in 2009, the otherwise generally applicable laws and regulations on OSH were subject to certain exceptions, and self-employed persons were excluded from national OSH protections. See further ILO, 'General Survey concerning the OSH Convention, 1981' (No. 155), the OSH Recommendation, 1981 (No. 164), and the Protocol of 2002 to the OSH Convention, 1981. International Labour Conference, 98th Session, (2009). Report III (Part 1B). Third item on the agenda: Information and reports on the application of Conventions and Recommendations. Report of the Committee of Experts (Articles 19, 22 and 35 of the Constitution). Available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/98thSession/ReportsubmittedtotheConference/WCMS_103485/lang-en/index.htm. Accessed on 3 August 2019. Page 11 and pages 13–14.

380 Labour Code, (2012). Chapter IX; Labour Code, (2019). Chapter IX (n. 263).

381 ILO in Viet Nam, 'Code of Conduct on Sexual Harassment in the Workplace', (2015). Available at: https://www.ilo.org/hanoi/Informationresources/Librarydocumentationcenter/WCMS_421220/lang-en/index.htm. Access on 3 August 2019.

382 Decision No. 05/QĐ-TTg to improve the National programme on occupational safety and occupational health for the period 2016–2020, dated 5 January 2016. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=2&mode=detail&document_id=182960. Accessed on 3 August 2019.

383 CESCR, 'Concluding observations of Viet Nam' (n. 266).

384 Constitution of Vietnam. Article 34 (n. 60).

385 Ibid. Article 59(2).

386 Ibid. Article 58.

387 Resolution No. 15-NQ/TW on some main issues on social policies for the period 2012–2020, dated 1 November 2012. Available at (in Vietnamese): <http://vbpl.vn/botuphap/Pages/vbpg-toanvan.aspx?ItemID=86046&Keyword=>. Accessed on 22 September 2020.

388 Law on Social Insurance, (2014) (n. 354); Law on Health Insurance, (2008), Law No. 25/2008/QH12. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82231. Accessed on 22 September 2020; Employment Law, (2013), Law No. 38/2013/QH13. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97048/114981/F-2129581250/VNM97048%20Eng.pdf>. Accessed on 22 September 2020.

389 Law on Social Insurance, (2014). Article 1 (n. 354).

regulate issues related to compulsory social insurance.³⁹⁰ Under the Law on Enterprises, the obligations of enterprises include the obligation “to implement the regimes of social insurance, job loss insurance, health insurance and other insurance for employees in accordance with law.”³⁹¹

The policy framework on social protection is provided by Party Resolution No. 28-NQ/TW on reform of the social insurance policy, or the Master Plan on Social Insurance Reforms.³⁹² The Master Plan proposes reform of multiple social insurance systems, conditions for retirement pensions, increasing the number of people having social insurance from informal sector, and increasing the age of retirement.³⁹³ The major reform areas included developing a multi-tier social insurance system, creating flexibility in minimum contribution requirements for pension entitlement, increasing retirement age from 2021 and narrowing the gender gap in retirement age, and expanding social insurance to the informal sector. Resolution No. 28 establishes the goal of universal coverage, meaning that Viet Nam aligns itself with the key international normative references such as the right to social security in the ICESCR, the ILO Recommendation on Social Protection Floors and the UN 2030 Agenda. An Action Plan to ensure the full implementation of the Master Plan on Social Insurance Reforms was passed under Resolution 125/NQ-CP, setting key actions to be achieved by 2030.³⁹⁴

Social security insurance for vulnerable groups or groups of special difficulty is recognized in specific articles of legislation such as the Law on Children (2006),³⁹⁵ and the

Law on Persons with Disabilities (2010),³⁹⁶ supported by Decree No. 67/2007/ND-CP on supporting policy for the groups receiving social insurance.³⁹⁷

UN treaty bodies and the UNHRC have issued a number of recommendations aimed at improving social protection in Viet Nam. One of the current barriers for the social protection system in Viet Nam is the limited access or absence of access to social protection for those working in in the informal economy including those holding short-term contracts, the self-employed, and rural workers in casual or informal employment.³⁹⁸ In particular, the CESCR has expressed concern about the lack of State-funded social assistance unemployment, social protection floors and that unemployment insurance is only available to paid-up contributors, which resulted in very low unemployment insurance coverage (of around five per cent of the workforce in 2013).³⁹⁹ The UN Committee on the Convention on the Rights of the Child (CRC) has recommended that Viet Nam allocate more resources for social protection policies and programmes, including for child protection, and in doing so to pay particular attention to socially and economically disadvantaged and marginalized children, especially children living in remote areas, children with disabilities and children belonging to ethnic minorities and indigenous groups.⁴⁰⁰ The ILO and the CESCR have expressed shared

390 Labour Code, (2012). Article 189; Labour Code, (2019). Article 168 (n. 263).

391 Law on Enterprises, (2014). Article 8(4); Law on Enterprises, (2020). Article 8(5) (n. 63).

392 Resolution No. 28-NQ/TW on reforming of social insurance policy, dated 23 May 2018. Available at (in Vietnamese): <https://m.thuvienphapluat.vn/van-ban/bao-hiem/Nghi-quyet-28-NQ-TW-2018-cai-cach-chinh-sach-bao-hiem-xa-hoi-382542.aspx>. Accessed on 19 of August 2019.

393 Ibid.

394 Resolution No. 125/NQ-CP action program of the government for implementation of resolution No. 28-/TW, dated October 8, 2018. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/bao-hiem/Resolution-125-NQ-CP-2018-action-program-for-implementation-of-Resolution-28-NQ-TW-445001.aspx>. Accessed on 22 September 2020.

395 Law on Children, (2016), Law No. 102/2016/QH13. Avail-

able at: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103522&p_country=VNM&p_count=573. Accessed on 19 August 2019. Article 94.

396 Law on Persons with Disabilities, (2010), Law No. 51/2010/QH12. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_174606.pdf. Accessed on 19 August 2019.

397 Decree No. 67/2007/ND-CP on supporting policy for the groups receiving social insurance, dated 13 April 2007. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=810&mode=detail&document_id=22662. Accessed on 19 August 2019.

398 ILO, MOLISA, VGCL, VCCI, VCA, ‘Decent Work Country programme 2017 – 2021’. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_630293.pdf. Accessed on 22 August 2019. Page 22.

399 CESCR, ‘Concluding observations - Viet Nam’. Paragraph 23 (n. 266).

400 UN Committee on the Rights of the Child, ‘Consideration of reports submitted by States parties under Article 44 of the Convention Concluding observations: Viet Nam,’ (2012), UN Doc CRC/C/VNM/CO/3-4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/VNM/CO/3-4&Lang=En. Accessed on 6 September 2019.

concern about the limited access by older persons to social pensions, since the current universal social pension scheme covers only persons who are over the age of 80.⁴⁰¹ Viet Nam received a number of recommendations about the need to expand social benefits, to all social groups, particularly to farmers, and improve social services for elderly during the Third Cycle review under the Universal Periodic Review (UPR) at the UNHRC in 2019.⁴⁰²

- *Labour inspection*

The Labour Code provides for the responsibilities of labour inspectors and the role of labour inspection in handling violations under the Labour Code.⁴⁰³ The general legal framework on inspection (not specific to working conditions) is set out in the Law on Inspection (2010).⁴⁰⁴ Relevant Decrees, Decisions and Circulars include: Decision No. 614/QD-LDTBXH on roles, responsibilities, duties, authorities and organization structure of the MOLISA Inspectorate; Decree No. 86/2011/ND-CP guiding the implementation of the Law on Inspection; Directive No. 22/2001/CT-TTg on reorganising the work of inspection and examination of enterprises; Circular No. 20/2018/TT-BLDTBXH guiding the coordination mechanism in implementation of specialized labour inspection, safety and hygiene and out-of-administrative hours, and; Decree No. 61/1998/ND-CP on inspection and monitoring work with regard to enterprises. The Circular No. 17/2018/TT-BLDTBXH is the key instrument providing guidelines for self-inspection of compliance

with labour law, online reporting, and responsibilities of employers, labour unions, and the State's inspection agencies in a business context.⁴⁰⁵ According to Circular No. 17, the timing of self-inspection is at the discretion of the targeted enterprises, but they need to do it at least once a year and must retain all the files of the results. Under the Labour Code, once the competent authority decides, where the circumstances in the workplace are found to threaten the safety, life, health, honour or dignity of the employees, then the labour inspectorate does not need to inform the enterprise in advance of the inspection.⁴⁰⁶ MOLISA and the ILO have been undertaking a 'Labour Inspection Campaign' annually since 2015.⁴⁰⁷

The CESCR has recommended that Viet Nam allocate the necessary resources so that the inspection system is sufficiently staffed with trained inspectors to monitor conditions of work, including in the informal economy.⁴⁰⁸ The CEDAW Committee has recommended that Viet Nam strengthen the regulation and inspection of employers to enforce compliance with labour standards and the prohibition of discrimination against women.⁴⁰⁹

Institutional framework

MOLISA has primary responsibility for regulation of working conditions.⁴¹⁰ Within MOLISA, issues relating to working time, OSH and wages, are under the

401 ILO, 'General Survey concerning the Social Protection Floors Recommendation, 2012', (No. 202), Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution, Report III (Part B)). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf. Accessed on 3 August 2019. Page 234; CESCR, 'Concluding observations of Viet Nam'. Paragraph 24 (n. 266).

402 UNHRC, Universal Period Review, Third Cycle, 'Report of the Working Group on the Universal Periodic Review-Viet Nam', (2019). A/HRC/41/7. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/083/45/PDF/G1908345.pdf?OpenElement>. Accessed on 22 September 2020. Recommendations No. 237, 240, 249, 250.

403 Labour Code, (2019) (n. 263).

404 Law on Inspection, (2010), Law No. 56/2010/QH12. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91605&p_country=VNM&p_count=548. Accessed on 22 August 2019

405 Circular No. 17/2018/TT-BLDTBXH on regulating self-inspection of labour law compliance by enterprises, dated 17 October 2018. Available at (in Vietnamese): <https://luatvietnam.vn/lao-dong/thong-tu-17-2018-tt-bltdtbxh-tu-kiem-tra-viec-thuc-hien-phap-luat-lao-dong-167989-d1.html>. Accessed on 22 August 2019.

406 Labour Code, (2019). Article 216 (n. 263).

407 ILO, 'Viet Nam launches labour inspection campaign to promote sustainable woodwork industry development', (27 March 2019). Available at: https://www.ilo.org/hanoi/informationresources/PublicInformation/Pressreleases/WCMS_679744/lang--en/index.htm. Accessed on 23 August 2019.

408 CESCR, 'Concluding observations of Viet Nam'. Paragraph 18 (b) (n. 266).

409 UN Committee on Elimination of all Forms of Discrimination Against Women (CEDAW), 'Concluding observations on the combined seventh and eighth periodic reports of Viet Nam', (2015), UN Doc CEDAW/C/VNM/CO/7-8. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CE-DAW/C/VNM/CO/7-8&Lang=En. Accessed on 22 August 2019.

410 See Decree No.14/2017/ND-CP on stipulating functions, duties, authorities and organization structure of the Ministry of Labour, Invalids and Social Affairs, dated 17 February 2017. Available at: <http://english.molisa.gov.vn/Pages/About/DutiesResponsibilities.aspx>. Accessed on 22 September 2020.

administration of the Department of Work Safety, and the Department of Industrial Relations and Wage. The Inspectorate of MOLISA and DOLISAs have inspection functions in respect of labour issues. The National Wages Council is the main advisory body charged with regional minimum wage setting and adjustment. Social insurance is under the administration of MOLISA's Department of Social Assistance and the Viet Nam Social Security State agency. The state administration of social protection for vulnerable groups is under the mandate of the Department of Social Assistance, the Department of Child Affairs, the National Office for Poverty Reduction, the National Office of Elderly People, and the Department of Overseas Labour. While MOLISA is the key agency to develop policy, law and administration of law and policy on maternity protection, the Department of Mother and Child under the Ministry of Health has a mandate to protect the health of the mother during her pregnancy.

Recommendations

• Working time

1. Ratify additional ILO Convention(s) on working time, guided by technical assistance from and relevant recommendations issued by the ILO, and implement additional such ratified Conventions in light of associated ILO Recommendations.

• Wages

2. Undertake legislative reform to ensure that persons performing work in the home in the form of piecework and sub-contracting receive minimum wages that are protected with the force of law including the effective implementation of the Party's Resolution No. 27-NQ/TW on wage reform (2018).
3. Ratify the Minimum Wage Fixing Convention, 1970 (No. 131) within the indicated period of 2016–2020, and effectively implement the Convention

once ratified. Implement Convention No. 131 in light of the Minimum Wage Fixing Recommendation, 1970 (No. 135).

4. Adopt a dedicated minimum wage law aligned to international standards, including ILO Conventions No. 131, No. 95 and No. 100 and ILO Recommendation No. 135. Ensure that laws, regulations, policies, and programmes evaluate jobs using an objective method that includes criteria such as skills, effort, responsibilities and working conditions, in line with the 2012 recommendation issued to Viet Nam by ILO CEACR, pursuant to ILO Convention No. 100.
5. Ensure that the level of the minimum wage provides a decent living for workers and their families by conducting an assessment of the minimum income necessary for a worker to meet their basic needs in order to calculate a living wage for workers.
6. Ensure effective implementation of Equal Remuneration Convention (No. 100), including by ensuring the adoption of a national objective method that includes criteria such as skills, effort, responsibilities and working conditions when jobs are evaluated, in line with recommendations issued by the ILO CEACR.
7. Ensure effective implementation of the obligations of the State under Article 7(a) of the ICESCR on the remuneration of workers.
8. Ratify and implement the Protection of Wages Convention, 1949 (No. 95).

• Maternity protection

9. Ratify and ensure effective implementation of the Maternity Protection Convention, 2000 (No. 183), ensuring that implementation is in line with the Maternity Protection Recommendation, 2000 (No. 191).

10. Ensure effective implementation of the obligations of the State under Article 10(2) of ICESCR on special protection to mothers before and after childbirth.
 11. Ensure effective implementation of the obligations of the State to Article 5(b) of CEDAW regarding ensuring that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.
 12. Expand maternity protection beyond formal workers to include workers in the informal economy.
- *Violence and Harassment*
13. Ratify ILO Violence and Harassment Convention, 2019 (No. 190).
- *Occupational Safety and Health*
14. Adopt and implement a National OSH Programme to follow-up on the 2016–2020 programme, with the objectives, amongst others, of raising awareness of labour safety and hygiene among workers and employers, and strengthening the capacity of labour inspection. Ratify and ensure effective implementation of the Occupational Health Services Convention, 1985 (No. 161).
 15. Expand and complete legislative OSH protections for migrant workers and informal workers.
 16. Ensure effective implementation of ILO Convention No. 187 regarding mechanism strengthening OSH and ILO Convention No. 155 regarding labour safety, hygiene at work, and working environment.
 17. Ensure effective implementation of the Law on Occupational Safety and Health (2015), OSH provisions of the Labour Code, and Code of Conduct on Sexual Harassment in the Workplace.
18. Ratify and implement ILO Convention No. 161 on occupational health services.
- *Social protection*
19. Undertake legislative reform to ensure access to social protection, including pensions, for those working in the informal economy including those holding short-term contracts, the self-employed, farmers and rural workers in casual or informal employment, children and the elderly.
 20. Expand health coverage to all workers in the informal economy and those living in remote areas.
 21. Extend the coverage of health insurance and health care services to all groups in particular vulnerable groups such as older persons.
 22. Increase the coverage of unemployment insurance, in particular to vulnerable groups.
 23. Expand social benefits to all social groups, particularly to farmers.⁴¹¹
 24. Ratify and ensure effective implementation of the Social Security (Minimum Standards) Convention (No. 102), the Equality of Treatment (Social Security) Convention (No. 118), and the Maintenance of Social Security Rights Convention (No. 157).
- *Labour inspection*
25. Ratify and ensure effective implementation of the Labour Inspection (Agriculture) Convention, 1969 (No. 129).
 26. Allocate the necessary resources so that the inspection system is sufficiently staffed with trained inspectors to monitor conditions of work, including in the informal economy, in line with the relevant recommendations of the CESCR.

⁴¹¹ UNHRC, 'UPR Viet Nam', (2019). Recommendations No. 237, 240, 249, 250 (n. 402).

27. Strengthen the regulation and inspection of employers to enforce compliance with labour standards and the prohibition of discrimination against women, in line with the relevant recommendations of CEDAW.
28. Provide in law a general right of entry without notice for Labour Inspectors for the purpose of inspections within the Labour Code.

3.3 Forced Labour, Human Trafficking, Debt Bondage and Forced Marriage

Forced labour, human trafficking, debt bondage, forced marriage, are forms of labour referring to situations of labour exploitation and forced labour where a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power, and their rights are severely violated. According to ILO, these labour forms are similar to slavery and slavery like practices, hence, they are often included under the umbrella term of 'modern slavery'.⁴¹²

This section addresses the following specific topics: Forced labour; Human trafficking; Debt bondage, and; Forced marriage. Meanwhile, child labour is addressed in a stand-alone section entitled 'Child Labour'.

International commitments

The UDHR and ICCPR both prohibit slavery, servitude, or the slave trade in all their forms.⁴¹³ The ICCPR, ratified by Viet Nam, further sets out that: "No one shall be required to perform forced or compulsory labour."⁴¹⁴ The 1926 Slavery Convention,⁴¹⁵ ratified by Viet Nam,⁴¹⁶ calls on States

parties to "prevent and suppress the slave trade ... To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms ... to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery ... [and] to adopt the necessary measures in order that severe penalties may be imposed in respect of such infractions."⁴¹⁷ However, Viet Nam has not ratified the Protocol amending the 1926 Slavery Convention,⁴¹⁸ or the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.⁴¹⁹

Target 8.7 of the SDGs calls upon Viet Nam to: "take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms."⁴²⁰

Alliance 8.7 is an inclusive global partnership committed to achieving Target 8.7.⁴²¹ Viet Nam has recently become an Alliance 8.7 'Pathfinder country'.⁴²² As such, Viet Nam has committed to going further and faster than other countries to achieve Target 8.7, by accelerating efforts, trying new approaches, and increasing collaboration.⁴²³ Amongst others, by becoming an Alliance 8.7 Pathfinder country, Viet Nam has committed to:⁴²⁴

- Ratifying, or actively working towards the ratification or implementation of, applicable international social and environmental standards, including ILS.
- Translating public commitments into concrete actions by signing the "Call to Action to End Forced Labour, Modern

412 ILO, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage', (2017). Available at: https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm. Accessed on 4 August 2019. See also ILO, 'Forced labour, modern slavery and human trafficking'. Available at: <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>. Accessed on 4 August 2019.

413 UDHR. Article 4 (n. 233); ICCPR. Article 8 (n. 237).

414 ICCPR. Article 8 (n. 237).

415 Slavery Convention, (1926). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>. Accessed on 4 August 2019.

416 UN Treaty Collection (UNTC), 'Chapter XVIII - Penal Matters: 2. Slavery Convention, signed at Geneva on 25 September 1926 and

amended by the Protocol'. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-2&chapter=18&clang=_en. Accessed on 4 August 2019.

417 Slavery Convention, (1926). Article 2, 5, and 6 (n. 415).

418 UNTC, 'Penal Matters, Slavery Convention' (n. 416).

419 Ibid.

420 UN, 'SDG Indicators' (n. 232).

421 Alliance 8.7. Available at: <https://www.alliance87.org>. Accessed on 4 August 2019.

422 Ibid. Pathfinders - Viet Nam.

423 Ibid.

424 Ibid.

Slavery and Human Trafficking”,⁴²⁵ or similar initiatives, including by developing, adopting, and putting into practice improved legislation, national action plans (NAPs) or policies on – amongst others – forced labour, modern slavery and/or human trafficking.

- *Forced labour*

Two fundamental ILO Conventions relating to the suppression of forced labour are amongst the eight ILO Fundamental Conventions, namely: Forced Labour Convention, 1930 (No. 29), and; Abolition of Forced Labour Convention, 1957 (No. 105). Viet Nam has ratified both of these two fundamental conventions,⁴²⁶ which prohibits all forms of forced or compulsory labour, defined by the Convention as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴²⁷ Convention No. 29 requires that the illegal extraction of forced or compulsory labour be punishable as a penal offence, and that ratifying States ensure that the relevant penalties imposed by law are adequate and strictly enforced.⁴²⁸ Viet Nam has ratified the Abolition of Forced Labour Convention, 1957 (No. 105) in 2020.

In the third UPR cycle, Viet Nam received two recommendations to ratify Convention No. 105, as well as a separate recommendation to revise labour laws to ensure protections of workers against forced labour.⁴²⁹ In 2012, the ILO CEACR noted that “The Government of Viet Nam indicated that it was in the process of adjusting national legislation in view of the ratification of the [Convention No. 105] and that MOLISA made a study and is now collecting comments in order to

have the Convention ratified in 2011–12.”⁴³⁰ In 2018 CEACR adopted observation on Convention No. 29 concerning, compulsory military service and penal sanctions for forced labour, to guide Viet Nam on the effective implementation of the Convention by the CEACR.⁴³¹

Convention No. 105 prohibits forced or compulsory labour: as a means of coercion or education or as a punishment for holding or expressing views politically or ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes, and; as a means of racial, social, national or religious discrimination.⁴³²

The 2014 Protocol to the Forced Labour Convention (Protocol No. 29) is a legally binding instrument, supported by the Forced Labour (Supplementary Measures) Recommendation (No. 203) that aims to advance prevention, protection and compensation measures, as well as to intensify efforts to eliminate all forms of forced labour, including trafficking in persons.⁴³³ Protocol No. 29 supplements the 1930 Forced Labour Convention (No. 29) and complements existing international instruments by providing specific guidance on effective measures to be taken regarding prevention, protection and remedy in order to eliminate all forms of forced labour.⁴³⁴ Viet Nam has not ratified Protocol No. 29.⁴³⁵

425 Delta 8.7, ‘A Call to Action to End Forced Labour, Modern Slavery and Human Trafficking’, launched by World Leaders on 19 September 2017 during the 72nd Meeting of the UN General Assembly. Available at <https://delta87.org/call-to-action>. Accessed on 4 August 2019.

426 ILO, ‘Ratifications for Viet Nam’ (n. 23).

427 ILO, ‘International Labour Standards on Forced labour’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>. Accessed on 4 August 2019.

428 Ibid.

429 UNHRC, ‘UPR Viet Nam’, (2019) (n. 402).

430 ILO, ‘Report III(1B): Giving globalization a human face, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008’, (2012). Available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm. Accessed on 4 August 2019. Page 376.

431 ILO, ‘Observation (CEACR) - adopted 2018, published 108th ILC session, Viet Nam’, (2019). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3934941. Accessed 20 May 2020.

432 ILO, ‘International Labour Standards on Forced labour’ (n. 427).

433 Ibid.

434 ILO, ‘What is forced labour, modern slavery and human trafficking’. Available at: <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>. Accessed on 4 August 2019.

435 ILO, NORMLEX, ‘P029 - Protocol of 2014 to the Forced Labour Convention, 1930: Countries that have not ratified this Convention’. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:3174672:NO. Accessed on 4 August 2019.

The ICCPR, which was ratified by Viet Nam, sets out that: “No one shall be required to perform forced or compulsory labour.”⁴³⁶ The CEDAW, ratified by Viet Nam, requires ratifying States to take all appropriate measures to eliminate discrimination against women in the field of employment in which forced labour should be prohibited.⁴³⁷

- *Human trafficking*

Viet Nam has ratified the UN Convention against Transnational Organized Crime (2000),⁴³⁸ and its accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (the ‘Palermo Protocol’).⁴³⁹ This Convention is the main international instrument in the fight against transnational organized crime.⁴⁴⁰ In ratifying this Convention, Viet Nam has committed to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.⁴⁴¹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children aims to prevent and combat trafficking in persons; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives.⁴⁴² Trafficking of women in any

form is prohibited under CEDAW.⁴⁴³ Viet Nam has not ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).⁴⁴⁴

- *Debt bondage*

Debt bondage is defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”⁴⁴⁵ The ILO Private Employment Agencies Convention, 1997 (No. 181)⁴⁴⁶ and the ILO’s ‘General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs’ (2019) recognize the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.⁴⁴⁷ Specifically, Convention No. 181 calls on States Parties to “provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.”⁴⁴⁸

443 CEDAW. Article 6 (n. 297).

444 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, (1949). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>. Accessed on 4 August 2019.

445 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, (1956). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>. Accessed on 12 August 2019.

446 ILO, ‘Private Employment Agencies Convention, 1997’, (No. 181). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORM-LEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326. Accessed on 6 September 2019. Article 7(1).

447 ILO, ‘General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs’, (2019). Available at: https://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm. Accessed on 6 September 2019.

448 ILO, ‘Private Employment Agencies Convention, 1997’ (No. 181). Article 8 (n. 446).

436 ICCPR. Article 8 (n. 237).

437 CEDAW. Article 11 (n. 297).

438 UN Convention against Transnational Organized Crime (UN-TOC) and the Protocols Thereto, (2000). Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>. Accessed on 4 August 2019.

439 UN, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, (2000). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Protocol-TraffickingInPersons.aspx>. Accessed on 4 August 2019.

440 UNTOC (n. 438).

441 Ibid.

442 UN, ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons’. Article 2 (n. 439).

- *Forced marriage*

Forced marriage refers to situations where persons, regardless of their age, have been forced to marry without their consent. The UDHR recognizes that marriage shall be entered into only “with the free and full consent of the intending spouse.”⁴⁴⁹ The 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (The Convention on Consent to Marriage),⁴⁵⁰ and the CEDAW, ratified by Viet Nam, specify that marriage is legal only with the full and free consent of both parties and calls upon ratifying States to take legislative action to set a minimum age to marry.⁴⁵¹

- *EU-Viet Nam Free Trade Agreement*

By entering into the EVFTA, Viet Nam has reaffirmed its commitment to respect, promote and effectively implement the elimination of all forms of forced or compulsory labour.⁴⁵²

- *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*

Under the CPTPP, Viet Nam “recognises the goal of eliminating all forms of forced or compulsory labour.”⁴⁵³ In particular, as a party to the CPTPP, Viet Nam is committed to adopting and maintaining in its statutes, regulations, and practices thereunder for the elimination of all forms of forced or compulsory labour,⁴⁵⁴ and to discouraging the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.⁴⁵⁵

449 UDHR. Article 16(2) (n. 233).

450 UN, ‘Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages’, (1963). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>. Accessed on 6 September 2019. Article 1(1).

451 CEDAW. Article 16(2) (n. 297).

452 EVFTA. Article 13.4.2(b) (n. 28).

453 CPTPP. Article 19.6 (n. 29).

454 Ibid. Article 19.3.1(b).

455 Ibid. Article 19.6.

Regulatory framework

- *Forced labour*

The Constitution provides that “forced labour” and certain other practices “are strictly prohibited” and that a citizen has “the right to work and to select [their] career, job, and workplace.”⁴⁵⁶ Forced labour is criminalized within the Law on the Prevention of and Combat against Human Trafficking (2011).⁴⁵⁷ The Labour Code prohibits acts of forced labour, including those against domestic workers.⁴⁵⁸ Under the Law on Enterprises, the obligations of enterprises include the obligation “not to use forced labour.”⁴⁵⁹

The Penal Code (2015) prohibits the act of forced labour and defines clear sanctions for any violation of coercive labour.⁴⁶⁰ However, the definition of “forced labour” adopted under the Penal Code is less expansive than that of the ILO, focusing more on the presence, or absence, of physical coercion or violence under the former. Also, penalties for forced labour are low and enforcement lacking. The UNHRC has suggested that labour law in Viet Nam should be assessed and introduce appropriate amendments to provide better protection against forced labour, based on compliance with applicable ILO and other international standards.⁴⁶¹

- *Human trafficking*

Human trafficking is criminalized under the Penal Code.⁴⁶² The Law on the Prevention of and Combat against Human Trafficking (2011) (Anti-Trafficking Law) provides for the prevention, detection, and handling of

456 Constitution of Vietnam. Article 35 (n. 60).

457 Law on the Prevention of and Combat against Human Trafficking, (2011), Law No. 66/2011/QH12. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91653. Accessed on 12 August 2019.

458 Labour Code, (2012). Article 8; Labour Code, (2019). Article 8 (n. 263).

459 Law on Enterprises, (2014). Article 8(4); Law on Enterprises, (2020). Article 8(5) (n. 63).

460 Penal Code, (2015), Law No. 100/2015/QH13. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=183216. Accessed on 20 May 2020. Article 297.

461 UNHRC, UPR Viet Nam. Recommendation No. 235 (n. 402).

462 Penal Code, (2015). Articles 150 and 151 (n. 460).

human trafficking and related acts; receipt, verification and protection of and support for victims; international cooperation in human trafficking prevention and combat; and sets out the respective responsibilities of the Government, ministries, sectors and localities for preventing and combating human trafficking.⁴⁶³

Several Decisions, Decrees, Circulars and Memorandum of Understandings (MoUs) address human trafficking, including in particular:

- Decision No. 17/2007/QD-TTg on reception of, and community reintegration support for, trafficked women and children home from foreign countries.⁴⁶⁴
- Circular No. 35/2013/TT-BLDTBXH guides the implementation of Decree No. 09/2013/ND-CP and details a number of articles of the Anti-Trafficking Law.⁴⁶⁵
- Agreement between Cambodia and Viet Nam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking.⁴⁶⁶
- Decision No. 1497/QD-TTg approving the Plan for initiating the implementation of the Agreement between Viet Nam and Cambodia on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking.⁴⁶⁷

463 Law on the Prevention of and Combat against Human Trafficking (2011) (n. 457).

464 Decision No. 17/2007/QD-TTg promulgates the regulation on reception of, and community reintegration support for, trafficked women and children home from foreign countries, dated 29 January 2007. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76175&p_classification=04. Accessed on 11 August 2019.

465 Circular No. 35/2013/TT-BLDTBXH providing guidelines for the implementation of Decree No. 09/2013/ND-CP detailing a number of articles of the Anti-Trafficking Law, dated 30 December 2013. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=97058. Accessed on 11 August 2019.

466 Agreement between Cambodia and Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=93357&p_country=VN-M&p_count=546&p_classification=23&p_classcount=11. Accessed on 10 August 2019.

467 Decision No. 1497/QD-TTg approving Plan of initiating the implementation of the Agreement between the Government of the Socialist Republic of Viet Nam and the Royal Government of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking, dated 13

- Decree No. 09/2013/ND-CP details a number of articles of the Anti-Trafficking Law.⁴⁶⁸
- Decree No. 62/2012/ND-CP prescribes the grounds for identification of trafficked victims and safety protection of victims and their relatives.⁴⁶⁹
- Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region.⁴⁷⁰
- Ordinance on Prostitution Prevention and Combat (Promulgated by Presidential Order No. 10/2003/L-CTN).⁴⁷¹
- Decision No. 793/QD-TTg on National Day against Trafficking in Persons.⁴⁷²

The National Programme of Action to prevent and combat human trafficking crimes (2016–2020) aims to reduce the risk of trafficking, trafficking crimes and to implement work to support victims of trafficking more effectively.⁴⁷³ The current National Programme of Action follows adoption of two prior consecutive national action plans (2006–2010 and 2011–2015)⁴⁷⁴ that previously aspired to organise

August 2012. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94468&p_country=VNM&p_count=556. Accessed on 11 August 2019.

468 Decree No. 09/2013/ND-CP details a number of articles of the Anti-Trafficking Law, dated 11 January 2013. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94456&p_country=VNM&p_count=556. Accessed on 12 August 2019.

469 Decree No. 62/2012/ND-CP prescribing the grounds for identification of trafficked victims and safety protection of victims and their relatives, 13 August 2013. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94468&p_country=VN-M&p_count=556. Accessed on 10 August 2019.

470 Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94468&p_country=VNM&p_count=556. Access on 10 August 2019.

471 Presidential Order No. 10/2003/L-CTN Ordinance on prostitution prevention and combat, dated 17 March 2003. Available at: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=71702&p_country=VNM&p_count=532. Accessed on 10 August 2019.

472 Decision No. 793/QD-TTg on National Day against Trafficking in Persons, dated 10 May 2016. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/Van-hoa-Xa-hoi/Quyet-dinh-793-QD-TTg-Ngay-toan-dan-phong-chong-mua-ban-nguoi-2016-311063.aspx>. Accessed on 15 July 2020.

473 Decision No. 2546/QD-TTg on the National Programme of Action to prevent and combat human trafficking crimes (2016 – 2020), dated 31 December 2015. Available at: <https://vanbanphapluat.co/decision-2546-qd-ttg-granting-approval-for-human-trafficking-prevention-fighting-program-2016-2020>. Accessed on 13 August 2019.

474 Decision No. 1427/QD-TTg approving the Program of Action to prevent and combat human trafficking crimes during 2011–2015, dated 18 August 2011. Available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91617&p_country=VNM&p_count=548. Accessed on 11 August 2019.

mass awareness programmes and other actions at different levels in order to prevent and reduce the incidence of trafficking of women and children by 2010 and 2015 respectively.⁴⁷⁵

Viet Nam has adopted the following further measures to combat human trafficking:⁴⁷⁶

- Establishment of the Steering Committee on Crime Prevention and Control (Steering Committee 138/CP for short) led by a Deputy Prime Minister and coordinated by MPS.
- Participation in international and regional cooperation initiatives, including the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Task Force;⁴⁷⁷ Establishment of cross-border MoUs with Lao PDR, Thailand, and China; Establishment of Standard Operation Procedures (SOPs) with Cambodia and Thailand; and establishment of Border Liaison Offices, and; MoU with the Government of the United Kingdom of Great Britain and Northern Ireland on Cooperation in Countering Human Trafficking.

The Law on Children defines a 'child' as a person under 16 years while the age of majority is simultaneously recognized as being 18 years under other national laws, creating gaps for children aged 16-17 years.⁴⁷⁸ The Penal Code provides for the protection of victims of trafficking under 16 years of age. This creates challenges for victims of trafficking aged 16 and 17 in accessing justice and protection services reserved for children under 16 years of age, thus is misaligned with international law, as defined under the CRC.⁴⁷⁹

475 See further ILO, 'General Survey on the fundamental Conventions concerning rights at work'. Page 198 (n. 430).

476 UN Action for Cooperation Against Trafficking in Persons (UN-ACT), 'Viet Nam'. Available at: <http://un-act.org/vietnam>. Accessed on 4 August 2019.

477 See further ILO, 'General Survey on the fundamental Conventions concerning rights at work'. Notes at page 257 that Viet Nam has concluded the "Mekong subregional cooperation in the anti-trafficking process" with China, Cambodia, Lao People's Democratic Republic, Myanmar, and Thailand. (n. 430).

478 Law on Children, (2016) (n. 395).

479 UN Convention on the Rights of the Child (CRC), (1989). Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Accessed on 26 August 2019.

Viet Nam received 12 recommendations regarding human trafficking during its third cycle UPR review,⁴⁸⁰ recommending that Viet Nam continue efforts to take legislative and other measures to combat human trafficking.⁴⁸¹ The HRC has expressed concerns regarding support services for victims of human trafficking.⁴⁸²

• Debt bondage

The Law on Vietnamese Workers Working Abroad under Contracts (2006) allows recruitment agencies, and their brokers to charge workers brokerage commission, service charges, and deposits,⁴⁸³ practices that are not aligned with the ILO Private Employment Agencies Convention, 1997 (No. 181),⁴⁸⁴ and ILO's 'General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs' (2019), which recognize the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.⁴⁸⁵ Relevant subsidiary Circulars, Decrees, and Decisions include:

- Decree No. 95/2013/ND-CP on penalties for administrative violations against regulations on labour, social insurance and overseas manpower supply.
- Decree No. 126/2007/ND-CP on Vietnamese guest workers under contract.
- Decision 61/2008/QD-BLDTBXH on the brokerage fee paid by employees to enterprises in some markets.
- Circular No. 22/2013/TT-BLDTBXH Prescribing the form and content of labour contracts and supply contracts of workers sent to work abroad.

480 UNHRC, 'UPR Viet Nam', (2019). Recommendations No. 217 to 225, 227, 276 (n. 402).

481 Ibid.

482 HRC, 'Concluding observations of Viet Nam' (n. 265).

483 Law on Vietnamese Workers Working Abroad under Contracts, (2006), Law No. 72/2006/QH11. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91702&p_country=VN-M&p_count=532&p_classification=17&p_classcount=40. Accessed on 11 August 2019.

484 ILO, 'Private Employment Agencies Convention, 1997' (No. 181) (n. 446).

485 ILO, 'General principles and operational guidelines for fair recruitment', (2019) (n. 447).

- Circular 21/2013/TT-BLDTBXH on the ceiling of labour export deposit in some markets.
- Inter-Circular No. 16/2007/TTLT-BTC-BLDTBXH on brokerage money and labour export service.

The CESCR has expressed concerns that a combination of irregularities in the recruitment of Vietnamese migrant workers, the limited scope of the Law on Vietnamese Workers Working Abroad under Contracts, and the lack of access to tailored assistance, render Vietnamese migrant workers vulnerable to abuse and exploitation.⁴⁸⁶

- *Forced marriage*

The Constitution provides that: “Marriage shall conform to the principles of free consent, progressive union, monogamy and equality between husband and wife, and mutual respect.”⁴⁸⁷ The Law on Marriage and Family (2014) prohibits forced marriage.⁴⁸⁸ The Penal Code penalizes forced marriage.⁴⁸⁹ The CEDAW Committee has expressed concern about the situation of women and girls migrating abroad who are often victimized by fraudulent recruitment agencies and brokers for international marriage.⁴⁹⁰ The CEDAW Committee has recommended Viet Nam to take additional measures to address internal and cross-border trafficking in women and children for purposes of fraudulent internationally brokered marriage in which women can be at high risk of forced marriage.⁴⁹¹

The revised Labour Code (2019) helps to strengthen protection against forced labour and debt bondage, by providing greater clarity on such offences when compared with the Labour Code of 2012, thus making it easier for employers to understand and comply with the law.⁴⁹²

486 CESCR, ‘Concluding observations of Viet Nam’ (n. 266).

487 Constitution of Vietnam. Article 36 (n. 60).

488 Law on Marriage and Family, (2014), Law No. 52/2014/QH13. Available at: <http://vbpl.vn/TW/Pages/vbpgen-toanvan.aspx?ItemID=11018>. Accessed on 11 August 2019.

489 Penal Code (2015) (n. 460).

490 CEDAW, ‘Concluding observations of Viet Nam’ (n. 409).

491 Ibid.

492 ILO, ‘What’s new with draft revised Labour Code?’ (n. 270). See also ILO, “Revised Vietnamese Labour Code to help everyone gain

Institutional framework

- *Forced labour*

The ministries that are primarily responsible for the suppression of forced labour are MOLISA and MPS. Other bodies with related responsibilities and functions are the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry of Culture, Sports and Tourism.

- *Human trafficking*

The key government ministry charged with combatting human trafficking is MPS. Other ministries with related functions and responsibilities include MOLISA, Ministry of Health, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Education and Training, Ministry of Information and Communications, and Ministry of Culture, Sports and Tourism. People’s Committees at all levels also have responsibilities regarding the prevention and combatting of human trafficking, as well as the Vietnam Women’s Union.

- *Debt bondage*

MOLISA, and in particular its Department of Overseas Labour is the key ministry charged with management of guest workers and issues related to debt bondage. MOLISA coordinates with other ministries and agencies such as MPS and Vietnamese diplomatic missions and consulates abroad, in order to protect workers from entrapment in debt bondage.

- *Forced marriage*

MPS, the procuracies and the courts at all level are in charge of investigation and handling of cases of forced marriage.

Recommendations

1. Ensure effective implementation of the Protocol to the Forced Labour Convention, 2014 (Protocol No. 29).

fair shares of economic growth”, (20 November 2019). Available at: https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_729339/lang--en/index.htm. Accessed on 22 September 2020.

2. Ensure effective implementation of the Abolition of Forced Labour Convention, 1957 (No. 105).
3. Ratify and ensure effective implementation of the Private Employment Agencies Convention, 1997 (No. 181).
4. Ensure effective implementation of Convention No. 29 in light of Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).
5. Revise the Law on Vietnamese Workers Working Abroad under Contracts to better protect Vietnamese migrant workers before, during and after migration, taking into account relevant recommendations issued by the CESCR and ILO's 'General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs' (2019) in recognition of the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.
6. Assess current legislation and introduce amendments based on applicable ILO and other international standards to provide better protection against forced labour, in line with relevant recommendations issued by the HRC.
7. Continue efforts to take legislative and other measure to combat human trafficking, in line with relevant recommendations received during the UPR third cycle.
8. Take additional measures to address internal and cross-border trafficking in women and children for purposes of fraudulent internationally brokered marriage in which women can be at high risk of forced marriage, in line with relevant recommendations issued by the CEDAW Committee.
9. Implement commitments regarding forced labour set out in the CPTPP and EVFTA.

3.4 Child Labour

As defined by the ILO, “child labour” refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.⁴⁹³ The “worst forms of child labour” involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age.⁴⁹⁴

International commitments

As a State party to the CRC, Viet Nam has an international obligation to protect children from “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”⁴⁹⁵ As a State party to the Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182), Viet Nam has international obligations to “ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”,⁴⁹⁶ and to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”⁴⁹⁷

⁴⁹³ ILO, ‘What is child labour’. Available at: <https://www.ilo.org/ipec/facts/lang--en/index.htm>. Accessed on 6 September 2019.

⁴⁹⁴ Ibid.

⁴⁹⁵ CRC, (1989). Article 32 (n. 479).

⁴⁹⁶ ILO, ‘Minimum Age Convention, 1973’ (No. 138). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138. Accessed on 26 August 2019. Article 1.

⁴⁹⁷ ILO, ‘Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999’ (No. 182). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182. Accessed on 26 August 2019. Article 1.

The SDGs, call for “immediate and effective measures to ... secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms” (Target 8.7).⁴⁹⁸ The corresponding SDG Indicator 8.7.1 is: “Proportion and number of children aged 5–17 years engaged in child labour, by sex and age.”⁴⁹⁹ Alliance 8.7 is an inclusive global partnership committed to achieving Target 8.7.⁵⁰⁰ As mentioned above, Viet Nam has recently become an Alliance 8.7 ‘Pathfinder country’.⁵⁰¹ As such, Viet Nam has committed to going further and faster than other countries to achieve Target 8.7, by accelerating efforts, trying new approaches, and through collaboration.⁵⁰² Amongst others, by becoming an Alliance 8.7 Pathfinder country, Viet Nam has committed to implementing ILS related to ending child labour, and developing laws, policies and plans in this regard.⁵⁰³

In the third cycle of the UPR, Viet Nam accepted two recommendations on the issue of child labour: a recommendation to undertake efforts to eliminate child labour, and; a recommendation to continue to carry out policies in order to prevent and combat child labour.⁵⁰⁴

- *EU-Viet Nam Free Trade Agreement*

The EVFTA requires Viet Nam to commit to effectively implement fundamental rights at work including the effective abolition of child labour.⁵⁰⁵

- *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*

The CPTPP calls upon Viet Nam to effectively abolish child labour, prohibit the worst forms of child labour, and to take

498 UN, ‘SDGs’ (n. 34).

499 UN, ‘SDG Indicators’ (n. 232).

500 Alliance 8.7 (n. 421).

501 Alliance 8.7 – Pathfinders – Viet Nam (n. 421).

502 Ibid.

503 Ibid.

504 UNHRC, ‘UPR Viet Nam’, (2019). Recommendations No. 224 and 270 (n. 402).

505 EVFTA. Chapter 13 (n. 28).

initiatives to eliminate all forms of forced or compulsory child labour.⁵⁰⁶

Regulatory framework

The Constitution provides that “employment of worker[s] under minimum age of labour”, together with certain other practices, is “strictly prohibited.”⁵⁰⁷ The Constitution also provides that: “Children enjoy protection, care and education by the family, the State and society; and are allowed to participate in children affairs. Infringement, maltreatment, abandonment, abuse, and exploitation of labour and other forms of violating children rights are strictly prohibited.”⁵⁰⁸ Under the Constitution: “The State shall prioritize investment and attraction of other investment sources for education; take care of pre-school education; guarantee compulsory secondary education which is free of charge; [and] gradually universalize high education.”⁵⁰⁹ The Constitution further states that: “The State, the family, and society shall create favourable conditions for young people to study, work, relax, develop bodies and minds, and shall educate them in morality, national tradition, civic consciousness, for them to be in the van of creative labour and national defence.”⁵¹⁰

Viet Nam’s legislation currently lacks a clear official definition of child labour. The revised Labour Code (2019) regulates the employment of persons under the age of 18, prohibiting employment of such persons “in heavy, toxic and dangerous jobs or in workplaces or jobs which may adversely affect their personality”, but does not provide any clear overall definition of, or prohibition upon, child labour as such.⁵¹¹ The Law on Children (2016) specifies that children under the age of 16 must be protected from labour exploitation, meaning they “must not work overtime or do arduous, harmful or dangerous works as regulated by the law” nor be forced to perform jobs or work

506 CPTPP. Article 19.3(c) and 19.6 (n. 29).

507 Constitution of Vietnam. Article 35 (n. 60).

508 Ibid. Article 37.

509 Ibid. Article 61(2).

510 Ibid. Article 37.

511 Labour Code, (2012). Article 163; Labour Code, (2019). Article 61 (n. 263).

places that may “cause adverse influence on their personality and comprehensive development.”⁵¹² The international standard for the protection of children from hazardous child labour set out under the CRC and ILO Convention No. 182 should apply to all children under the age of 18, rather than only to children under the age of 16.⁵¹³

The Labour Code, taken together with a subsidiary Circular, prohibit the unlawful employment of children under the age of 15.⁵¹⁴ In some types of “light jobs”, children may be allowed to undertake work with specific conditions from the age of 13.⁵¹⁵ The Labour Code sets out further specific legal frameworks to prevent child labour and the abuse of juvenile workers, and contains a dedicated chapter on juvenile labour that aims to protect working children.⁵¹⁶ Under the Labour Code, detailed provisions outline the protection of children from labour exploitation. In particular, the Labour Code sets out a clause on the prohibition of illegal employment of juvenile workers, and sets out principles of using juvenile labour and employing children who are under the age of 15.⁵¹⁷

The Penal Code establishes criminal liability in the case of violations relating to employment of children under the age of 16.⁵¹⁸ The Law on Children sets out that: “Children have the right to be protected in all forms from labour exploitation.”⁵¹⁹ The Law on Enterprises establishes the obligation of enterprises: “Not to use force and child labour.”⁵²⁰

512 Law on Children, (2016). Article 26 (n. 395).

513 ILO, ‘Convention Elimination of the Worst Forms of Child Labour, 1999’ (No. 182) (n. 497).

514 ILO, General Survey on the fundamental Conventions concerning rights at work (n. 430). See also Circular No. 10/2013/TT-BLDT-BXH promulgating the list of jobs and workplaces prohibited to young workers, dated 10 June 2013. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94648. Accessed on 22 September 2020.

515 Ibid.

516 Labour Code, (2012). Article 161-165.; Labour Code, (2019). Article 143-147 (n. 263).

517 Labour Code, (2012). Article 163-165; Labour Code, (2019). Article 145-147 (n. 263).

518 Penal Code, (2015). Article 296 (n. 460).

519 Law on Children, (2016). Article 26 (n. 395).

520 Law on Enterprises, (2014). Article 8(4); Law on Enterprises, (2020). Article 8(5) (n.63).

A number of legal documents further prohibit child labour, including: Circular No. 10/2013/TT-BLDTBXH promulgating the list of jobs and workplaces prohibited to young workers; Circular No. 11/2013/TT-BLDTBXH promulgating the list of light tasks permitted for persons under 15 years old; Decree No. 95/2013/ND-CP promulgating administrative punishment in the field of labour, social insurance and bringing Vietnamese labourers to work abroad under contract; Decree No. 91/2011/ND-CP regulating sanction of administrative violation on protection, care for and education of children.

In an effort to reach out to children working in the informal economy, the Government has initiated several policies for children under 15 years working on their own account, including referring these children to social centres and encouraging their families to support their attendance in school or vocational training.⁵²¹ Since the early 1990s, Viet Nam has developed many policies and programmes that directly or indirectly aim to eliminate child labour, including a series of Prime Minister’s Decisions, such as Decision No. 1023/QD-TTg on approving the National programme on the prevention and control of child labour from 2016 to 2020 which aims to effectively prevent and eliminate child labour as well as to provide timely and relevant support to child labourers; Decision No. 1555/QD-TTg on the National Action Programme for children from 2012 to 2020; Decision No. 267/QD-TTg on approving the National Programme on Child Protection from 2011 to 2015; Decision No. 19/2004/QD-TTg on approving the Programme on the Prevention and Resolution to the situations faced by street children, child sexual abuse and child labour in hazardous and dangerous conditions from 2004 to 2010.

The revised Labour Code (2019) establishes clearer rules on the employment of minors at different ages.⁵²² Trafficking of persons under the age of 16 is specifically criminalised by the Penal Code (2015), amended in 2017,

521 ILO, ‘General Survey on the fundamental Conventions concerning rights at work’ (n. 430).

522 ILO, ‘What’s new with draft revised Labour Code?’ (n. 270).

by “Fraudulently exchanging persons aged under 01 [year of age]”; and “Appropriating persons aged under 16.”⁵²³

Institutional framework

MOLISA is the main responsible agency for the management and administration of laws on child labour. MOLISA has been working with other relevant Government ministries and bodies as well as with international organizations and NGOs to address the child labour issue in Viet Nam. MOLISA has the mandate to inspect the enforcement of laws on child labour through its inspectorate, which is responsible for inspecting and monitoring any violations of child labour in enterprises. In case there is a violation, the labour inspectorate can work with the People’s Court, the People’s Procuracy and MPS in order to address the instance of child labour.

Chapter VI of the Law on Children defines the duties of agencies, organizations, educational establishments, families and individuals relating to children’s rights. The National Committee for Children is a coordination mechanism among Government agencies on children’s rights, including relevant ministries such as MOLISA, the Ministry of Education and Training, and Ministry of Health. The National Committee for Children plays a specific role in guiding and ensuring that all relevant ministries and agencies participate and take responsibility for the implementation of children’s rights, including the protection of children from child labour.

Recommendations

1. Ensure effective implementation of Convention No. 138 concerning Minimum Age for Admission to Employment in line with the guidelines under ILO Recommendation No. 146.
2. Ensure effective implementation of Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in line with the guidelines under ILO Recommendation No. 190.
3. Implement commitments as an Alliance 8.7 Pathfinder Country regarding the child labour dimensions of SDG Target 8.7.
4. Revise the existing labour regulations that: strengthen civil sanctions against perpetrators of the worst form of child labour, the prohibition of employment of persons under the age of 13; clarify restrictions on certain forms of work for person under the age of 18 such as work in hotels or work with chemicals and that includes mandatory OSH training for young workers; and that provides for a community-based child labour reporting mechanism.
5. Ensure effective implementation of the national programme on the prevention and control of child labour (2016–2020).
6. Ensure effective implementation of provisions related to child labour set out in the CPTPP and EVFTA.
7. Develop and strengthen legal frameworks for the protection of children from child labour in informal economic activities, family undertakings, and the family environment.

⁵²³ Penal Code, (2015). Articles 151–153 (n. 460).

CHAPTER 4

BUSINESS IN THE COMMUNITY



A business's activities can affect their employees and contract workers, their customers, workers in their supply chains but also the communities located near their operations or where their products and services are sold. Businesses and communities depend on each other in various ways including in ensuring environmental protection, the sustainable use of national resources, and other cultural and social interactions that determine whether the impact of businesses on such communities is positive or negative. The economic growth and social development that businesses can potentially bring to a community, through increased employment for example, needs to be outweighed against their potential adverse impact on society and the environment. Therefore, the UNGPs call upon business enterprises to avoid causing or contributing to adverse impacts through their own activities and to "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships."⁵²⁴

Chapter 4 assesses the impact of business on communities by looking at relevant international commitments, national regulations, and responsible institutions. Below examines the responsible business practice framework in the following areas: Land; Environment; Consumer Protection; Anti-Corruption, and; Community Engagement.

4.1 Land

Land is a cross cutting social and environmental issue which effects the enjoyment of a wide range of international standards. Around the world, issues related to the ownership of, access to and use of land can often have negative impacts on local communities. The involvement of business enterprises in land issues is often related to involuntary displacement as a consequence of business projects such as zoning and licensing for commercial use of land, hydro power dam and other

civil infrastructural developments and mineral exploitation projects. In many cases, business projects that require the displacement of a large number of people and whole communities can create risks of negative impacts, in particular where such projects fail to effectively engage in consultations with communities, secure informed consent or award adequate compensation for such displacement.

In Viet Nam, by law, land is collectively owned by the people, governed by the Government on their behalf,⁵²⁵ and used by individuals, family households, and organizations.⁵²⁶ Therefore, in Viet Nam, the right to land is limited to land use rights permitted within the law. Legal provisions and procedures on the right to land use are complex, leading to land-related disputes being the leading cause of civil and administrative disputes in Viet Nam, according to the Vietnam Justice Index published in 2016.⁵²⁷ A 2011 World Bank study found that, as of early 2010, many local authorities reported that complaints on land price for compensation and resettlement accounted for 90 per cent of citizens' complaints.⁵²⁸ Nevertheless, there has not been an effective mechanism put in place to address such complaints, as complaints and conflicts around land continue to persist. While commercial investment in land has contributed to economic opportunities for Viet Nam, businesses are often the source of conflict as a result of land disputes and community displacements for development and business projects.

⁵²⁵ Constitution of Viet Nam. Article 53 (n. 60).

⁵²⁶ Land Law, (2013), Law No. 45/2013/QH13. Available: http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/mldocument_view/?set_language=en. Accessed on 21 May 2020. Articles 4 and 5.

⁵²⁷ Vietnam Lawyers Association (VLA), UNDP, '2015 Justice Index: Towards a justice system for the people', (2016). Available at: https://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/2015-justice-index.html. Accessed on 22 September 2020.

⁵²⁸ World Bank, 'Compulsory land acquisition and voluntary land conversion in Viet Nam: the conceptual approach, land valuation and grievance redress mechanism', (2011). Available at: <http://documents.worldbank.org/curated/en/172041468124755032/Compulsory-land-acquisition-and-voluntary-land-conversion-in-Viet-Nam-the-conceptual-approach-land-valuation-and-grievance-redress-mechanism>. Accessed on 22 September 2020.

⁵²⁴ UNGPs. Principle 13 (n. 2).

International commitments

While there is an absence of clear stand-alone international instruments relating to land, land is considered a cross-cutting issue that impacts directly on the enjoyment of a number of different social and environmental standards.⁵²⁹ These instruments often address how land management interacts with issues such as non-discrimination in the provisions of adequate housing, food, water, health, work, cultural integrity and cultural life; access to information, and; participation in decision making. Particular groups are more vulnerable to the mismanagement of land rights, including displaced persons, ethnic minorities, women and children.

Key international instruments contain provisions that relate to land and property, including the UDHR,⁵³⁰ the CEDAW⁵³¹ and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).⁵³²

Additionally, business responsibilities to society and the environment in relation to the management of land are addressed in several non-binding and voluntary UN instruments, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) and the UNGPs. The UNGPs recommend States to review whether laws provide necessary coverage to provide an environment that enables businesses to demonstrate respect for the rights of individuals, particularly the need to clarify how access to land is governed.⁵³³ This includes settlements of disputes in relation to ownership or use of land, which are often necessary to protect local communities and business enterprises.⁵³⁴ The Voluntary Guidelines on the Responsible Governance of Tenure, adopted in 2012 by the UN Food and Agriculture Organization (FAO), promotes

the responsibility of business enterprises to respect legitimate tenure rights and calls upon them to act with due diligence to avoid infringing the legitimate tenure rights of others. The IFC compiled Performance Standard No. 5 on Land Acquisition and Involuntary Resettlement in 2012 to provide guidance on managing resettlements and associated impacts. The Principles for Responsible Investment in Agriculture and Food Systems (RAI), adopted and endorsed by the Committee on World Food Security (CFS) in 2014, recognises the need to respect legitimate tenure claims as an essential component for greater sustainable investment in agriculture and food systems. The Global Roundtable for Sustainable Beef adopted the Principles and Criteria for Global Sustainable Beef, in which Principle 2 articulates that claims to ownership and use of land ought to be “acknowledged and respected throughout the value chain.”⁵³⁵

Regulatory framework

During the modernisation and industrialization process, land laws in Viet Nam have undergone significant changes. Land laws in Viet Nam cover a broad range of issues in relation to land ownership, land acquisition, land compensation, resettlement, land price, land use, master planning, and land conversion. The Constitution recognizes that land is a special resource under ownership of the people and governed by the State that organisations and individuals are entitled to use.⁵³⁶ Since Doi Moi, Viet Nam has adopted a number of laws focusing on the management and regulation of land, including in 1988, 1993, 2003 and 2013. Certain articles of the current in-force Land Law (2013) are planned for revision in 2021.

To implement the Land Law (2013) the Government has issued a significant number of guiding documents. Currently, there are approximately 27 legal documents issued at the central level, including laws, decrees

529 UN, Office of the High Commissioner for Human Rights, 'Land and Human Rights'. Available at: <https://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>. Accessed on 28 May 2020.

530 UDHR. Article 17 (n. 233).

531 CEDAW. Articles 15(2) and 16(h) (n. 297).

532 ILO, 'Indigenous and Tribal Peoples Convention, 1989' (No. 169). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORM-LEXPUB:12100:0::NO::P12100_ILO_CODE:C169. Accessed on 22 September. Article 14.

533 UNGPs. Principle 12 and 13 (n. 2).

534 UNGPs. Commentary to Principle No. 3 (n. 2).

535 Danish Institute for Human Rights, 'National Action Plans on Business and Human rights: Land'. Available at: <https://globalnaps.org/issue/land/>. Accessed on 28 October 2019.

536 Constitution of Viet Nam. Articles 53 and 54 (n. 60).

and circulars on land.⁵³⁷ Provisions related to land use, investment and planning are recognized in laws including the Law on Housing (2014), the Law on Real Estate Business (2014), the Law on Urban Planning (2009), the Law on Environmental Protection (2014), the Civil Code (2015), and the Law on Planning (2017). The Land Law contains a provision on the responsibilities of the State to ensure protection for ethnic minorities which includes the requirement to: adopt policies on residential land and land for community activities for ethnic minorities in conformity with their customs, practices and cultural identities and the practical conditions of each region, and; adopt policies to facilitate land use rights for ethnic minorities who are directly engaged in agricultural production.⁵³⁸ Accordingly, business enterprises must comply with the Land Law and other relevant legal instruments when they use land on the basis of ensuring respect for the land use claims and interests of other land users and communities.

While a large number of legislative instruments on land have been revised and adopted, the enforcement of these laws remains a challenge. Due to the rapid changes and complexity of the legal framework, it is difficult for many people, especially those in remote areas, to be aware of, fully understand, and have such laws enforced to ensure their claims are respected.

On monitoring issues related to land, including issues arising from business use or licensing of land, the Land Law provides for the supervision by citizens of land management and use,⁵³⁹ including land allocation, recovery, compensation, and for citizens to launch petitions and have their opinions examined by the relevant competent authorities. There is no decree or circular to guide implementation of these specific aspects of the Land Law.

537 The list of all legal documents on land is available at (in Vietnamese): <https://luatvietnam.vn/dat-dai-nha-o/toan-bo-van-ban-phap-luat-ve-dat-dai-hien-hanh-567-20147-article.html>. Accessed on 28 October 2019.

538 Land Law, (2013). Article 27 (n. 526).

539 Ibid. Article 199.

Another major land problem relates to regulations governing land conversion and the recovery of land. Economic development has resulted in widespread land conversion both in heavily populated urban areas and the country's most fertile agricultural land.⁵⁴⁰ The Land Law allows the State to implement land seizure for national defence or security purposes as well as for socio-economic development in the national or public interest.⁵⁴¹ It should be noted that land seizure issues also occur in economic development projects such as infrastructure construction projects, hi-tech parks, industrial zones, urban and rural residential areas, and for foreign investment projects. Such seizures can often result in complaints by communities due to land disputes over ownership and use with other land users, investors, and the State.⁵⁴²

The design and implementation of both master planning and land use plans often create further disputes in relation to land rights. The State manages land with various tools, including planning tools, in which it is decided how land is used, identifies who the user is, and what the respective roles of parties are under the plan. Therefore, the land planning process can have a significant impact on the enjoyment, or denial, of land claims. And where the process is not transparent, or the plan produced unclear, this can create further conflicts between land users, communities, businesses and the State.

The CEDAW Committee recommends that Viet Nam should “establish effective monitoring mechanisms for the implementation of the Land Law and ensure that land-use certificates bear the names of both spouses and that legal remedies are given priority over mediation in case of land

540 Hirsch P., Mellac M., Scurrah N., ‘The Political Economy of Land Governance in Viet Nam’, (2015), Mekong Region Land Governance. Available at: https://mrlg.org/wp-content/uploads/2015/12/Political_Economy_of_Land_Governance_in_Viet_Nam_FA_2_2.pdf. Accessed on 28 October 2019.

541 Land Law, (2013). Articles 61 and 62 (n. 526).

542 World Bank, ‘Revising the land law to enable sustainable development in Viet Nam’, (2012). Available at: <http://documents.worldbank.org/curated/en/767051468321532265/pdf/707260WP0REPLA0aw0Final0Eng012Oct12.pdf>. Accessed on 28 October 2019.

disputes involving women.”⁵⁴³ The Committee for the Convention on the Elimination of Racial Discrimination (CERD) also expresses concern over the issue of the displacement of minorities and the confiscation of ancestral lands without prior consent and appropriate compensation. Further, they call on Viet Nam to adopt measures to safeguard indigenous claims over ancestral lands and pursue efforts towards adequate resolution of land disputes, including the provision of appropriate compensation.⁵⁴⁴ In the Concluding Observations of the HRC in relation to the Third Periodic Report on Viet Nam, the Committee expressed concern that ethnic minority communities are not sufficiently consulted in decision-making processes. The seizure and allocation of land, including traditional and ancestral lands, for development projects or offers of inappropriate remedies are among the key issues highlighted. The Committee also expressed concern that such development projects might have negative impacts on the communities’ use of land. Therefore, Viet Nam should take all necessary steps to ensure meaningful consultation, carry out consultations with the ethnic minority people to get their prior voluntary agreement and informed consent so as to ensure that principle of non-discrimination is respected, and that legitimate claims to land are respected, protected and fulfilled.⁵⁴⁵

Institutional framework

The Land Law establishes a four-level land administration and management system that operates from the central level to provinces, districts and communes. According to the Land Law, the Ministry of Natural Resources and Environment (MONRE) has the responsibility as the key central administration agency.⁵⁴⁶ Within

MONRE, the General Department of Land Administration has the function of managing land. The People’s Committees at all levels perform the state management role with respect to land in their localities according to their competence prescribed in the Law. The land inspectorates have the responsibility to detect, check, and handle violations of land legislation according to their competence or propose the relevant authorized state agencies to handle such violations.

Recommendations

1. Ensure effective implementation of recommendations from the HRC, and CEDAW and CERD Committees related to the prevention and resolution of land disputes, including by ensuring that communities participate in any processes concerning their relocation and that such relocation is carried out in accordance with relevant international standards.⁵⁴⁷
2. Strengthen the regulatory framework on handling grievances and complaints about land acquisition, compensation, support, recovery and resettlement.
3. Strengthen the regulatory framework relating to the award of compensation for land acquisitions including the land price.
4. Ensure the legitimate claims to land for vulnerable groups are protected in the context of business activity, in particular, the right to access land and securing the free, prior and informed consent of ethnic minorities’ peoples.
5. Issue further guidance documents on the implementation of the Land Law, including on citizen monitoring of land management and use under Article 199.

⁵⁴³ CEDAW, ‘Concluding observations of Viet Nam’. Recommendation No. 37 (n. 409).

⁵⁴⁴ UN Committee on the Elimination of Racial Discrimination, ‘Concluding observations of the tenth to fourteenth periodic reports of Viet Nam’, (2012), CERD/C/VNM/CO/10-14. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/VNM/CO/10-14&Lang=En. Accessed on 30 October 2019. Recommendation No. 15.

⁵⁴⁵ HRC, ‘Concluding observations of Viet Nam’. Recommendation 56 (n. 265).

⁵⁴⁶ Land Law, (2013). Article 24 (n. 526).

⁵⁴⁷ HRC, ‘Concluding observations of Viet Nam’. Recommendation 56 (n. 265); CEDAW, ‘Concluding observations of Viet Nam’. Recommendation No. 37 (n. 409); CERD, ‘Concluding observations of Viet Nam’. Recommendation No. 15 (n. 544).

4.2 Environment

Environmental laws are identified by the UNGPs as being a key part of national regulatory frameworks that directly or indirectly regulate responsible business practice.⁵⁴⁸ The UNGPs further note that processes should be undertaken by business enterprises to assess the environmental impacts on society and communities, so long as such processes include all internationally recognized relevant social and environmental standards as a reference point, since enterprises may potentially impact virtually any of these standards.⁵⁴⁹

As set out in the UN Framework Principles on Human Rights and the Environment, “our human rights are intertwined with the environment in which we live.”⁵⁵⁰ The Principles also highlight that “environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development.”⁵⁵¹ The Principles highlight the responsibilities of business enterprises to comply with all applicable environmental laws and to meet their responsibilities to respect social standards through protecting the environment.⁵⁵²

International commitments

Relevant international instruments including the UDHR state that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.”⁵⁵³ ICESCR, ratified by Viet Nam, recognises “the right of everyone to the enjoyment of the highest attainable

standard of physical and mental health”, and requires Viet Nam to take the steps necessary to achieve the full realization of this right, including those steps necessary for the “improvement of all aspects of environmental and industrial hygiene.”⁵⁵⁴

Regarding climate change, the UN has led international standard setting and the establishment of State commitments. Amongst others, Viet Nam has ratified the UN Framework Convention on Climate Change (1992),⁵⁵⁵ the Kyoto Protocol (1997),⁵⁵⁶ and the Paris Agreement (2016),⁵⁵⁷ which together provide the international framework for the establishment of binding targets for greenhouse gas emissions reduction, and associated obligations to report reductions and implementation efforts. The Paris Agreement specifies that its “parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights.”⁵⁵⁸ The Paris Agreement calls on States Parties to “incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities,” and “enhance public and private sector participation in the implementation of nationally determined contributions” to reducing greenhouse gas emissions.⁵⁵⁹

Other relevant international instruments include the Prevention of Major Industrial Accidents Convention, 1993 (No. 174),⁵⁶⁰ the Stockholm Declaration of the UN Conference on the Human Environment (1972),⁵⁶¹ the Rio Declaration on

548 UNGPs. Commentary to Principle 3 (n. 2).

549 Ibid.

550 UN, ‘Framework Principles on Human Rights and the Environment’, (2018). Available at: <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/08/framework-principles-on-human-rights-and-the-environment.pdf>. Accessed on 15 September 2019. Paragraph 1.

551 UNHRC, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’, (2018). No. A/HRC/37/59. Available at: https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/A_HRC_37_59_EN.pdf. Accessed on 15 September 2019.

552 UN, ‘Framework Principles on Human Rights and the Environment’, (2018). Page 18 (n. 550).

553 UDHR. Article 25(1) (n. 233).

554 ICESCR. Article 12 (n. 236).

555 UN, ‘Framework Convention on Climate Change’, (1992). Available at: https://treaties.un.org/Pages/ViewDetailsIII.aspx?s-rc=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en. Accessed on 30 September 2019.

556 Kyoto Protocol to the UN Framework Convention on Climate Change, (1997). Available at: <https://unfccc.int/resource/docs/convkp/kpeng.pdf>. Accessed on 30 September 2019.

557 UN Framework Convention on Climate Change (UNFCCC), ‘Paris Agreement’. Available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf. Accessed on 30 September 2019.

558 Ibid.

559 Ibid. Articles 4 and 8.

560 ILO, ‘Prevention of Major Industrial Accidents Convention, 1993’ (No. 174). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C174. Accessed on 30 September 2019.

561 UN, ‘Stockholm Declaration of the UN Conference on the Human Environment’, (1972). Available at: <http://web.archive.loc.gov/all/20150314024203/http%3A//www.unep.org/Documents>.

Environment and Development (1992) and;⁵⁶² the UN Convention on Biological Diversity (1992),⁵⁶³ which was ratified by Viet Nam in 1994. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), which has not been ratified by Viet Nam, specifies that: “Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories” inhabited by indigenous and tribal peoples.⁵⁶⁴ Regarding the ozone layer, Viet Nam has ratified the Vienna Convention for the Protection of the Ozone Layer (1985),⁵⁶⁵ and the Montreal Protocol on Substances that Deplete the Ozone Layer (1987).⁵⁶⁶

A number of the SDGs establish international commitments directly related to the protection of the natural environment, including in particular SDGs 8, 11, 12, 13, 14 and 15.⁵⁶⁷

- *EU-Vietnam Free Trade Agreement*

International trade agreements ratified by Viet Nam, including the CPTPP and EVFTA, establish international environmental protection obligations. Under the EVFTA, for example, Viet Nam has an obligation to implement in its domestic law and practice the multilateral environmental agreements to which it is party.⁵⁶⁸ Specifically on climate change, the EVFTA confirms parties commitment to implementing the Kyoto Protocol to the UN Framework Convention on Climate Change and

Paris Agreement, and promotes sharing between the EU and Viet Nam on carbon markets and energy efficiency, stating “[w]ithin the UN Framework Convention on Climate Change, the parties shall consult and share information and experiences of priority or of mutual interest, including: (a) pricing carbon; (b) promotion of domestic and international carbon markets including through mechanisms such as Emissions Trading Schemes and Reducing Emissions from Deforestation and Forest Degradation, and; (c) energy efficiency, low-emission technology and renewable energy.”⁵⁶⁹ This provision will help ensure responsible business practice with regards environmental protection by creating both domestic and international opportunities for carbon trading, and moving towards a low-carbon economy through improvements in energy sector.

On biological diversity, the EVFTA calls for measures to be implemented to reduce the illegal trade in wildlife, including by promoting compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or CITES.⁵⁷⁰ The Agreement outlines further protection for the environment and promotes responsible business practice in relation to Sustainable Forest Management and Trade in Forest Products by encouraging trade in forest products from sustainably managed forests and mutual supportiveness to exclude illegally harvested timber and timber products from trade flows.⁵⁷¹ More specific provisions on strengthening domestic measures can be found under the relevant Article on “Trade and Investment Favouring Sustainable Development”, which calls for voluntary sustainable assurance schemes such as fair and ethical trade schemes and eco-labels.⁵⁷² These provisions further encourage businesses to adopt proactive environmental management practices.⁵⁷³

Multilingual/Default.asp?documentid%3D97%26articleid%3D1503. Accessed on 30 September 2019.

562 UN, ‘The Rio Declaration on Environment and Development’, (1992). Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf. Accessed on 30 September 2019.

563 UN, ‘Convention on Biological Diversity’, (1992). Available at: <https://www.cbd.int/doc/legal/cbd-en.pdf>. Accessed on 30 September 2019.

564 ILO, ‘Indigenous and Tribal Peoples Convention, 1989’ (No. 169). Article 7(4) (n. 532).

565 UN, ‘Vienna Convention for the Protection of the Ozone Layer’, (1985). Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2&chapter=27&clang=en. Accessed on 18 September 2019.

566 UN, ‘Montreal Protocol on Substances that Deplete the Ozone Layer’, (1987). Available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2-a&chapter=27&clang=en. Accessed on 18 September 2019.

567 UN, ‘SDGs’ (n. 34).

568 EVFTA. Article 13.4 (n. 28).

569 Ibid. Article 13.6.

570 Ibid. Article 13.7.

571 Ibid. Article 13.8.

572 Ibid. Article 13.10.

573 Ibid.

As a party to the EVFTA, Viet Nam undertakes to promote CSR through measures that “include, among others, exchange of information and best practices, education and training activities and technical advice” and that take “into account relevant internationally agreed instruments that have been endorsed or are supported by” Viet Nam, “such as the [OECD] Guidelines for Multinational Enterprises, the UN Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.”⁵⁷⁴

Regarding implementation of the EVFTA, Viet Nam is required to designate a “contact point” within its administration for the purposes of implementing the Trade and Sustainable Development chapter, Chapter 13, and to designate senior officials as members of the EVFTA Committee on Trade and Sustainable Development.⁵⁷⁵ In the event of disagreement, the European Union has recourse to procedures including “Government Consultations”,⁵⁷⁶ and the right to request that a “Panel of Experts” be convened to examine the matter and make recommendations for the solution of the matter.⁵⁷⁷ The EVFTA further calls on Parties to establish a Domestic Advisory Group (DAG), or groups, with the task of advising on the implementation of the Trade and Sustainable Development chapter of EVFTA. The DAGs “shall comprise independent representative organisations, ensuring a balanced representation of economic, social and environmental stakeholders, including, among others, employers’ and workers’ organisations, business groups, and environmental organisations.”⁵⁷⁸ The DAGs of each Party shall meet in a joint forum that “shall be based on a balanced representation of economic, social and environmental stakeholders.” By agreement of the Parties, the DAGs may involve other stakeholders in meetings of the joint forum.

574 Ibid. Article 13.10.2(e).

575 Ibid. Article 17.2.

576 Ibid. Article 13.16.

577 Ibid. Article 13.17.

578 Ibid. Article 13.5.4.

DAGs should take a more inclusive, participatory approach by providing a forum or platform aimed at enhancing the participation of a wide range of stakeholders including NGOs and the private sector. In particular, non-governmental organizations may inform the work of the DAGs by collecting relevant business data and monitoring the impact of business activity on the environment and labour rights. These processes will not only put pressure on businesses to adopt more ambitious policies and targets on advancing responsible business practice, but also help government counterparts to identify gaps in the implementation of the EVFTA.

• *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*

The CPTPP includes a dedicated chapter, Chapter 20, that requires its parties to ensure environmental protection in the context of the agreement. As a party to the CPTPP, Viet Nam is required to “strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.”⁵⁷⁹ The CPTPP prohibits Viet Nam from failing “to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.”⁵⁸⁰ The CPTPP sets out additional specific requirements regarding protection of the ozone layer,⁵⁸¹ protection of the marine environment from ship pollution,⁵⁸² the conservation and sustainable use of biological diversity,⁵⁸³ invasive alien species,⁵⁸⁴ marine capture fisheries,⁵⁸⁵ and the illegal take and illegal trade in wild fauna and flora.⁵⁸⁶

579 CPTPP. Article 20.3.3 (n. 29).

580 Ibid. Article 20.3.4.

581 Ibid. Article 20.5.

582 Ibid. Article 20.6.

583 Ibid. Article 20.13.

584 Ibid. Article 20.14.

585 Ibid. Article 20.16.

586 Ibid. Article 20.17.

The CPTPP sets out the obligation for States Parties to “encourage enterprises operating within its territory or jurisdiction, to adopt voluntarily, into their policies and practices, principles of corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party.”⁵⁸⁷ The CPTPP encourages the use of voluntary mechanisms to enhance environmental performance, including auditing and reporting, market-based incentives, voluntary sharing of information and expertise, promotion of public-private partnerships, which, given the voluntary nature of these mechanisms, will need to be driven by businesses, with support from government. Under the CPTPP, States Parties are expected to promote transparency, accountability, and public participation in issues related to environmental protection.⁵⁸⁸

States Parties are also required to “ensure that judicial, quasi-judicial or administrative proceedings for the enforcement of its environmental laws are available under its law and that those proceedings are fair, equitable, transparent and comply with due process of law” and to “accommodate requests for information regarding the Party’s implementation of this [environmental] Chapter.”⁵⁸⁹ The CPTPP requires Viet Nam to “promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.”⁵⁹⁰ It is a requirement of the CPTPP that Viet Nam “ensure that an interested person ... may request that the ... competent authorities investigate alleged violations of its environmental laws, and that the competent authorities give those requests due consideration, in accordance with the ... law.”⁵⁹¹ These provisions together help reinforce access to justice and information on issues related

to environmental protection and disputes. For businesses in particular, individuals or entities harmed by the companies’ activities should be able to take their case to court, and the court should provide the parties with appropriate sanctions or remedies. With respect to access to information, under these provisions, environmental NGOs and other concerned individuals may submit requests for information on trade activities that have negative impacts on the environment.

In terms of public consultation, the CPTPP requires Viet Nam to “make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views” on implementation of the agreement’s environment chapter.⁵⁹² As a party to the CPTPP, Viet Nam is further required to “make its procedures for the receipt and consideration of written submissions readily accessible and publicly available.”⁵⁹³ Viet Nam is also required to establish an Environment Committee composed of senior government officials.⁵⁹⁴

Both the EVFTA and the CPTPP stipulate that States Parties cannot weaken the level of protection afforded in domestic environmental law to gain a trade or investment advantage.⁵⁹⁵ Thus economic benefits should never be used as an excuse for derogating from existing environmental regulations. Accordingly, businesses in Viet Nam should be advised that during the implementation of these trade agreements they are still under obligation to comply with all relevant domestic environmental standards.

Regulatory framework

At a national level, environmental protections are clearly enshrined in the Constitution by ensuring everyone has the right to live in a clean environment and has the duty to protect the environment.⁵⁹⁶ The Constitution also recognizes the

587 Ibid. Article 20.10.

588 Ibid. Articles 20.7 and 20.8.

589 Ibid. Article 20.7.

590 Ibid. Article 20.7.1.

591 Ibid. Article 20.7.2.

592 Ibid. Article 20.8.2.

593 Ibid. Article 20.9.2.

594 Ibid. Article 20.19.

595 EVFTA. Article 13.3 (n. 28); CPTPP. Article 20.3 (n. 29).

596 Constitution of Viet Nam. Article 43 (n. 60).

importance of environmental protection and the State's obligations to manage the environment.⁵⁹⁷ The Law on Environmental Protection (2014) provides the legal framework on environmental protection activities, policies, measures and resources for protection of the environment; and the rights and obligations of organizations, family households and individuals with respect to protecting the environment.⁵⁹⁸ The Law on Environmental Protection includes a separate chapter, Chapter VII, on environmental protection in the context of business activity, specifically covering manufacturing, trading, and service provision to ensure protection extends to hi-tech zones, industrial parks, agricultural production, construction and tourism industries, and business premises.⁵⁹⁹

The responsibility of business to protect the environment is also regulated in many other environment related legal documents such as the Law on Biodiversity (2008)⁶⁰⁰ and the Law on Environmental Protection Tax (2010).⁶⁰¹

Regarding the environmental responsibility of business, a critical element of the national legal framework includes regulations on the requirement to conduct environmental impact assessments as a pre-condition for investment projects. The framework on environmental impact assessments is regulated under: the Law on Environmental Protection;⁶⁰² Decree No. 18/2015/ND-CP on environmental protection planning, strategic environmental assessment, environmental impact assessment and environmental protection plan;⁶⁰³ Decree No. 40/2019/ND-CP

revising articles, provisions of several decrees on implementation of the Law on Environmental Protection, and; Circular No. 25/2019/TT-BTNMT on guidance to implement Decree No 40/2019/ND-CP, including a significant focus on strategic environmental assessment, environmental impact assessment and environmental protection planning. Many laws in the field of business, trade, investment and in different economic sectors include provisions on the responsibility of businesses to conduct environmental impact assessments, which are often implemented with an additional requirement to consult with organizations and local communities affected by proposed projects. For example, the Law on Investment, under Section 2,⁶⁰⁴ and the Law on Public Investments (2014),⁶⁰⁵ incorporate environmental impact assessments as standard procedure for making investment policy decisions, and for reporting assessments for an investment project. The Law on Environmental Protection regulates the requirement for consultation with organizations and communities affected by proposed projects.⁶⁰⁶

In order to enforce laws on environmental protection, a monitoring system has been established. Chapter 12 of the Law on Environmental Protection provides regulations on levels, components, agencies, programmes and data for monitoring environmental impact.⁶⁰⁷ According to the Law on Environmental Protection, in addition to state management bodies, business actors based in industrial parks, export processing zones, high-tech zones, industrial complexes, trade villages, manufacturers, and other business enterprises must implement monitoring programmes on emissions and environmental impacts, and report to regulatory agencies on environmental protection efforts in accordance with the

597 Ibid. Articles 63 and 96.

598 Law on Environmental Protection, (2014) (n. 195).

599 Ibid.

600 Law on Biodiversity, (2008), Law No. 20/2008/QH12. <http://vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/20-2008-QH12.pdf>. Accessed on 22 September 2020.

601 Law on Environmental Protection Tax, (2010), Law No. 57/2010/QH12. Available at: <https://www.global-regulation.com/translation/vietnam/2958632/law-57-2010-gh12%253a-environment-protection-tax.html>. Accessed on 22 September 2020.

602 Law on Environmental Protection, (2014). Articles 18-28 (n. 195).

603 Decree No. 18/2015/ND-CP on Environmental protection planning, strategic environmental assessment, environmental impact assessment and environmental protection plan, dated 14 February 2015. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Decree-No-18-2015-ND-CP-en->

[environmental-protection-planning-strategic-environmental-assessment-268489.aspx](http://www.vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/20-2008-QH12.pdf). Accessed on 19 September 2019.

604 Law on Investment, (2014). Section 2; Law on Investment, (2020). Section 2 (n. 64).

605 Law on Public Investments, (2014), Law No. 9/2014/QH13. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=175353. Accessed on 19 September 2019. Articles 29, 30, 31 44, 73.

606 Law on Environmental Protection, (2014). Article 21 (n. 195).

607 Law on Public Investments, (2014). Chapter 12 (n. 605).

law.⁶⁰⁸ The Law on Environmental Protection recognizes the role of organizations, family households and individuals in monitoring environmental protection, namely by supervising and inspecting the performance of environmental protection in accordance with the laws.⁶⁰⁹

The Prime Minister's Decision No. 16/2015/QĐ-TTg on prescribing retrieval and disposal of discarded products, which replaces Decision No. 50/2013/QĐ-TTg, forms the basic legislation for the application of Extended Producer Responsibility system for discarded products. However, it is found that, the domination of informal stakeholders to the waste cycle, due to the obtained benefit, the capacity of the current recycling system, and the lack of supporting policy have resulted in challenges to the effective implementation of Decision No. 16 and the Extended Producer Responsibility system in Viet Nam.

The current legal framework also includes detailed provisions on actions to address violations or disputes, as outlined under Chapter 18, and compensations for environmental damages, under Chapter 19, of the Law on Environmental Protection.⁶¹⁰

Viet Nam has issued a number of laws and policy documents which form part of the wider regulatory framework on environmental protection and combatting climate change including: the Law on Biodiversity (2008);⁶¹¹ the Law on Forest Protection and Development (2004);⁶¹² Law on Forestry (2017);⁶¹³ the National Strategy for Environmental Protection Until 2020 and Vision Toward 2030;⁶¹⁴ the Strategy

of Viet Nam Forestry Development (2006-2020), and;⁶¹⁵ the National Strategy on Biodiversity up to 2020 with a Vision Toward 2030.⁶¹⁶ Viet Nam also issued the National Action Plan to Combat Desertification in 2006⁶¹⁷ and the National program on reduction of greenhouse gas emissions through the mitigation of deforestation and forest degradation, conservation and enhancement of forest carbon stocks and sustainable management of forest resources (REDD+ Programme).⁶¹⁸

Decree No. 155/2016/ND-CP on sanctioning of administrative violations in the field of environmental protection provides for sanctions against individuals who violate regulations on environmental protection in industrial parks, export processing zones, hi-tech parks, industrial clusters, trade-service complexes, traditional craft villages, and aquaculture zones to be fined between VND 5 million and VND 500 million. Those who discharge wastes, especially harmful wastes, against environmental protection regulations will be fined between VND 300,000 and VND 1 billion.

Although a legal framework on the protection of the environment has been developed, there remains areas for strengthening

608 Law on Environmental Protection, (2014). Articles 123 (n. 195).

609 Ibid. Article 5.

610 Ibid. Chapters 18 and 19.

611 Law on Biodiversity, (2008) (n. 600).

612 Law on Forest Protection and Development, (2004), Law No. 29/2004/QH11. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=13658. Accessed on 19 October 2019.

613 Law on Forestry, (2017), Law No. 16/2017/QH14. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=192329. Accessed on 19 October 2019.

614 Decision No. 1216/QĐ-TTg approving the National Strategy on Environment Protection to 2020, with Visions to 2030, dated 5 September 2012. Available at: [http://www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryId=30&arti-](http://www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryId=30&articleId=10051159)

[cleId=10051159](http://www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryId=30&articleId=10051159). Accessed on 19 October 2019.

615 Decision No. 18/2007/QĐ-TTg approving National Strategy of Forestry Development (2006-2020), dated 5 February 2007. Available at (in Vietnamese): <http://vbpl.vn/bonongnghiep/Pages/vbpg-luocdo.aspx?ItemID=14672> http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=456&mode=detail&document_id=20355. Accessed on 19 October 2019.

616 Decision No. 79/2007/QĐ-TTg approving National Strategy on Biodiversity until 2020 with a vision toward 2030 for implementation of the Convention on biological diversity and the Cartagena protocol on biosafety, dated 31 May 2007. Available at: http://www2.chinhphu.vn/portal/Trang/portal/chinhphu/noidungchienlucophattienkinhtexahoi?piref33_14725_33_14721_14721.struts-Action=ViewDetailAction.do&piref33_14725_33_14721_14721.docid=1995&piref33_14725_33_14721_14721.substract=. Accessed on 19 October 2019.

617 Decision No. 204/2006/QĐ-TTg Promulgating the National Action Plan to Combat Desertification 2006-2010, with a vision toward 2020, dated 2 September 2006. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/tai-nguyen-moi-truong/Quyet-dinh-204-2006-QĐ-TTg-Chuong-trinh-hanh-dong-quoc-gia-chong-sa-mac-hoa-2006-2010-dinh-huong-den-2020-13791.aspx>. Accessed on 19 October 2019.

618 Decision No. 419/QĐ-TTg on Approval of the National Action Programme on the Reduction of Green-house Gas Emissions through the reduction of Deforestation and Forest Degradation, Sustainable Management of Forest Resources, and Conservation and Enhancement of Forest Carbon Stocks (REDD+) by 2030, dated 5 April 2017. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=189244. Accessed on 19 October 2019.

compliance with international standards which, if implemented, would ensure stronger protection against environmental degradation and, in turn, for individuals and communities in Viet Nam. One such area in need of strengthening is the regulatory framework around handling environmental disputes, including non-state mediation for environmental disputes and the introduction of mechanisms to effectively monitor violations.

Under the Law on Environmental Protection, victims of environmental violations are allowed to pursue: settlement through negotiations; arbitration, and; resolution through courts. However, in practice, most of the environment-related disputes recourse to settlement through negotiations, mediation or arbitration rather than litigation. Litigation is avoided due to its perceived complexity, inefficiency and cost.⁶¹⁹ There is also a lack of regulations that allow class action complaints for victims of environmental violations.

Although laws to regulate on administrative, civil and criminal punishment in the area of environmental protection have been adopted,⁶²⁰ the level and types of punishment for violations are not yet strong enough to have had the desired effect of deterring environmentally irresponsible behaviour.

The current regulatory framework does not provide for mechanisms to allow people and social organizations to effectively participate and raise concerns on environmental issues, either through ensuring their effective participation in the design stage, or in the monitoring of investment projects on their environmental impact. Currently, many environmental violations are identified and reported by affected communities, especially those who live and work nearby the facilities which are violating environmental protection

regulations. These communities require further support to monitor and report such violations through established mechanisms and reporting procedures.

Institutional framework

There are four key groups of state management agencies at both national and provincial levels responsible for the development and implementation of laws and regulations on environmental protection. These institutions are also responsible for organizing and directing the investigation and inspection of environmental protection in accordance with the law. These bodies are: the Ministry of Natural Resources and Environment (Vietnam Environment Administration); Environmental management agencies of relevant ministries; Provincial Departments of Natural Resources and Environment, and; other local environmental protection authorities.

Since the environment is an important cross-cutting issue, many ministries have their own specialist environmental bodies according to their mandates, such as: the Ministry of Public Security (Department of Environmental Police, Institute of Science and Technology); the Ministry of Industry and Trade (General Department of Industrial Safety and Environmental Engineering); the Ministry of Transportation (Department of Environment); the Ministry of Education and Training (Department of Science, Technology and Environment); the Ministry of Planning and Investment (Department of Science, Education, Natural Resources and Environment); the Ministry of Information and Communications (Department of Science and Technology); the Ministry of Culture, Sports and Tourism (Department of Science, Technology and Environment); the Ministry of Construction (Department of Science, Technology and Environment); the Ministry of Health (Department of Health Environmental Management). In order to address climate change, Viet Nam established the National Committee on Climate Change in 2012.⁶²¹

619 Asia-Pacific Institute of Management, UNDP, 'Environmental disputes, social changes, and distributive justice in Viet Nam: Case studies, comparative analysis, and policy implications', (2018). Available at: https://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/environmental-disputes--social-changes--and-distributive-justice.html. Accessed on 22 September 2020.

620 See, for example Decree No. 55/2016/ND-CP on regulation of administrative punishment in environmental protection, dated 18 November 2016. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/vi-pham-hanh-chinh/Nghi-dinh-155-2016-ND-CP-quy-dinh-xu-phat-vi-pham-hanh-chinh-trong-lin.h-vuc-bao-ve-moi-truong-331295.aspx>. Accessed on 17 September 2019.

621 Decision of Prime Minister No. 43/QĐ-TTg establishing the National Committee on Climate Change, dated 09 January 2012.

Apart from MONRE as the lead agency for climate change, most ministries, related agencies and provinces have already set up specialized agencies and units for climate change. According to the Law on Environmental Protection, the Minister of National Defence and the Minister of Public Security shall organize and direct the investigation and inspection of environmental protection with respect to establishments, projects and works under national secrecy in defence and security.⁶²²

Recommendations

1. Strengthen judicial mechanisms to handle environmental disputes including the development of mechanisms to handle class action complaints for victims after environmental incidents or disasters.
2. Strengthen the regulatory framework to ensure remedy for victims of environmental violations, including through non-state mediation, and the effective enforcement of sanctions against violators.
3. Support the effective monitoring of environmental impacts by business activity through data collection and sharing, including by encouraging businesses to create user-friendly sites or take other measures to make environmental information public and ensure transparency, including under the relevant provisions of the EVFTA and the CPTPP.
4. Strengthen the regulatory framework for the participation of individuals and local communities in monitoring and reporting business activities in relation to environmental protection, including through the development of a mechanism where communities are able to obtain and share information on environmental compliance of businesses.

5. Take necessary measures to enhance public participation in the Domestic Advisory Group, including the creation of a participatory platform with the utilization of new technologies, to monitor implementation of provisions related to environment under the EVFTA.

In addition, under the third UPR review in 2019, the UNHRC offered five recommendations on environmental protection for Viet Nam in the following specific areas:⁶²³

6. Strengthen efforts to reduce the adverse environmental effects of industrialization and ensure the right to safe water.
7. Continue to address the vulnerabilities and needs of women, children, persons with disabilities and vulnerable groups in the effective implementation of the 2016–2020 target programme for climate change adaptation and green growth, and the 2016–2020 target programme for sustainable forestry development.
8. Prioritize investment in enhancing the effectiveness of the treatment of waste water, domestic waste and industrial waste, thus better protecting the environment.
9. Promote and take part in initiatives within the UN system, including in the UNHRC, on climate change.
10. Strengthen public information dissemination and awareness-raising on the impacts of climate change as well as mitigation measures.

4.3 Consumer Protection

Consumers play an important role in a modern market economy because they are the users of goods and services that, as a result of their use, help drive business and economic growth. Consumer protection refers to legal and other

Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Quyet-dinh-43-QD-TTg-thanh-lap-Uy-ban-Quoc-gia-bien-doi-khi-hau-135025.aspx>. Accessed on 22 September 2020.
622 Law on Environmental Protection, (2014), Article 159 (n. 195).

623 UNHRC, UPR Viet Nam, (2019). Recommendations No. 124, 136, 137, 138, and 238 (n. 402).

measures including consumer education, mobilization and representation that aim to promote and protect consumers when they buy goods or services, ensuring their safety and well-being are protected. Businesses can have a significant impact on the consumer protection system. The low quality of their products and services may cause adverse impact for the health and safety of consumers. Failure to protect consumers can have an adverse impacts on a number of other rights, and it is the joint responsibility of government, businesses and other relevant social organizations to ensure rights related to consumers are protected and respected. Therefore, it is crucial that the government puts in place a robust regulatory framework to protect the rights of consumers.

International commitments

Substantive provisions and principles to protect consumers can be found via a number of international standards and treaties which Viet Nam has ratified. The UDHR does not directly deal with consumer protection, however, Article 25 of the Declaration recognizes the right to “a standard of living adequate for the health and well-being of himself and of his family”, which similarly with environmental protection as highlighted above, requires consideration of the possible impacts of actions on the well-being and health of people.⁶²⁴ These considerations hold strong relevance for the protection of the consumer. The ICESCR contains provisions that address the key standards for the protection of consumers including the right to adequate food, clothing and housing, and to the continuous improvement of living conditions, the right to health, and the right to education.⁶²⁵

The most relevant international guidance on consumer protection are the UN Guidelines for Consumer Protection (UNGCP), first adopted in 1985 then later revised and expanded by the Economic

and Social Council (ECOSOC) in 1999. The Guidelines set out the main characteristics of effective consumer protection legislations, enforcement institutions and redress systems, and recognize eight basic consumer rights and responsibilities.⁶²⁶ In sum, the Guidelines highlight the underlying principles of effective consumer protection, which is the concern for the protection of the consumer's health and, as such, is intended to enhance the standard of living and the well-being of the individual as a consumer.

The international commitment to consumer protection is also highlighted in the SDGs. The 17 SDGs require sustainable consumption and the participation of responsible and empowered consumers in order to achieve certain SDG targets. In particular, consumer protection is addressed in Goal 12, Target 12.3, on Responsible Consumption and Production, and in Goal 3 on Good Health and Well-being.⁶²⁷

At the regional level, Viet Nam is a member of the ASEAN Committee on Consumer Protection (ACCP).⁶²⁸ The main role of the ACCP is to: ensure that minimum standards in consumer protection, including laws, regulations and policies, are in place in all ASEAN member states; consumers' access to information is enhanced; ensure mechanisms for consumer redress and product recalls are in place, and; institutional capacity for consumer protection bodies is strengthened. Under the framework of ACCP, the ASEAN High-Level Principles on Consumer Protection and the ASEAN Strategic Action Plan on Consumer Protection 2016-2025 was developed to guide all ASEAN Member States, including Viet Nam, to take effective measures to protect ASEAN consumers.⁶²⁹

⁶²⁶ UNCTAD, 'United Nations Guidelines for Consumer Protection', (2016). Available at: https://unctad.org/en/PublicationsLibrary/ditccplp2016d1_en.pdf. Accessed on 7 September 2019.

⁶²⁷ UNCTAD, 'Achieving the Sustainable Development Goals through Consumer Protection', (2017). Available at: https://unctad.org/en/PublicationsLibrary/ditccplp2017d2_en.pdf. Accessed on 5 September 2019.

⁶²⁸ ASEAN Committee on Consumer Protection (ACCP), 'Consumer Protection in ASEAN'. Available at: <https://aseanconsumer.org/>. Accessed on 7 September 2019.

⁶²⁹ ASEAN, 'ASEAN High-Level Principles on Consumer Protection'. Available at: <https://aseanconsumer.org/cterm-asean-high-level-principles-on-consumer-protection>.

⁶²⁴ UDHR. Article 25(1) (n. 233).

⁶²⁵ ICESCR. Articles 11, 12 and 13 (n. 236).

Regulatory framework

Viet Nam's regulatory framework on consumer protection is enshrined in the Constitution, which provides that: "Any acts threatening the life and health of other people are strictly prohibited."⁶³⁰ The most comprehensive legislation for the protection of consumer rights in Viet Nam is the Law on Protection of Consumer Rights (2010).⁶³¹ The Law provides for the rights and obligations of consumers; the responsibilities of traders to consumers; the responsibilities of social organizations in protection of the rights of consumers; settlement of disputes between consumers and traders, and; the responsibilities of the State to protect the rights of consumers.⁶³² The Law also recognizes the rights of consumers to his/her life, health and property safety; the right to information; the right to choose goods or services; the right to be heard on quality of goods and service; the right to participate in implementing policy and laws on consumer right protection; and the right to complain about goods and services.⁶³³ The Law on Protection of Consumer Rights regulates the mechanism to handle disputes between consumers and businesses through possible negotiation, mediation, arbitration and litigation. However, the effective enforcement of consumer rights remains a challenge.⁶³⁴

In addition, the protection of consumer rights are also recognized in many other legal documents, such as the Civil Code (2015), the Penal Code (2015), the Commercial Law (2005), the Law on Competition (2018), the Law on Environmental Protection (2014), the Law on Product Quality (2007), the Law on Food Safety (2010), the Law

on Advertising (2012), and the Law on Enterprises (2014, revised in 2020). Under the Law on Enterprises, the obligations of enterprises include the obligation: "To ensure and be responsible for the quality of goods and services in accordance with standards stipulated by law or registered or declared standards."⁶³⁵ Enterprises providing public utility products or services have additional obligations under the Law on Enterprises to "supply products or provide services in the correct quantity and quality and on time as committed at the price or charge rates stipulated by competent State agencies"; ensure that equitable and favourable conditions are equally applicable to customers", and; "To be responsible before the law and customers for quantity, quality, terms of supply and prices, and charges for supply of products or provision of services."⁶³⁶ The Commercial Law requires traders to fulfil the principle of protection of legitimate interests of consumers and "provide consumers with sufficient and truthful information on goods and/or services they trade in or provide and take responsibility for the accuracy of such information" and "be responsible for the quality and lawfulness of goods and/or services they trade in or provide" when conducting commercial activities.⁶³⁷ In 2019, due to increasing concerns over consumer protection, the Secretariat of the Central Committee of the Communist Party of Viet Nam adopted a Directive on strengthening the Party Leadership and State's management obligation to the protection of consumer rights.⁶³⁸ This policy document affirms the importance of consumer protection and the key role the Party committees of all levels of government and other organizations within the political system to ensure the protection of consumer rights.

Accessed on 7 September 2019; ASEAN Strategic Action Plan on Consumer Protection (ASAPCP), 2016 - 2025. Available at: <https://aseanconsumer.org/cterm-asean-strategic-action-plan-on-consumer-protection-asapcp-2016-2025>. Accessed on 7 September 2019.

630 Constitution of Viet Nam. Article 38 (n. 60).

631 Law on Protection of Consumer Rights, (2010), Law No.59/2010/QH12. Available at: [https://aseanconsumer.org/file/pdf_file/Vietnam%20Legislation%20-%20Law%20on%20Protection%20of%20Consumer%20\(english\).pdf](https://aseanconsumer.org/file/pdf_file/Vietnam%20Legislation%20-%20Law%20on%20Protection%20of%20Consumer%20(english).pdf). Accessed on 7 September 2019.

632 Ibid. Article 1.9.

633 Ibid. Article 8.

634 Ibid. Article 30-46.

635 Law on Enterprises, (2014); Law on Enterprises (2020) (n. 63).

636 Law on Enterprises, (2014). Article 8; Law on Enterprises (2020). Article 9 (n. 63).

637 Commercial Law, (2005), Law No. 36/2005/QH11. Available at (in Vietnamese): <https://vanbanphapluat.co/commercial-law-no-36-2005-qh11-passed-by-the-national-assembly>. Accessed on 7 September 2019. Article 14.

638 Directive No. 30-CT/TW on strengthening the Party Leadership and State management's Obligation for the Protection of Consumer Rights, dated 22 January 2019. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/Thuong-mai/Chi-thi-30-CT-TW-2019-trach-nhiem-quan-ly-cong-tac-bao-ve-quyen-loi-nguoi-tieu-dung-406208.aspx>. Accessed on 7 September 2019.

Institutional framework

The State agency responsible for administration of consumer rights in Viet Nam is the National Competition Commission, established following the merger of the Viet Nam Competition and Consumer Protection Authority and the Vietnam Council of Competition, under the Ministry of Industry and Trade. This government body is in charge of policy-making and inter-agency coordination in the area of consumer protection. It has the mandate to receive and mediate complaints from consumers, impose administrative sanctions for violations of the law, govern standard contracts and general trading conditions in relation to consumer protection, and undertakes consumer education and awareness-raising.⁶³⁹ In addition, the Departments of Industry and Trade at the provincial level have responsibility for law enforcement on consumer protection.

The most notable consumer organization is the Viet Nam Standards and Consumers Association (VINASTAS). VINASTAS is a non-profit, socio-professional organisation with the mission to promote and protect the rights of consumers. VINASTAS has the mandate to support consumers make complaints, however, there remains challenges to date in effectively fulfilling this role.

Recommendations

1. Promote and ensure effective implementation of the UN Guidelines for Consumer Protection, 2015.
2. Ensure effective integration of the ASEAN High-Level Principles on Consumer Protection and the ASEAN Strategic Action Plan on Consumer Protection 2016- 2025 into national law in Viet Nam.
3. Strengthen the regulatory framework related to handling of complaints by consumers, including support and representation of consumers and

⁶³⁹ Law on Protection of Consumer Rights, (2010). Article 48 (n. 631).

providing for the class action complaints to be taken in relation to consumer protection cases.

4. Improve the effectiveness of dispute settlements between consumers and businesses, through revisions to the Law on the Protection of Consumer Rights (2010).
5. Develop policies to promote awareness raising and information dissemination among consumers of their rights.

4.4 Anti-Corruption

Corrupt corporate practice can have a significant impact on society and the environment. The UN have increasingly recognized this nexus between corruption and rights.⁶⁴⁰ In 2020, the report of the UNWG on 'Connecting the business and human rights and the anti-corruption agendas' was published. The Report further explores and confirms the strong connection between corruption and IHRL, and "examines the good practices that States, businesses and other relevant organizations can undertake to address corruption when it has negative impacts on human rights."⁶⁴¹ The following section explores this nexus in the regulatory framework in Viet Nam, by building an environment that promotes responsible corporate governance and greater 'business integrity'.

For this section, the definitions for various acts of corruption as provided for in the UN Convention Against Corruption (UNCAC) are adopted.

International commitments

The only legally binding international treaty on combatting corruption is the UNCAC, which came into effect in 2005.⁶⁴² The

⁶⁴⁰ UNHRC, 41st Session, 'The negative impact of corruption on the enjoyment of human rights', (2019). Resolution 41/9. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/L.11. Accessed on 28 May 2020.

⁶⁴¹ UNHRC, 44th Session, 'Connecting the business and human rights and the anti-corruption agendas', (2020). Resolution 44/43. Available at: https://www.ohchr.org/Documents/Issues/Business/A_HRC_44_43_AdvanceEditedVersion.pdf. Access on 14 July 2020.

⁶⁴² UN Office on Drugs and Crime, UN Convention against Corruption (UNCAC), (2003). Available at: <https://www.unodc.org/unodc/>

Government of Viet Nam ratified UNCAC in 2009.⁶⁴³ While the UNCAC creates legal obligations only on States Parties, it is designed to prevent and fight corruption committed by both public and private actors, therefore includes a number of provisions targeted at corruption in the private sector. Under the UNCAC, States Parties shall take measures to “prevent corruption involving the private sector”, “enhance accounting and auditing standards in the private sector”, and where appropriate, provide effective “administrative or criminal penalties for failure to comply with such measures.”⁶⁴⁴ A number of measures are outlined in the UNCAC that States Parties should take to combat corruption in the private sector, including the development of relevant standards designed to safeguard the integrity of businesses, such as codes of conduct, preventing the misuse of procedures regulating private entities.⁶⁴⁵

UNCAC includes a number of mandatory provisions calling for the criminalisation of corrupt acts which States Parties are obliged to implement, and which are relevant to anti-corruption among businesses. The Convention includes a focus on bribery within the private sector, however this provision is non-mandatory for States Parties, thus “Each State Party shall consider adopting” this provision.⁶⁴⁶ Also included as non-mandatory provisions of UNCAC related to business activity is the call for States Parties to consider criminalizing the offering of a bribe to a public official or other person to use their influence with a view to obtaining from a public authority an undue advantage, or trading in influence, and the call on States Parties to consider criminalizing embezzlement of “property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position” by persons who work for the private sector.⁶⁴⁷ With particular relevance for businesses in the financial sector, but

applicable to all enterprises, UNCAC calls on countries to establish, as a mandatory provision, the laundering of proceeds of crime as a criminal offence.⁶⁴⁸ With respect to ‘liability of legal persons’, the UNCAC extends liability for corrupt acts, not just to individuals, but to businesses also, and as a mandatory provision for States Parties.⁶⁴⁹

As mentioned above, corruption in business can have a significant impact on the enjoyment of many rights, including the granting of licenses and subsidies in return for bribes, and sales of counterfeit goods. Therefore, corruption is a cross cutting issue that effects the implementation of many of the UNGPs, a specific instance is namely in undermining victims’ access to remedy through corruption in the justice sector.⁶⁵⁰

The importance of combatting corruption for ensuring sustainable development is highlighted under Goal 16 of the SDGs. Target 16.5 calls on States to substantially reduce corruption and bribery in all their forms. Target 16.4 aims to reduce illicit financial flows, while Targets 16.6 and 16.7 aim to promote effective, accountable and transparent institutions, and promote inclusive, participatory and representative decision-making respectively.⁶⁵¹

- *EU-Vietnam Free Trade Agreement*

The EVFTA includes many provisions that promote transparency and help to combat corruption, which in effect help to ensure responsible business practice. Of particular relevance to businesses, under Chapter 11, the EVFTA allows parties which have “reasonable reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a SOE, an enterprise granted special rights or privileges, or a designated monopoly of the other Party ... [to] request the other Party in writing to provide information about the operations of that enterprise or entity”, thus ensuring greater

[en/corruption/tools_and_publications/UN-convention-against-corruption.html](https://www.transparency.org/en/corruption/tools_and_publications/UN-convention-against-corruption.html). Accessed on 28 May 2020.

643 Ibid.

644 Ibid. Article 12.1.

645 Ibid. Article 12.2.

646 Ibid. Article 21.

647 Ibid. Articles 18 and 22.

648 Ibid. Article 23.

649 Ibid. Article 26.

650 UNGPs. Commentary to Principle 26 (n. 2).

651 UN, ‘SDGs’ SDG 16, Targets 16.4, 16.5, 16.6 and 16.7 (n. 34).

transparency of such activities.⁶⁵² Under Chapter 4 on Customs and Trade Facilitation, the Agreement calls for the establishment of simplified customs procedures, “that are transparent and efficient in order to reduce costs and increase predictability for economic operators.”⁶⁵³ Chapter 5 on Technical Barriers to Trade calls on parties to ensure transparency with regard to the “preparation, adoption and application of standards, technical regulations and conformity assessment procedures.”⁶⁵⁴

- *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*

By entering into the CPTPP, Viet Nam has reaffirmed its “resolve to eliminate bribery and corruption in international trade and investment” as well as its recognition of the need to build integrity within both the public and private sectors.⁶⁵⁵ In particular, the CPTPP requires Viet Nam to “adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law” practices of bribery and corruption.⁶⁵⁶ Viet Nam is also required to promote the active participation of enterprises and non-governmental organizations, among others, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption.⁶⁵⁷ Further, the CPTPP requires Viet Nam to encourage private enterprises to “develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of corruption in matters affecting international trade or investment ... and ... ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.”⁶⁵⁸ The CPTPP also requires Viet Nam to “take appropriate measures to

ensure that its relevant anticorruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of any incident that may be considered to constitute” corruption.⁶⁵⁹

Regulatory framework

The Constitution outlines that it is the task of Government to “fight against bureaucracy and corruption in the state apparatus.”⁶⁶⁰

Pursuant to the Constitution, the Law on Anti-Corruption was approved by the National Assembly in 2018 and officially came into effect on the 1 July 2019, replacing the Law on Anti-Corruption of 2005.⁶⁶¹ The Law on Anti-Corruption, for the first time, under Chapter VI, includes provisions related to combatting corruption in the private sector.⁶⁶² Chapter VI aims to foster transparency and non-corrupt business culture by promoting greater business integrity in the private sector. The Law on Anti-Corruption applies to specific enterprises as outlined under Section 2 of Chapter VI. Publicly listed businesses and credit institutions are regulated under the Law with respect to disclosure of information, control of conflict of interest, and the responsibilities of heads and deputies.⁶⁶³ Under the Law, these companies and institutions are subject to inspection of implementation of anti-corruption law by the relevant authorities, including the Government Inspectorate, ministerial inspectorates and provincial inspectorates.⁶⁶⁴ The Law further outlines the responsibilities of such companies and institutions in the detection, handling and reporting of cases of corruption within their organizations.⁶⁶⁵

652 EVFTA. Article 11.6 (n. 28).

653 Ibid. Article 4.5.

654 Ibid. Article 5.7.

655 CPTPP. Article 26.6 (n. 29).

656 Ibid.

657 Ibid.

658 Ibid.

659 Ibid.

660 Constitution of Vietnam. Article 96.4 (n. 60).

661 Law on Anti-Corruption. (2018), Law No. 36/2018/QH14. Available at: <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf>. Accessed on 28 May 2020.

662 Ibid. Chapter VI.

663 Ibid. Article 80.

664 Ibid. Article 81.

665 Ibid. Article 82.

Decree No. 59/2019/ND-CP provides specific guidance on a number of articles and measures for implementation of the Law on Anti-Corruption, with Chapter VII focusing specifically on publicly listed businesses and credit institutions.⁶⁶⁶ Decree No. 59 requires publicly listed businesses and credit institutions to actively take measures to address conflict of interest, including by delivering training for staff on the issue, developing codes of conducts and other detection, handling and reporting of conflict of interest cases.⁶⁶⁷ Additional requirements are placed on publicly listed businesses and credit institutions to ensure transparency where cases of corruption are detected.⁶⁶⁸ Failure to ensure compliance may result in an inspection from the relevant authorities to examine procedures for combatting, and possible cases of, corruption.⁶⁶⁹ Decree No. 59 allows enterprises to issue sanctions against company heads and deputies who they themselves are found, or employees under their supervisions are found, to be liable for corruption under the Law.⁶⁷⁰

The Law on Anti-Corruption provides for the criminalisation of certain corrupt practices in line with mandatory obligations under the UNCAC, including by expanding the definition of abuse of power offences to include those committed by the private sector. The Penal Code (2015) provides for the criminalisation of corrupt practices, including: embezzlement⁶⁷¹ and taking bribes.⁶⁷² The recent adoption of the Law on Anti-Corruption and Decree No. 59 has strengthened the alignment of the regulatory framework in Viet Nam with international commitments through the introduction of a number of important provisions, in particular relating to combatting corruption by, and within, the private sector. Despite improvements, the regulatory framework

is still lacking in robust mechanisms for implementation and enforcement. Critical to ensuring clarity for businesses and Government on how the provisions of the Law will be implemented and enforced is clear and targeted guiding documents, including practical toolkits and other similar resources. Furthermore, Viet Nam has recently undertaken its second review under UNCAC in 2020.⁶⁷³ Recommendations under the second UNCAC review related to combatting corruption in the private sector should be implemented where possible through further legal documents guiding the implementation of the Law on Anti-Corruption.

Institutional framework

The Law on Anti-Corruption outlines that responsibility for the state management of combatting corruption in Viet Nam rests with the Government. Under the Law, the Government Inspectorate is the focal agency assisting the Government in performing State management over corruption prevention and combating work, including in both the public and private sector, and has the following responsibilities: to promulgate and organize the implementation of policies and legislations on corruption prevention and combating; to inspect, examine corruption prevention and combating activities; to organize, direct and guide the inspection of law enforcement in corruption prevention and combating; re-training for officials engaged in corruption prevention and combating work. MPS and the Ministry of Defence are responsible for organizing investigation activities against corruption crimes.⁶⁷⁴ People's Committees, at all levels, hold key responsibilities, including for the dissemination of information related to corruption, organize the inspection and settlement of complaints of corruption, and reporting on corruption to the People's Council.⁶⁷⁵ The Law outlines the

⁶⁶⁶ Decree No. 59/2019/ND-CP detailing a number of articles of, and measures to implement the Law on Anti-Corruption, 1 July 2019. Available at: <https://vanbanphapluat.co/decrees-59-2019-nd-cp-elaborating-the-law-on-anti-corruption>. Accessed on 22 September 2020. Chapter VII.

⁶⁶⁷ Ibid. Article 54.

⁶⁶⁸ Ibid. Article 53.

⁶⁶⁹ Ibid. Chapter VII, Section 2.

⁶⁷⁰ Ibid. Article 55.

⁶⁷¹ Penal Code, (2015). Article 353 (n. 460).

⁶⁷² Ibid. Article 354.

⁶⁷³ UNODC, 'Implementation Review Mechanism: Country Pairings for Each Review (Second Review)'. Available at: <https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html>. Accessed on 22 September 2020.

⁶⁷⁴ Law on Anti-Corruption, (2018). Article 84 (n. 661).

⁶⁷⁵ Ibid. Article 85.

responsibilities of the Supreme People's Procuracy and the Supreme People's Court, including to investigate, prosecute, adjudicate execute judgments on corruption crimes. The "State audit shall have the responsibility to audit in order to prevent, detect corruption and audit cases with signs of corruption."⁶⁷⁶

Recommendations

1. Ensure effective dissemination of information on the Law on Anti-Corruption and related guiding documents to increase awareness of the relevant provisions and mechanisms, among public institutions, business enterprises and the public.
2. Develop guiding documents and guidelines on the implementation of the Law on Anti-Corruption, including further decrees and circulars and practical toolkits, in particular to support businesses to promote and implement the Law.
3. Assess the alignment of the Law on Anti-Corruption with commitments under UNCAC and take legislative and policy measures to strengthen alignment ahead of Viet Nam's next review under UNCAC.
4. Provide capacity building programmes for key agencies on implementation of the Law on Anti-Corruption, including for the Government Inspectorate, for the judiciary on processing corruption crimes, and for State-Owned-Enterprises.
5. Continue to ensure the full implementation of all transparency and anti-corruption related provisions of the CPTPP and the EVFTA.

4.5 Community Engagement

Community engagement is a process that facilitates communication, interaction, involvement, and exchange between an

⁶⁷⁶ Ibid. Articles 86 and 87.

organization and a community for a range of social and organizational outcomes.⁶⁷⁷ The main goal of community engagement is to improve efficiency, transparency and public involvement in decision making that impacts upon such communities. Community engagement can take many forms including notification, consultation and participation. The absence of community engagement about matters that directly affect the lives of individuals and communities can lead to conflicts involving such communities and businesses.

Corporate community engagement refers to the activities that a company undertakes to enhance its relationships with the communities in which it has a presence or impact. This engagement is key to ensuring potential harmful risks of business activity are mitigated or prevented. In certain countries, community engagement is mandated by law, for example when major development projects are planned that will directly impact on communities in the area. Effective community engagement is often based on the principle of obtaining and applying free, prior, and informed consent (FPIC) from the affected community by the business. FPIC is a key tool to ensuring that the right to self-determination, related rights to lands, territories and natural resources are respected.⁶⁷⁸

International commitments

Ensuring the full and effective participation of relevant stakeholders, in particular local communities, has been addressed in many international instruments. Viet Nam's international commitment to community participation is recognized in Common Article 1 on the right to self-determination under the ICCPR,⁶⁷⁹ and the ICECSR.⁶⁸⁰

⁶⁷⁷ Johnston, K. A., 'Toward a theory of social engagement', *The Handbook of Communication Engagement*, (2018). Pages. 19-32.

⁶⁷⁸ Thu Pham T., Christophe Castella J., Lestrelin G., Mertz O., Ngoc Le D., Moeliono M., Quang Nguyen T., Thi Vu H., and Nguyen T.D., 'Adopting Free, Prior, and Informed Consent (FPIC) to Local Contexts in REDD+: Lessons from Three Experiments in Vietnam', (2015). *Forest*, Vol.6 (7). Pages 2405-2423.

⁶⁷⁹ ICCPR. Article 27 (n. 237).

⁶⁸⁰ ICECSR. Article 15 (n. 236).

The Convention on Biological Diversity (1992), to which Viet Nam is a party, states that: “access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.”⁶⁸¹ The UN Declaration on the Rights of Indigenous Peoples (2007) requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.⁶⁸² No relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.⁶⁸³

The UNGPs highlight the responsibility to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that considers language and other potential barriers to effective engagement.⁶⁸⁴ The UN Program on Reducing Emissions from Deforestation and Forest Degradation (REDD) also provides guidance on how to effectively implement FPIC processes in the context of reducing emissions from deforestation and forest degradation.⁶⁸⁵

Community engagement is addressed in ILO Treaties in issues related to discrimination. The ILO CEACR has charged the Government with the responsibility to provide information on the measures taken to consult with the groups concerned when developing and implementing programmes and policies with an impact on ethnic minority groups.⁶⁸⁶ Viet Nam’s commitment to local

community engagement is also recognized in international trade agreements. The relevant article on Trade and Biodiversity of the CPTPP recognizes the importance of respecting, preserving, and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.⁶⁸⁷

The 2030 Agenda, including the SDGs, places paramount importance on the need to ensure stronger participation of stakeholders in decision making processes, in particular through Goal 16. Target 16.7 specifically calls to “Ensure responsive, inclusive, participatory and representative decision-making at all levels.”⁶⁸⁸

Regulatory framework

The people’s participation in state management and monitoring of law enforcement is a key pillar of good governance and democracy. The Constitution recognizes that: “The citizen has the right to participate in the administration of the State and management of society, and to participate in the discussion and recommendation to the state organs on the issues of the community, the region, and the country. The State shall create conditions for the citizen to participate in the administration of the State and management of society; the receipt and response to citizen’s opinion and recommendation shall be public and transparent.”⁶⁸⁹ The requirement to engage with people and communities in Viet Nam is provided for in a number of regulations including the Law on Land (2013), the Law on Planning (2017), the Law on the Environmental Protection (2014) and the Law on Viet Nam’s Motherland’s Front (2015). The Law on Land requires consultation with people in the development of master plans for land, plans on land use, land acquisitions,

681 UN, Convention on Biological Diversity, (1992). Article 15 (n. 563).

682 UN, ‘Declaration on the Rights of Indigenous Peoples’, (2007). Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Accessed on 15 December 2019.

683 Ibid.

684 UNGPs. Commentary to Principle 17 (n. 2).

685 UN-REDD Programme, Guidelines on Free, Prior and Informed Consent, (2013). Available at: <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>. Accessed on 22 September 2019.

686 ILO, ‘Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the

Constitution) (Part 1A)’. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123424.pdf. Accessed on 4 December 2019. Page 467

687 CPTPP. Article 20.13 (n. 29).

688 UN, ‘SDGs’ (n. 34).

689 Constitution of Viet Nam. Article 28 (n. 60).

assessment of compensation, and support and resettlements to be offered to those displaced under Chapter 10.⁶⁹⁰ Specific provisions on supervision of land management, setting up a monitoring and evaluation systems for land management and their use on a national and local level are also affirmed under Chapter 13.⁶⁹¹ The Law on Planning recognizes that one of the key principles in planning activities is to ensure the participation and supervision of organizations, communities and individuals in planning.⁶⁹² The Law on the Environmental Protection encourages and aims to facilitate all organizations, communities, households and individuals to participate in environmental protection activities.⁶⁹³

Even though there are provisions on people and community participants in some key laws, most of the legal instruments do not include strong regulations or mechanisms on ensuring community consultation, dialogue or engagement, moreover, enforcing sanctions where there is failure to ensure participation. More specifically, there is no specific provisions requiring FPIC be secured with local communities under the relevant provisions in the laws on land, investment, environment, and planning.

Institutional framework

There are no specialized agencies to administer matters relating to community engagement in Viet Nam. Relevant ministries, including MPI and MONRE, hold key responsibilities in the context of planning and approving projects which impact upon communities. Local government, in particular local agencies at the grass roots level, play a key role in ensuring direct community participation in matters related to the community and to local people's rights.

Recommendations

1. Strengthen the regulatory framework to ensure the active participation of local communities in decision making processes on business development projects that affect them, in particular for ethnic minorities.⁶⁹⁴
2. Strengthen the regulatory framework to include the principle of the free, prior, and informed consent (FPIC) in relation to corporate activities which may impact upon local communities.
3. Strengthen the regulatory framework to ensure effective enforcement against public bodies and businesses for failure to adhere to relevant provisions related to community engagement and the issuance of sanctions for such of violations, including in the proposed revision of the Land Law.

⁶⁹⁰ Land Law, (2013). Article 43 (n. 526).

⁶⁹¹ Ibid.

⁶⁹² Law on Planning, (2017), Law No. 21/2017/QH14 (2017). Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=192206. Accessed on 25 September 2019. Article 4.

⁶⁹³ Law on Environmental Protection, (2014). Article 5 (n. 195).

⁶⁹⁴ CERD, 'Concluding observations of Viet Nam'. Paragraph 13 (n. 544).

CHAPTER 5

RESPONSIBLE BUSINESS PRACTICE AND VULNERABLE GROUPS



This chapter examines specific international commitments and legislative protections regarding identified demographic groups in Viet Nam which may be more vulnerable thus at higher risk to negative impacts from business activity, and offers targeted recommendations for further strengthening the regulatory framework in relation to protecting such groups.

The UNWG has set out that: “Effective implementation of the UNGPs requires equality and non-discrimination regardless of gender, age, ethnicity, sexual orientation, economic situation, or social status.”⁶⁹⁵ Accordingly, NAP development processes must give particular attention to identify and address these challenges faced by populations that may be at heightened risk due to their marginalization or vulnerability.⁶⁹⁶ The UNGPs set out that States should provide effective guidance to business on how to respect the rights of individuals, considering effectively issues of gender, vulnerability and marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.⁶⁹⁷

5.1 Workers in the Informal Economy

According to the ILO, the informal economy refers to all economic activities, which are not illicit, “by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.”⁶⁹⁸ The informal economy accounts for more than half of the global labour force and more than 90 per cent of the workforce of micro and small enterprises worldwide.⁶⁹⁹ Approximately 6 workers in 10

and 4 enterprises in 5 in the world operate in the informal economy.⁷⁰⁰ However, workers in the informal economy are more vulnerable to gaps in protection systems and laws designed to protect worker’s rights, thus are less likely to enjoy the same rights of those who work in the formal sector.

In Viet Nam, workers in the informal economy constitute a critical component of the national labour market, with an overall contribution of approximately 20 per cent of GDP.⁷⁰¹ In 2016, there are more than 18 million informal workers in Viet Nam, of whom more than three-quarters had no written contracts.⁷⁰² The number of workers in informal employment in Viet Nam accounts for about 57.2 per cent of non-agricultural workers nationwide, and 78.6 per cent of workers if agricultural households are included.⁷⁰³

Workers in the informal economy often receive low and irregular income, face longer working hours, benefit from fewer career development opportunities and other protections due to the lack of legal protection with regards to their contract, working conditions, and safety and health standards.

International commitments

The international framework for the protection of workers in the informal economy was established through key ILS and conventions, which are applied in both the formal and informal economy without distinction. As mentioned above, Viet Nam has ratified seven of the eight core ILO conventions. Under these conventions, Viet

htm. Accessed on 15 December 2019.

700 ILO, ‘Employment Promotion: Informal economy’. Available at: <http://www.ilo.ch/global/topics/employment-promotion/informal-economy/lang--en/index.htm>. Accessed on 5 September 2020.

701 Cling, J.P., Razafindrakoto, M., Raubaud, F., ILO, Ministry of Labour, Invalids and Social Affairs, ‘The informal economy in Viet Nam’, (2011). Page 17.

702 While only 1.7 per cent of formal economy workers failed to sign a labour contract, 76.7 per cent of informal economy workers engaged in such employment without any form of written labour contract, in which 62.1 per cent had a verbal agreement and the remainder (14.6 per cent) no form of agreement. See General Statistics Office of Viet Nam and ILO, ‘2016 Report on informal employment in Viet Nam’, (2016). Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_638330.pdf. Accessed on 19 December 2019. Page 12.

703 Ibid.

695 UNWG, ‘Guidance on National Action Plans on Business and Human Rights’. Page 19 (n. 8).

696 Ibid. Page 3.

697 UNGPs. Principle 3 (n. 2).

698 ILO, ‘Transition from the Informal to the Formal Economy Recommendation, No. 204’, (2015). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting-document/wcms_377774.pdf. Accessed on 21 September 2020.

699 ILO, ‘Informal economy’. Available at: <https://www.ilo.org/employment/units/emp-invest/informal-economy/lang--en/index>.

Nam has obligations to take appropriate measures to ensure legal protection for informal workers, including women and children.

The milestone ILO instrument on the informal economy was the Resolution and Conclusions on Decent Work and the Informal Economy (2002), which provides the definition of the informal economy cited above.⁷⁰⁴ A further recognition of the informal economy can be found under ILO Recommendation concerning the Transition from the Informal to the Formal Economy, 2015 (No. 204), which provides guidance to States in developing strategies and policies to facilitate the transition of workers from the informal sector toward registered employment.⁷⁰⁵

The UNGPs point to the eight core ILO conventions, regarding freedom of association and right to collective bargaining, non-discrimination and equal pay for equal work, elimination of forced labour and child labour, as benchmarks to guide States and businesses on their respective duties and responsibilities toward people. As the UNGPs “apply to all States and to all business enterprises”, regardless of their “sector”, these frameworks equally apply to informal economy as to formal economy.⁷⁰⁶

The protection of workers in the informal economy is also a thematic area under SDGs, specifically Target 8.3 on the development of policies that support decent job creation, entrepreneurship, and encourage formalization and growth of micro and SMEs, and Target 10.2 calling for the reduction of inequality and discrimination, through the empowerment and promotion of the social, economic and political inclusion for all, including for those in the informal economy.⁷⁰⁷

704 ILO, ‘Resolution and conclusions concerning decent work and the informal economy’, (2002). Available at: https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/WCMS_080105/lang-en/index.htm. Accessed on 28 December 2019.

705 ILO, ‘Transition from the Informal to the Formal Economy Recommendation’, (2015) (n. 698).

706 UNGPs. Principles 12 and 14 (n. 2).

707 UN, ‘SDG Indicators’ (n. 232).

Regulatory Framework

There has been no specific law enacted governing informal employment in Viet Nam. However, the Constitution guarantees the right to work in equal and safe conditions without discrimination and forced labour and the right to social security, which apply equally to those in the informal economy.⁷⁰⁸ Accordingly, the State has the responsibility to develop social protection systems for all workers, including those in the informal economy.⁷⁰⁹

Protection of workers in the informal economy is also recognized in a number of Vietnamese laws. The Labour Code (2019) expanded the scope of regulations to protect the rights and the legitimate interests of workers without formal labour relations.⁷¹⁰ The Law on Social Insurance (2014) provides regulations to ensure social protection for everyone, specifically providing that all organizations in Viet Nam that hire workers must contribute to social insurance programmes, and individuals from 15 years old can participate voluntary social insurance.⁷¹¹ The Law on Health Insurance (2008) identifies criteria for those who are eligible for health insurance.⁷¹²

Despite the abovementioned provisions, the national legal framework for the protection of workers does not effectively provide for workers in the informal economy, in particular workers without a written contract.⁷¹³ There is a lack of clear and targeted legal provisions in labour laws, social insurance and health insurance law to ensure the fundamental rights of workers in the informal economy are protected.

Both the UNHRC and the CEDAW Committee expressed concern at the lack of legal protection for workers in the informal economy, such as domestic workers, women and children.⁷¹⁴ The Law on Health

708 Constitution of Vietnam. Article 34 and 35 (n. 60).

709 Ibid. Article 59.

710 Labour Code (2019). Article 2 (n. 263).

711 Law on Social Insurance, (2014). Article 2 (n. 354).

712 Law on Health Insurance, (2008) (n. 388).

713 Except for employment contracts for a duration of less than 01 month. See Labour Code, (2019). Article 14 (n. 263).

714 UNHRC, ‘Compilation on Viet Nam Report of OHCHR’. Para-

Insurance (2014) does provide for voluntary social insurance, or household insurance, for workers in the informal economy;⁷¹⁵ however, the rate of participation of voluntary social insurance, or household insurance, among workers in the informal economy remains very low.⁷¹⁶ Women working in the informal economy have limited access to social protections, training opportunities and financial resources, such as formal credits through bank loans, pension and social security schemes.⁷¹⁷ Despite strong progress in the area of ending child labour, the CRC Committee highlighted that it remains an issue in the informal economy through its Concluding Observations during Viet Nam's review in 2012.⁷¹⁸

Institutional framework

MOLISA has the primary responsibility for the protection of worker's rights, and the development and administration of laws and policies concerning workers in the informal economy. Within MOLISA, issues relating to workers' rights in the informal economy are under the administration of the Department of Work Safety and the Department of Industrial Relations and Wage.⁷¹⁹ The provision of social insurance for workers in the informal economy is under the administration of the Department of Social Insurance of MOLISA and Viet Nam Social Security.

Recommendations

1. Extend social protection to people working in the informal economy, especially women and children in the sector through a mix of contributory, financed by contributions of

beneficiaries, and non-contributory, financed through tax or other state revenues, schemes,⁷²⁰ including an increase in the social assistance cash transfer programme for low-income families with children, extending such support to poor ethnic minority families, informal workers' families and migrants' families.⁷²¹

2. Take steps to improve health insurance coverage and expand access to health care to all workers in the informal economy and those living in remote areas.⁷²²

5.2 Ethnic Minorities

Minority groups refers to national or ethnic, religious and linguistic minorities.⁷²³ International efforts have focused on eliminating discrimination as it is a key issue related to the protection of the rights of ethnic minority groups. The Government uses the term ethnic minorities to refer to ethnic groups with a smaller population than that of the majority in the territory of Viet Nam.⁷²⁴

International commitments

Ethnic minorities are often included as being a 'marginalized' or 'vulnerable group' under certain international frameworks. IHRL affirms the cross-cutting principles of non-discrimination of any kind as to, among others, race, colour, language, religion, and national origin. The protection of rights of ethnic minority groups is provided for under a number of key treaties that Viet Nam has

graph 47 (n. 224); CEDAW, 'Concluding observations of Viet Nam'. Paragraph 28 (n. 409).

715 Law on Health Insurance, (2008). Article 13 (n. 388).

716 ILO, GSO, 2016 Report on Informal Employment in Viet Nam, (2016). Page 47 (n. 702).

717 CEDAW, 'Concluding observations of Viet Nam', (2015) (n. 409).

718 CRC Committee, 'Concluding observations of Viet Nam', (2012) (n. 400).

719 See Ministry of Labour Invalids and Social Affairs, 'Department of Work Safety'. Available at: <http://english.molisa.gov.vn/Pages/About/OrganizationalDetail.aspx?ToChuclD=2231>; See MOLISA, 'Department of Industrial Relations and Wage'. Available at: <http://english.molisa.gov.vn/Pages/About/OrganizationalDetail.aspx?ToChuclD=2221>. Accessed on 22 September 2020.

720 CESCR, 'Concluding observations of Viet Nam'. Paragraph 23 (n. 266); CEDAW, 'Concluding observations of Viet Nam'. Paragraph 29 (n. 409).

721 CEDAW, 'Concluding observations of Viet Nam'. Paragraph 31 (n. 409).

722 UNHRC, UPR Viet Nam, (2019). Recommendation 247 (n. 402).

723 UN, 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities', (1992). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>. Accessed on 12 December 2019.

724 Decree No. 05/2011/ND-CP on ethnic minorities, dated 14 January 2011. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91609&p_country=VNM&p_count=543&p_classification=21&p_classcount=5. Accessed on 12 December 2019. Article 4(2).

ratified including the ICCPR,⁷²⁵ ICESCR,⁷²⁶ CRC,⁷²⁷ and the CERD.⁷²⁸ The CERD protects the rights of groups to enjoy their own culture, to profess and practice their own religion and to use their own language. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) affirms the rights of persons belonging to minorities to enjoy all fundamental freedoms based on the principles of non-discrimination and equality before the law.⁷²⁹ The UNGPs note that businesses may need to consider international standards contained in UN instruments in relation to “national or ethnic, religious and linguistic minorities.”⁷³⁰ The UNGPs also refer to the need to consider the specific concerns of these minorities in connection when undertaking due diligence in business activities.⁷³¹ The UNGPs state that business enterprises should recognize the importance of “meaningful consultation with potentially affected groups” when doing business.⁷³²

The key concerns expressed by the monitoring committees of the ICCPR, ICESCR, CERD and CRC include: the socio-economic gap between ethnic minorities and the majority;⁷³³ discrimination regarding education, employment and other public services;⁷³⁴ the lack of free, prior and informed consent of ethnic minorities on decisions that affect them;⁷³⁵ the persistent disparities in service delivery for health, education and social protection, and;⁷³⁶ the lack of a comprehensive, effective and independent complaints mechanisms available in line with Articles 2, 4, 5 and 6 of the CERD.⁷³⁷

725 ICCPR, Article 1 and 27 (n. 237).

726 ICESCR, Article 2(2) (n. 236).

727 CRC, Article 30 (n. 479).

728 UN, ‘Convention on the Elimination of All Forms of Racial Discrimination’, (1965). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>. Accessed on 26 December 2019

729 UN, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (1992) (n. 723).

730 UNGPs, Commentary to Guiding Principle 12 (n. 2).

731 Ibid.

732 Ibid. Guiding Principle 18.

733 CERD, ‘Concluding observations of Viet Nam’ (n. 544).

734 CRC Committee, ‘Concluding observations of Viet Nam’ (n. 400); CERD, ‘Concluding observations of Viet Nam’ (n. 544).

735 CESCR, ‘Concluding observations of Viet Nam’ (n. 266).

736 CRC Committee, ‘Concluding observations of Viet Nam’ (n. 400).

737 CERD, ‘Concluding observations of Viet Nam’ (n. 544).

Regarding business and development protections, the Concluding Observations of the HRC, under the ICCPR, raise concerns that the use of land and resources of ethnic minorities for development projects may have negative impacts on the communities’ culture, lifestyle, and livelihoods, resulting in the exacerbation of socio-economic inequalities.⁷³⁸

Regulatory framework

There are 53 minority ethnic groups in Viet Nam, accounting for 14.7 per cent of the total population.⁷³⁹ The Constitution establishes the right to equality and prohibits all acts of discrimination against and division of ethnicities, and provides that the State “shall implement a policy of comprehensive development and create the conditions for the minority ethnicities to fully utilize their internal strengths and develop together with the country.”⁷⁴⁰

The Constitution recognises the duty of the State to exercise a priority policy of health care for ethnic minorities, and to prioritize educational development in regions inhabited by ethnic minority people.⁷⁴¹ The Constitution,⁷⁴² Criminal Procedure Code (2015),⁷⁴³ Civil Procedure Code (2015),⁷⁴⁴ and the Law on Administrative Procedure (2015)⁷⁴⁵ all recognise the right to speak and write in native languages of ethnic people.

However, the current legal framework is lacking a specific law addressing all forms of discrimination including those against ethnic minorities. A law on supporting the development of ethnic minorities and

738 HRC, ‘Concluding observations of Viet Nam’ (n. 265).

739 General Statistics Office of Viet Nam, ‘Selected key indicators the Viet Nam population and housing census’, (2019). Available at: https://www.gso.gov.vn/default_en.aspx?tabid=515&id_mid=5&ItemID=19449. Accessed on 25 December 2012.

740 Constitution of Viet Nam, Article 5(4) (n. 60).

741 Ibid. Article 42, 58, and 61.

742 Ibid. Article 42.

743 Criminal Procedure Code, (2015), Law No. 101/2015/QH13. Available at: <https://vanbanphapluat.co/law-no-101-2015-qh13-criminal-procedure-code>. Accessed on 22 September 2020. Article 29.

744 Civil Procedure Code, (2015), Law No. 92/2015/QH13. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn083en.pdf>. Accessed on 22 September 2020. Article 20.

745 Law on Administrative Procedure, (2015), Law No. 93/2015/QH13. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf>. Accessed on 22 September 2020. Article 21.

mountainous areas has been drafted and at the time of writing has not yet been submitted for the approval of the National Assembly.⁷⁴⁶ There is also a lack of provisions on business responsibilities towards minority groups in business and investment laws.

Since Doi Moi, many policies and programmes focusing on poverty reduction, education, healthcare, cultural identity and infrastructure and investment have been targeted to the ethnic minority development in Viet Nam. Resolution No. 88/2019/QH14 approving the Master Plan for socio-economic development of ethnic minority and mountainous areas calls for the mobilization of resources for the sustainable development of ethnic minorities, and further calls for expanding preferential credit capital for relevant stakeholders to develop business production in ethnic minority and mountainous areas.⁷⁴⁷

Most of these policies and projects have contributed significantly to economic and social development for ethnic minority communities. Nevertheless, they mainly focus on particular areas such as poverty elimination, infrastructure development, education and health care while failing to effectively address emerging challenges such as those resulting from development or infrastructural projects including land disputes, displacement of minority communities and pollution of soil and water.⁷⁴⁸

Institutional framework

There are two key state agencies in charge of ethnic minorities at the central level: the Committee for Ethnic Minority Affairs (CEMA), and; the Ethnic Council under the

National Assembly.⁷⁴⁹ Under CEMA, there are also agencies organized at the provincial and district levels which are composed of ethnic minority people. Other ministries, ministerial-level agencies and people's committees, at all levels, also exercise the state management of ethnic affairs according to the relevant provisions of law. The Ethnic Council is one of the elected bodies of the National Assembly⁷⁵⁰ and has the mandate to supervise and to support the implementation of ethnic policies, laws, programmes and plans relating to ethnic issues.⁷⁵¹ The Ethnic Council is also present in provincial and district levels where there are many ethnic minority people in the local population.⁷⁵²

Recommendations

1. Ensure effective implementation of the CERD, Article 27 of the ICCPR and Article 30 of the CRC related to the protection of ethnic minorities.
2. Ensure the draft Law on Supporting Ethnic Minorities and Mountainous Areas is progressed and includes provisions on protecting the rights of ethnic minorities from the adverse impacts of business activity.
3. Integrate provisions on business responsibility, sustainable development and environmental protection for ethnic communities into corporate and investment law.

746 Committee on Ethnic Minority Affairs (CEMA), Decision No. 460/QĐ-UBND promulgating the Plan of Action to implement the Socio-economic development plan for ethnic minority and mountainous areas for the period 2021-2025, dated 21 August 2020. Available at: <http://csdl.ubdt.gov.vn/noidung/vanban/Pages/chi-tiet-vbqp.aspx?ItemId=20174>. Accessed 25 August 2020.

747 National Assembly of Viet Nam, 'Resolution No. 88/2019/QH14 approving the Master Plan for socio-economic development of ethnic minority and mountainous areas in the 2021-2030 period', adopted on 18 November 2019. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/thuong-mai/Nghi-quyet-88-2019-QH14-De-an-phat-trien-kinh-te-xa-hoi-vung-dong-bao-dan-toc-thieu-so-va-mien-nui-429559.aspx>. Access on 14 January 2020.

748 UNHRC, 'Report of the independent expert on minority issues, Gay McDougall', (2011). Available at: <https://www.right-docs.org/doc/a-hrc-16-45/>. Accessed on 12 January 2020.

749 Decree No. 13/2017/ND-CP on the mandate, function and organizational structure of the Committee for Ethnic Minority Affairs, dated 10 February 2017. Available at: <https://vanbanphapluat.co/decree-13-2017-nd-cp-functions-powers-organizational-structure-committee-ethnic-minority-affairs>. Accessed on 22 September 2020.

750 Constitution of Viet Nam. Article 73 (n. 60).

751 Law on the Organisation of the National Assembly, (2014), Law No. 57/2014/QH13. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=178126. Accessed 25 December 2019.

752 Law on Organization of Local Government, (2015), Law No. 77/2015/QH13. Available at (in Vietnamese): http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&page=1&mode=detail&document_id=180614. Accessed on 26 March 2020. Articles 18(3) and 25(3).

4. Ensure free, prior and informed consultation and full participation of ethnic minorities in decisions that affect them, in particular decisions related to their lands and displacement for development projects.

5.3 Migrant Workers

According to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, an international migrant has been understood to be any person who lives and engages in a remunerated activity temporarily or permanently in a country where he or she is neither a national nor was born and has acquired some significant social ties to this country.⁷⁵³ The UN has defined internal migration as “a move from one area (a province, district or municipality) to another within one country.”⁷⁵⁴

This section assesses the regulatory framework with respect to both international and internal migrants and migrant workers in the context of responsible business practice. Meanwhile, human trafficking is addressed above in Section 3.3 ‘Forced Labour, Human Trafficking, Debt Bondage and Forced Marriage’.

International commitments

The international framework for the protection of migrant workers is established through a number of conventions including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁷⁵⁵ the Migration for Employment Convention (No. 97),⁷⁵⁶ the Migrant Workers (Supplementary Provisions) Convention

(No. 143),⁷⁵⁷ and the Private Employment Agencies Convention (No. 181).⁷⁵⁸ Viet Nam has not ratified any of these instruments. In 2016, the ILO reported that Viet Nam was currently considering ratification of Convention No. 97 and Convention No. 143.⁷⁵⁹ To enhance international cooperation in migration, Viet Nam adopted the UN Global Compact for Safe, Orderly and Regular Migration (GCM) in 2019 which is a tool to promote safe, orderly and regular migration, thus protecting the rights and interests of migrants.

Convention No. 97 requires ratifying states to “facilitate international migration for employment by establishing and maintaining free assistance and information service for migrant workers.”⁷⁶⁰ The Convention also includes “provisions on appropriate medical services for migrant workers and the transfer of earnings and savings.”⁷⁶¹ States that ratify Convention No. 97 are required to “apply treatment no less favourable that which applies to their own nationals in respect to a number of matters, including conditions of employment, freedom of association and social security.”⁷⁶²

Convention No. 143 provides measures against clandestine and illegal migration while proposing the general obligation to respect IHRL.⁷⁶³ Convention No. 143 also calls for measures to “ensure equality of opportunity and treatment in respect of employment and occupation, social

753 UN, ‘Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families’, (1990). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>. Article 2(1).

754 UNESCO, ‘Migrant/Migration’. Available at: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/>. Accessed on 29 September 2019.

755 UN, Convention on the Protection of the Rights of All Migrant Workers (1990) (n. 753).

756 ILO, ‘Migration for Employment Convention (Revised), 1949’ (No. 97). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097. Accessed on 29 September 2019.

757 ILO, ‘Migrant Workers (Supplementary Provisions) Convention, 1975’ (No. 143). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143. Accessed on 29 September 2019.

758 ILO, ‘Private Employment Agencies Convention, 1997’ (No. 181) (n. 446).

759 ILO, ‘Report III (1B): Promoting fair migration: General Survey concerning the migrant workers instruments – Information and reports on the application of Conventions and Recommendations Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)’, (2016). Available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/105/reports/reports-to-the-conference/WCMS_453898/lang--en/index.htm. Accessed on 29 September 2019. Page 177.

760 ILO, ‘International Labour Standards on Migrant Workers’. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang--en/index.htm>. Accessed on 29 September 2019.

761 Ibid.

762 ILO, ‘Migration for Employment Convention, 1949’ (No. 97) (n. 756).

763 ILO, ‘International Labour Standards on Migrant Workers’ (n. 760).

security, trade union and cultural rights, and individual and collective freedoms” for migrant workers or their family members and calls upon ratifying states to “facilitate the reunification of families of migrant workers legally residing in their territory.”⁷⁶⁴

As outlined above, Convention No. 181 recognizes the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.⁷⁶⁵ It also stipulates that a member country shall, after consulting the most representative organizations of employers and workers, implement all necessary and appropriate measures to “provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies.”⁷⁶⁶

Viet Nam’s current international legal obligations to protect the rights of migrants, including against business-related harm, is reflected in the principle of non-discrimination set out in the relevant treaties that Viet Nam has ratified.⁷⁶⁷ The Global Compact for Safe, Orderly and Regular Migration provides States with: guidance on strengthened international cooperation on the governance of international migration; a comprehensive menu of options for States from which they can select policy options to address some of the most pressing issues around international migration, and; the space and flexibility to pursue implementation based on their own migration realities and capacities.⁷⁶⁸

The Government of Viet Nam has developed a plan including 61 specific activities to

implement the objectives of the Compact. The plan was issued in 2020, under Decision No. 402/QD-TTg, to “demonstrate the determination and responsibilities of Viet Nam to implement the Global Compact for Safe, Orderly and Regular Migration.”⁷⁶⁹

The UNGPs call upon States to provide effective guidance for business on “appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by ... migrant workers and their families.”⁷⁷⁰

SDG 8.8 calls upon States to “protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.”⁷⁷¹ The relevant indicators on frequency rates of fatal and non-fatal occupational injuries and level of national compliance with labour rights are disaggregated by migrant status.⁷⁷² SDG 10.7 calls upon States to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.”⁷⁷³ Target 10c calls upon States to “reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.”⁷⁷⁴

Other relevant standards include the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007),⁷⁷⁵ the Dhaka Principles for Migration

764 Ibid.

765 ILO, ‘Private Employment Agencies Convention, 1997’ (No. 181) (n. 446).

766 Ibid. Article 8.

767 Viet Nam has ratified 7 out of 9 core human rights treaties including: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities.

768 See International Organization for Migration (IOM), ‘Global Compact for Safe, Orderly and Regular Migration’. Available at: <https://www.iom.int/global-compact-migration>. Accessed on 13 September 2020.

769 Decision No. 402/QD-TTg on the plan to Implement United Nation’s Global Compact for Safe, Orderly and Regular Migration, dated 20 March 2020. Available at: <https://english.luatvietnam.vn/decision-no-402-qd-ttg-dated-march-20-2020-of-the-prime-minister-on-promulgating-the-plan-on-implementation-of-the-united-nations-global-compact-fo-181792-Doc1.html>. Accessed on 22 September 2020.

770 UNGPs. Principle 3 (n. 2).

771 UN, ‘SDGs’. SDG 8, Targets (n. 34).

772 UN, ‘SDG Indicators’ (n. 232).

773 Ibid.

774 Ibid.

775 ASEAN, ‘ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers’, (2012). Available at: https://asean.org/?static_post=asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers. Accessed on 29 September 2019.

with Dignity (2012),⁷⁷⁶ and ILO's 'General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs' (2019).⁷⁷⁷

Regulatory framework

- *Vietnamese migrant workers abroad*

The Law on Vietnamese Workers Working Abroad under Contract (2006), or 'Law 72', is the key legislation governing the recruitment of Vietnamese migrant workers for employment abroad.⁷⁷⁸ The Law sets out the rights of Vietnamese migrant workers employed under contract in other countries, and the obligations of business enterprises sending workers abroad under contract.⁷⁷⁹ It also establishes the Overseas Employment Support Fund, which is aimed at developing and expanding foreign labour markets, raising the quality of workforce, and supporting workers and enterprises in handling risks.⁷⁸⁰

Various guiding decrees and circulars further address the responsibility of business enterprises with respect of migrant workers, including Decree No. 144/2007/ND-CP on sanctioning of administrative violations in the sending of Vietnamese workers abroad for employment, Circular No. 09/2006/TTLT/BLDTBXH-BCA-VKSNDTC-TANDTC on the investigation of criminal responsibilities of people who violate laws in sending workers abroad and the Code of Conduct (2018) of Viet Nam Association of Manpower Supply, which outlines the fundamental principles for compliance by enterprises recruiting workers for overseas employment.⁷⁸¹

776 UNGC, 'The Dhaka Principles for Migration with Dignity', (2012). Available at: <http://supply-chain.unglobalcompact.org/site/article/141>. Accessed on 29 September 2019.

777 ILO, 'General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs', (2019). (n. 447).

778 Law on Vietnamese Workers Working Abroad under Contracts, (2006) (n. 483).

779 Ibid.

780 Ibid.

781 See further International Organization for Migration (IOM), "VAMAS Launches Revised Code of Conduct to Promote Ethical Recruitment of Migrant Workers in Viet Nam", (24 April 2018). Available at: <https://www.iom.int/news/vamas-launches-revised-code-conduct-promote-ethical-recruitment-migrant-workers-viet-nam>. Accessed on 29 September 2019.

The CESCR has indicated that it is concerned that the current regulatory framework in this area retains irregularities,⁷⁸² in particular, the scope of Law 72 is limited and that there is a lack of access to tailored assistance, rendering Vietnamese migrant workers vulnerable to abuse and exploitation.⁷⁸³ The ILO CEACR has noted that Viet Nam's labour legislation does not allow migrant workers to establish trade unions.⁷⁸⁴

The provisions of Law 72 relating to fees and costs incurred by migrant workers as part of recruitment processes are misaligned with the ILO Private Employment Agencies Convention, 1997, (No. 181). As outlined, Convention No. 181 prohibits the charging of such fees given the increased risk debt bondage they create.⁷⁸⁵

Viet Nam has also entered into a number of bilateral agreements and MoUs on labour migration, including with Cambodia, Lao PDR, China, Thailand, Angola, Russia and Cyprus. Such agreements outline types of employments, terms of working visas, common efforts to combat trafficking in persons, and other issues related to migration policy and practice between Viet Nam and partner countries.

- *Grievance mechanisms*

Law 72 provides for the settlement of disputes and handling of violations.⁷⁸⁶ In particular, the Law enables workers to lodge complaints or denunciations or initiate lawsuits against illegal acts in the sending of workers abroad.⁷⁸⁷ Accordingly, its guiding Decree No. 119/2014/ND-CP was issued to regulate the handling of these complaints and denunciations including those against recruitment agencies.⁷⁸⁸ The Decree,

782 CESCR, 'Concluding observations' (n. 266).

783 Ibid.

784 ILO, 'General Survey concerning the migrant workers instruments'. Page 133 (n. 759).

785 ILO, 'Private Employment Agencies Convention, 1997', (No. 181). Article 8 (n. 446).

786 Law on Vietnamese Workers Working Abroad under Contracts, (2006) (n. 483).

787 Ibid. Article 44(6).

788 Decree No. 119/2014/ND-CP on detailing some provisions of the Labour Code, Law on Vocational Training, the Law on Sending Vietnamese Contract-Based Workers Abroad on complaint and denunciation, dated 17 December 2014. Available at (in Vietnamese):

however, applies neither to state-owned recruitment agencies nor to recruitment agencies operating under a contract negotiated directly with an employer.⁷⁸⁹ The Viet Nam Association of Manpower Supply's Code of Conduct (2010) provides guidance on the settlement of disputes between migrant workers and employers overseas.⁷⁹⁰

Law 72 is now being revised to ensure alignment with the Constitution and emerging issues related to international labour migration and the protection of citizens' rights. Notable provisions under the draft Law, which is scheduled to be submitted for National Assembly's approval in late 2020,⁷⁹¹ include: the form of workers working abroad; the list of subjects permitted to sign contracts for working abroad; transparency of regulations and improvement of conditions for business investment in this sector, and; recruiting, training and standardizing procedures for sending workers abroad.⁷⁹²

- *International migrant workers in Viet Nam*

The protection of migrants working in Viet Nam is provided principally by the general provisions of the Labour Code, including a dedicated section on the employment of international and foreign migrants working in Viet Nam.⁷⁹³

<https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Nghi-dinh-119-2014-ND-CP-huong-dan-Bo-luat-Lao-dong-Luat-Day-nghe-lao-dong-di-lam-viec-o-nuoc-ngoai-khieu-nai-to-cao-261011.aspx>. Accessed on 19 September 2019.

789 ILO, 'Complaint mechanisms for Vietnamese migrant workers: an overview of law and practice', (2015). Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_482928.pdf. Accessed on 19 September 2019.

790 Vietnam Association of Manpower Supply (VAMAS), 'Code of Conduct (CoC-VN)', Available at: https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=116. Accessed on 20 September 2019.

791 Resolution No. 78/2019/QH14 on laws and ordinances making agenda in 2020 and amendment to law and ordinance making agenda in 2019. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Nghi-quyet-78-2019-QH14-Chuong-trinh-xay-dung-luat-phap-lenh-417670.aspx>. Accessed on 5 September 2020.

792 The Fourth draft of the Law on Vietnamese Workers Working Abroad under Contract is available at (in Vietnamese): <http://duthaoonline.quochoi.vn/Pages/dsuthao/chitietduthao.aspx?id=1788>. Accessed on 13 July 2020.

793 Labour Code, (2019). Chapter XI, Section 3 (n. 263).

- *Internal migrants*

CESCR has expressed concern at "the discriminatory impact of the residential registration system (ho khau) on access by internal migrants to social services, and the enjoyment of other rights, such as housing rights and the right to water and sanitation."⁷⁹⁴ The CEDAW Committee also expresses concern that "internal migrant workers, including women and girls, face barriers in gaining access to basic social services guaranteed to all Vietnamese citizens."⁷⁹⁵

Institutional framework

MOLISA is the state agency principally responsible for administering international labour migration from Viet Nam abroad, as well as the employment of internal and international migrants within Viet Nam. In particular, the Department of Overseas Labour and the Department of Employment, have direct responsibility for the governance of international labour migration from Viet Nam to other countries.⁷⁹⁶ The Government of Viet Nam has established labour management units and representative offices in countries with large numbers of Vietnamese migrant workers.⁷⁹⁷ Provincial People's Committees and local authorities and agencies such as DOLISA are mandated to provide support to returning Vietnamese migrant workers.

Recommendations

1. Ratify and ensure the effective implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Conventions No. 97, No. 143, and No. 181.

794 CESCR, 'Concluding observations of Viet Nam'. Paragraph 14 (n. 266).

795 CEDAW, 'Concluding observations of Viet Nam'. Paragraph 30 (n. 409).

796 ILO, 'General Survey concerning the migrant workers instruments'. Page 79 (n. 759).

797 ILO, 'General Surveys'. Available at: <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/general-surveys/lang--en/index.htm>. Accessed on 11 September 2019. Page 157.

2. Develop an action plan for the achievement of, and share data on monitoring, the implementation of SDG Targets 8.8, 10.7 and 10c on the protection of migrant workers.
3. Expand the scope of the Law on Vietnamese People Working Abroad under Contracts to include those who emigrate under individual contracts or irregularly, in line with the relevant recommendation issued by the CESCR.⁷⁹⁸
4. Revise the Law on Vietnamese Workers Working Abroad under Contract to prohibit the charging of fees and related costs in the recruitment process for migrant workers, ensuring alignment with ILO Private Employment Agencies Convention (No. 181).
5. Improve the complaints mechanisms and legal assistance to take into account the vulnerability, mobility and complexity of migration, in line with the relevant recommendation issued by the CESCR.⁷⁹⁹
6. Ensure that internal migrants and their families, including those not registered in the household registration system, enjoy all the rights guaranteed to all Vietnamese citizens, in line with the relevant recommendation issued by the CEDAW Committee.⁸⁰⁰
7. Revise the Law on Vietnamese Workers Working Abroad under Contracts to make it gender-sensitive and responsive to the specific needs of migrant women and girls, in line with the relevant recommendation issued by the CEDAW Committee.⁸⁰¹
8. Develop emergency protocols in place to protect and uphold the rights of Vietnamese migrant workers overseas during crisis, including guidance, health and safety precautions and possible repatriation, for example in the context of the COVID-19 pandemic.

⁷⁹⁸ CESCR, 'Concluding observations of Viet Nam'. Paragraph 19 (n. 266).

⁷⁹⁹ Ibid.

⁸⁰⁰ Ibid. Paragraph 31.

⁸⁰¹ CEDAW, 'Concluding observations of Viet Nam'. Paragraph 31 (n. 409).

5.4 Children

Children interact with businesses every day, both inside and outside the workplace. They are young workers, children of employees, consumers and members of communities where business enterprises operate. According to the former Special Representative of the UN Secretary-General, Professor John Ruggie, "Children are among the most marginalized and vulnerable members of society and can be disproportionately, severely, and permanently impacted by business activities, operations, and relationships."⁸⁰²

This section focuses primarily on the regulatory framework of children's rights and business. However, issues related to child labour are addressed in Chapter 3.

International Commitments

International commitments to the rights of the child are enshrined in a range of treaties and ILS conventions. Viet Nam has an obligation to protect and report on children's rights through treaty-based mechanisms. Among these instruments, Viet Nam is a state party to three legally binding treaties: the CRC,⁸⁰³ the Worst Forms of Child Labour Convention (No. 182),⁸⁰⁴ and; the Minimum Age for Admission to Employment and Work Convention (No. 138).⁸⁰⁵

The CRC is the core international treaty which provides standards to protect children in all aspects of their lives and is underpinned by four guiding principles on non-discrimination, survival and development, the best interests of the child, and participation. While the Convention does not specifically address the private sector,⁸⁰⁶ its monitoring Committee has adopted General Comment No. 16 on the state's obligations regarding the impact of business on children's rights to

⁸⁰² Global Child Forum, UNICEF, 'Children's Rights and Business Atlas'. Available at: <https://www.childrensrighsatlas.org/about/>. Accessed on 4 January 2020.

⁸⁰³ CRC (n. 479).

⁸⁰⁴ ILO, 'Convention Elimination of the Worst Forms of Child Labour, 1999' (No. 182) (n. 497).

⁸⁰⁵ ILO, 'Convention on the Minimum Age, 1977' (No. 138) (n. 496).

⁸⁰⁶ The prohibition of child labour is recognized in Article 32 of the CRC and under relevant ILO conventions.

give governments and other organizations advice and guidance on their responsibilities to ensure that businesses respect children's rights.⁸⁰⁷

The protection of the rights of children in the context of business activity is specifically addressed in two ILO conventions, No. 182 and No. 138, emphasising the relevant standards and obligation of the state to eliminate the worst forms of child labour and ensuring minimum wages for children who are to be admitted into employment and work.⁸⁰⁸ Three other non-binding instruments, including the UNGPs, UN Global Compact and Children's Rights and Business Principles, include guidance on ensuring protection for children's rights in the context of business activity.

The Children's Rights and Business Principles was developed by UNICEF, UN Global Compact and Save the Children.⁸⁰⁹ It sets out 10 principles to call on businesses to identify and assess any actual or potential adverse child rights impacts they may be involved in either directly or indirectly through their supply or value chains. In particular, the Principles call on all businesses to:

1. Meet their responsibility to respect and support children's rights and commit to supporting the rights of children.
2. Contribute towards the elimination of child labour, including in all business activities and business relationships.
3. Provide decent work for young workers, parents and caregivers.
4. Ensure the protection of children in all business activities and facilities.
5. Ensure that products and services are safe, and seek to support children's rights through them.

6. Use marketing and advertising that respect and support children's rights.
7. Respect and support children's rights in relation to the environment and land acquisition and use.
8. Respect and support children's rights in security arrangements.
9. Help protect children affected by emergencies.
10. Reinforce community and government efforts to protect and fulfil children's rights.⁸¹⁰

The protection of the rights of children in business is reflected in the SDGs, including in Goal 3 on Health and Well-Being, Goal 4 on Quality Education, Goal 8 on Decent Work and Economic Growth and Goal 16 on Peace, Justice and Strong Institutions.⁸¹¹

With regard to the protection of children in the market place, Viet Nam has ratified the Optional Protocol on Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography⁸¹² and other key conventions on marketing to children, such as the Constitution of the World Health Organization (WHO) and the WHO Framework Convention on Tobacco Control. Viet Nam has also adopted the International Code on Marketing of Breastmilk Substitutes into national law.⁸¹³ To protect the rights of children in business at a community level, in the context of providing a safe and healthy environment for child development, Viet Nam has signed and ratified the UN Framework Convention on Climate Change, and the Paris Agreement dealing with greenhouse-gas-emissions mitigation, adaptation, and finance, signed in 2016, which was adopted under the UN Framework Convention on Climate Change.⁸¹⁴

810 Ibid.

811 UN, 'SDGs' (n. 34).

812 UN, 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography', (2000). Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-c&chapter=4&clang=_en. Accessed on 25 February 2020.

813 World Health Organization (WHO), 'International Code of Marketing of Breast-milk Substitutes', (1981). Available at: https://www.who.int/nutrition/publications/code_english.pdf. Accessed on 22 September 2020.

814 UNICEF, 'Children's rights and Business, Country Analysis: Viet

807 Committee on the Rights of the Child, 'General comment No. 16', (2013). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fG-C%2f16&Lang=en. Accessed on 22 September 2020.

808 See Child Labour section in Chapter 3 of this Assessment.

809 UNICEF, UNGC, Save the Children, 'Children's Rights and Business Principles', (2013). Available at: <http://childrenandbusiness.org/the-principles/introduction/>. Accessed on 25 February 2020.

Regulatory framework

Children's rights are guaranteed in the Constitution of Viet Nam and supported through many relevant laws. The Constitution provides that: "Children enjoy protection, care and education by the family, the State and society; and are allowed to participate in children affairs. Infringement, maltreatment, abandonment, abuse, and exploitation of labour and other forms of violating children rights are strictly prohibited."⁸¹⁵

The Law on Children (2016) prohibits acts that violate children's rights in many different aspects including in the context of business activity. In particular, the Law prohibits acts of violence, abuse or exploitation of children; acts that provide proscribed internet service and other services; acts that produce, reproduce, release, operate, disseminate, possess, transport, store and trade in publications, toys, games and other products whose contents cause adverse influence on children's healthy development, and; acts of building service facilities, production establishments or warehouses storing goods that cause environmental pollution, toxic chemicals or inflammable substances near facilities providing children protection services, educational establishments, health establishments, cultural establishments, children's entertainment and amusement centres or vice versa.⁸¹⁶ The current Law on Children enshrines the protection of children from any form of labour exploitation and impacts of natural disasters and calamities and environmental pollution.⁸¹⁷ The Law on Children regulates the responsibility of business to provide safe and friendly products and services which shall not cause harm to children, and must not infringe children's rights as regulated and guided by competent state authorities, create conditions for employees to fulfil the responsibilities of parents or caregivers of children, create conditions for children to learn jobs and to be employed in accordance with children's capacity and age, and to make

a contribution to and mobilize resources for exercising the children's rights.⁸¹⁸

The Labour Code prohibits the recruitment and employment of minors as illegal workers.⁸¹⁹ The Labour Code also includes specific provisions relating to the age of minor employees, principles to guide the employment of minor employees, employment and working hours for workers under the age of 15 and prohibited work and workplaces for minor employees.⁸²⁰ The Labour Code addresses the responsibility of employers to provide maternity care for employees and other protections for young children.⁸²¹ Further, the Labour Code allocates responsibility to businesses to assist and support in building day-care facilities and kindergartens, or in covering a part of the childcare expenses for employees.⁸²²

The Law on Cybersecurity (2018) includes a provision on child protection online which affirms the guarantee of the rights of children on the internet and the responsibility of internet service providers to effectively regulate their systems or services in order not to cause harm to children or infringe children's rights.⁸²³ The Law also places responsibility on businesses to block the sharing of information, and to delete such information, the contents of which may cause harm to or mistreat children or infringe their rights.

In other areas of law such as trade, business, and the environment, the protection of children is rarely addressed. However, there are some provisions in other areas of corporate law which relate to children. The Law on Advertising (2012) bans the advertising of breast milk substitutes for children under 24 months old, dietary supplements for children under six months

⁸¹⁸ Ibid.

⁸¹⁹ Labour Code, (2012). Article 8; Labour Code, (2019). Article 8 (n. 263).

⁸²⁰ Labour Code, (2012). Chapter XIV; Labour Code, (2019). Chapter XI (n. 263).

⁸²¹ Labour Code, (2012). Articles 155-610; Labour Code, (2019). Articles 137-142 (n. 263).

⁸²² Labour Code, (2012). Article 152; Labour Code, (2019). Article 136 (n. 263).

⁸²³ Law on Cybersecurity, (2018), Law No. 24/2018/QH14). Available at: <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Cyber%20Security%202018.pdf>. Accessed on 3 March 2020.

Nam'. Available at: <https://www.childrensrighsatlas.org/country-data/countries/viet-nam/#analysis-tab>. Accessed on 20 February 2020.

⁸¹⁵ Constitution of Vietnam. Article 37 (n. 60).

⁸¹⁶ Law on Children (2016). Article 6 (n. 395).

⁸¹⁷ Ibid. Articles 26 and 31.

old, and artificial feeding bottles and pacifiers.⁸²⁴ The Law also prohibits the use of advertisements that make children think, speak and act against traditional customs and ethics and negatively affect the children's health, safety or natural development.⁸²⁵

The Law on Environmental Protection (2014) includes a clause on the principles of environmental protection in harmony with ensuring children's rights.⁸²⁶ The Law on Investment makes reference to investment in centres for care of orphans or street children without support.⁸²⁷ The Law on Prevention and Control of Alcohol Harms (2019) provides provisions for the protection of children, and the responsibilities of social organizations, including enterprises, to protect children from alcohol harms.⁸²⁸ The Law on Prevention and Control of Tobacco Harms (2012) prohibits enterprises from advertising tobacco on newspapers and publications for children.⁸²⁹

It can be seen from this review of the current legal framework that although there are many laws and provisions of law relating to children, there are opportunities for strengthening the overall regulatory framework for the protection of child rights in the context of business activity, in particular by incorporating child rights more in corporate law. In addition, most of the current provision in the area of children and business mainly focus on business responsibility in the workplace such as child labour and exploitation. However, there is a lack of a legal framework on the responsibility of business to respect the rights of children in the market place, in

the local community and in the context of ensuring a clean and healthy environment for children. For example, the Law on Protection of Consumer Rights does not contain any provisions on the protection of children as consumers.⁸³⁰

Institutional Framework

Chapter VI of the Law on Children regulates the duties and responsibility of agencies and organizations to the exercise of children's rights.⁸³¹ Accordingly, all state agencies including the National Assembly and People's Councils at all levels, government ministries, People's Courts and People's Procuracies and the Vietnamese Fatherland Front as well as a range of social organizations have a mandate to ensure the protection children's rights.⁸³²

The National Assembly and People's Councils at all levels have a duty to: make decisions on socioeconomic development plans, objectives, targets, policies and programs for exercising children's rights; supervise the exercise of children's rights as regulated by the law, and; allocate annual state budgets to ensure the exercise of children's rights.⁸³³

Among government agencies, MOLISA, in particular the Department of Child Affairs, is responsible for the execution of the State's management of children's rights in all sectors including in business.⁸³⁴ MPS, according to the Law on Children, takes primary responsibility, in cooperation with MOLISA, the Communist Youth Union of Ho Chi Minh, the Viet Nam Women's Youth Union's Central Committee and other law enforcement agencies, to guide and organize the implementation of measures for preventing violence against children, child exploitation, sexual abuse and trafficking, and crime relating to children.⁸³⁵ In the case where there are abuses of children's rights by business enterprises, legal assessment and judicial

824 Law on Advertising, (2012), Law No.16/2012/QH13. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=163008. Accessed on 4 March 2020. Article 7.

825 Ibid. Article 8.

826 Law on Environmental Protection, (2014). Article 4(2) (n. 195).

827 Law on Investment, (2014). Article 16(1)(m); Law on Investment, (2020). Article 16(1)(m) (n. 64).

828 Law on Prevention and Control of Alcohol Harms, (2019), Law No. 44/2019/QH14). Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=197311. Accessed on 19 August 2020. Articles 3, 12, 23, 25, and 31.

829 Law on Prevention and Control of Tobacco Harms, (2012), Law No. 09/2012/QH13. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=163544. Accessed on 19 August 2020. Article 9.

830 Law on Protection of Consumer Rights, (2010) (n. 631).

831 Law on Children (2016). Chapter VI (n. 395).

832 Ibid.

833 Ibid. Article 79.

834 Ibid. Article 82.

835 Ibid. Article 88.

measures can be taken by People's Courts and People's Procuracies.⁸³⁶ The Ministry of Information and Communications has the mandate to ensure children's right to access to information and to protect their privacy in communication, in particular to protect children in online environments, through computer networks, telecommunications networks, electronic devices and other means of communications, including through such systems operated by businesses.⁸³⁷ The Ministry of Culture, Sports and Tourism is responsible to guarantee children's rights in recreational activities, cultural, arts, sports and tourist activities.⁸³⁸

As mentioned above, the Vietnam Chambers of Commerce and Industry, in collaboration with Vietnam Business Council for Sustainable Development, launched the Corporate Sustainability Index (CSI 100) to benchmark the top 100 sustainable companies in Viet Nam. The assessment criteria include indicators related to the rights of the child such as young worker protection, child labour, provision of childcare/kindergarten, and breastfeeding support to female employees.⁸³⁹

Recommendations

1. Ensure effective implementation of General Comment No. 16 from the CRC Committee on State obligations regarding the impact of the business sector on children's rights.
2. Continue to undertake efforts to eliminate child labour and take necessary measures to harmonize national laws and regulations to ensure the implementation of ILO Convention No. 182 on the Forms of Child Labour.
3. Incorporate ILO Convention No. 138 concerning the Minimum Age for Admission to Employment into domestic law including the revision of regulations relating to "light work."

4. Promote and disseminate Child Rights and Business Principles to government agencies, businesses and other stakeholders including by increasing awareness and capacity through communications and trainings.
5. Conduct assessments on the impact of business activities on children's rights with a focus on specific sectors with high impact on children and develop policies relating to Children's Rights and Business for relevant state agencies.
6. Ensure the inclusion of provisions relating to business responsibility for children's rights in law, regulation and policy on enterprise, trade, investment, advertisement and environment.
7. Document good practices by businesses on promoting children's rights by companies participating in the Corporate Sustainability Index for sharing and to inform the development of national policy to encourage the wider business community to adopt such practices.

5.5 Women

In Viet Nam, women account for 48 per cent of the labour force.⁸⁴⁰ Participation of women in the labour force is relatively high compared to global averages. While making a significant contribution to the national economy by creating profit and enabling growth for businesses as business leaders, entrepreneurs, decision-makers and labourers, the percentage of women in management positions and higher remains low. Furthermore, women still face gender-based discrimination, thus, are more prone to gender-specific risks and have more limited access to resources, education and labour market opportunities than men. National policies and legislative frameworks have improved, but challenges remain both with respect to discrimination against women in law and practice, in particular in securing decision-making and leadership positions.

⁸³⁶ Ibid. Articles 81 and 83.

⁸³⁷ Ibid. Article 87.

⁸³⁸ Ibid. Article 86.

⁸³⁹ VBSCSD, 'Corporate Sustainability Index (CSI 100)' (n. 19).

⁸⁴⁰ World Bank, 'Labor Force, Female (% of Total Labour Force), World', The World Bank Databank (2019). Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS>. Accessed on 22 September 2020.

International Commitments

Most IHRL instruments recognize the key principles of gender equality and call upon states to eliminate all form of discrimination against women. The UDHR proclaims that everyone is entitled to all the rights and freedoms without distinction of any kind including sex.⁸⁴¹ Both the ICCPR and the ICESCR prohibit discrimination based on sex and ensure the gender equality of rights.⁸⁴² The CEDAW, ratified by Viet Nam, provides a comprehensive set of rights for women and sets out obligations for States to take appropriate measures, including legislation, to ensure the full development and advancement of women.⁸⁴³

The seventh and eighth periodic report for Viet Nam were considered by the CEDAW Committee in 2015. After a constructive dialogue with the CEDAW Committee, Viet Nam received 50 recommendations to further promote and protect women's rights including the recommendations to protect women' labour rights, women working in the informal sector⁸⁴⁴ and the economic empowerment of women.⁸⁴⁵ In the third UPR, Viet Nam received 19 recommendations from 18 countries on issues related to gender equality and women's rights including the recommendation to promote the participation of businesses in the development and implementation of policies aimed at reducing inequalities, to invest in economic empowerment and promote decent work for women.⁸⁴⁶

In the area of labour rights, female workers are under the protection of many ILO conventions including the following key instruments: the Discrimination (Employment and Occupation) Convention (No. 111); the Equal Remuneration Convention (No. 100); the Workers with Family Responsibilities Convention (No. 156); the Maternity Protection

Convention (No. 183), and; the Violence and Harassment Convention (No.190). Viet Nam has ratified Conventions No. 156 and No. 183. However, Viet Nam is not a signatory state to Conventions No. 111, No. 100 and No. 190.

More recent non-binding international commitments, including the UNGPs, the 2030 Agenda, and the Women's Empowerment Principles (WEPs), recognise the importance of the private sector in contributing to the rights of women in the workplace.

The UNGPs call on all states to provide guidance to businesses to effectively address gender issues and specific challenges faced by women; to support business operating in conflict areas addressing gender-based sexual violence to women, and to identify potential negative impacts and monitor the effectiveness of their responses, while taking into account the differentiated risks faced by women and men.⁸⁴⁷

The 2030 Agenda considers the economic empowerment of women, gender equality and non-discrimination of women, ultimately ensuring no one is left behind, to all be key crosscutting principles of the Agenda. The SDGs call upon states to achieve gender equality and empower all women and girls, namely Goal 5 on Gender Equality, Goal 8 on Decent Work and Economic Growth, Goal 10 on Reduced Inequalities and Goal 16 on Peace, Justice and Strong Institutions.⁸⁴⁸

The WEPs were established by UN Global Compact and UN Women to guide businesses on how to promote gender equality and women's empowerment in the workplace, marketplace and community.⁸⁴⁹ The WEPs incorporate key aspects of ILS and IHRL in recognizing that businesses have a responsibility to promote gender equality and women's empowerment. At the time of writing, 3616 companies have

841 UDHR. Article 1 (n. 233).

842 ICCPR. Article 2 (n. 237); ICESCR. Article 3 (n. 236).

843 CEDAW (n. 297).

844 See further information about Informal Workers in Section 5.1 of this Chapter.

845 CEDAW, 'Concluding observations of Viet Nam' (n. 407).

846 UNHRC, 'UPR Viet Nam', (2019). Recommendations No. 133, 263 and 268 (n. 402).

847 UNGPs. Principle 3, 7, 18 and 20 (n. 2).

848 UN, 'SDGs' (n. 34).

849 UN Women, UNGC, 'Women's Empowerment Principles (WEPs)', (2010). Available at: <https://www.weps.org/>. Accessed on 18 July 2020.

become signatories to the WEPs, including 71 companies in Viet Nam.⁸⁵⁰

Regulatory framework

The Constitution guarantees equal rights, equality and non-discrimination to men and women in spheres of public and private life. The Constitution strictly prohibits gender-based discrimination.⁸⁵¹ Since Doi Moi in 1986, Viet Nam has adopted a number of significant laws and other legal instruments related to protecting women in the workplace. The Law on Gender Equality (2006) affirms gender equality in all fields including economic development and employment.⁸⁵² The principles of equality and non-discrimination between women and men is further affirmed in the Labour Code (2012, revised 2019), Law on Children (2016), Civil Procedure Code (2015), Civil Code (2015), Law on Social Insurance (2014), Law on Prevention of Domestic Violence (2007), Land Law (2013), Law on Prevention and Control of Trafficking in Persons (2011), Law on Support of SMEs (2017), and Law on Persons with Disabilities (2010). The revised Labour Code (2019) underscores the need for stronger protection for women in all business contexts, including narrowing the gap in retirement age, ensuring that women no longer are excluded from doing certain jobs, extending legal protection to informal employees, including women, and defining and prohibiting “sexual harassment” in the workplace.⁸⁵³ At the policy and programme level, the Government of Viet Nam has issued a number of instruments for women in the workplace such as the National Strategy on Gender Equality 2011-2020,⁸⁵⁴ and the Project for Supporting Women’s Start-ups 2017-2025.⁸⁵⁵

850 Ibid. “WEPs signatories”.

851 Constitution of Vietnam. Article 26 (n. 60).

852 Law on Gender Equality, (2006), Law No. 73/2006/QH11. Available at: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76089&p_count=96243&p_classification=05&p_class_count=3262. Accessed on 14 January 2020.

853 Labour Code, (2012); Labour Code, (2019) (n. 263).

854 Decision No. 2351/QĐ-TTg on National Strategy on Gender Equality for the 2011-2020 period, dated 24 December 2012. Available at: <http://www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryld=30&articld=10050924>. Accessed on 22 September 2020.

855 Decision No. 939/QĐ-TTg on “Project for Supporting Women’s Start-ups 2017-2025”, dated 30 June 2017. Available at (in Vietnam-

While much progress has been made in developing a legal framework on the protection of women, some areas for strengthening, especially in business sector, are still required. The revised Labour Code (2019) continues to confirm certain patriarchal norms, including on parental leave and kindergarten under Chapter X, thus reaffirming the social norm that being a parent is an issue related to female employees instead of equating men and women as parents. In business, there is still a lack of clear mainstreaming of gender into corporate legislation, and gaps in developing legislation to further address both direct and indirect discrimination, labour exploitation of women and the protection of women against sexual harassment in the workplace. Although the Law on Gender Equality (2006) requires that gender is mainstreamed into other legal documents as a measure to ensure gender equality, there is still weak gender equality protection in laws related to business. There are a few provisions on the prohibition of gender discrimination in corporate law worth highlighting, including: the Law on Advertising (2012) prohibited acts by using advertisements that express gender discrimination; the Law on Support of SMEs (2017) includes a definition of women-owned SMEs, with additional supports for women-owned SMEs and enterprises employing more women workers, and,⁸⁵⁶ the Law on Enterprises (2014, revised in 2020) includes a clause on the obligation of enterprises to comply with regulations of Law on Gender Equality.⁸⁵⁷ Nevertheless, many other laws related to business such as the Law on Investment (2014, revised in 2020)⁸⁵⁸ the Law on Competition (2018),⁸⁵⁹ and the Law on Tourism (2017)⁸⁶⁰ could be strengthened in terms of effectively addressing gender discrimination and

ese): <https://thuvienphapluat.vn/van-ban/van-hoa-xa-hoi/Quyết-dinh-939-QĐ-TTg-2017-De-an-Ho-tro-phu-nu-khoi-nghiep-giai-do-an-2017-2025-353813.aspx>. Accessed on 24 January 2020.

856 Law on Advertising, (2012) (n. 824).

857 Law on Enterprises, (2014). Article 8; Law on Enterprises (2020). Article 8 (n. 63).

858 Law on Investment, (2014); Law on Investment, (2020) (n. 64).

859 Law on Competition, (2018), Law No. 23/2018/QH14. Available at (in Vietnamese): <http://congbao.chinhphu.vn/loi-dung-van-ban-so-23-2018-qh14-26888>. Accessed on 24 January 2020.

860 Law on Tourism, (2017), Law No. 09/2017/QH14. Available at (in Vietnamese): <https://thuvienphapluat.vn/van-ban/van-hoa-xa-hoi/Luat-du-lich-2017-322936.aspx>. Accessed on 24 January 2020.

equality, including by incorporating a gender lens as part of social impact assessments at all relevant stages of the investment project cycle under the Law on Investment.

Institutional framework

MOLISA is the government ministry with responsibility for promoting and mainstreaming gender equality. Within MOLISA, the Department of Gender Equality is responsible for the drafting of laws, and legal instruments, strategies, programmes, plans, projects in the area of gender equality. The Department is also mandated to monitor the implementation of laws on gender equality and CEDAW recommendations, and to evaluate gender equality integration in legislative development processes.⁸⁶¹ Other ministries and ministerial-level agencies also have mandates to coordinate with MOLISA in performing state management of gender equality.⁸⁶² Locally, People's Committees at all levels are responsible for the state management of gender equality in their respective localities. In addition, social organizations such as Viet Nam Women's Union, together with the support of international organizations such as UN Women, and other stakeholders, also play a critical role in addressing gender equality by providing technical inputs during legal drafting processes and organizing workshops geared towards changing social norms.

Recommendations

1. Ensure the promotion of gender equality and the empowerment of women and girls is further mainstreamed into laws and policy related to business.
2. Take measures to strengthen the responsibility of ministries and agencies on business management to

⁸⁶¹ Decision No. 1246/QĐ-LĐTBXH on roles, responsibilities, duties, authorities and organization structure of Department of Gender equality, dated 9 August 2017. Available at: <http://english.molisa.gov.vn/Pages/About/OrganizationalDetail.aspx?ToChucID=2224>. Accessed on 23 January 2020.

⁸⁶² Decree No. 70/2008/ND-CP detailing the implementation of some provision of the law on gender equality, dated 4 June 2008. Available at: https://thukyluat.vn/vb/nghi-dinh-70-2008-nd-cp-huong-dan-luat-binh-dang-gioi-1047a.html#dieu_2. Accessed on 25 January 2020.

address gender equality and to protect female workers, in particular agencies with responsibility for economic and corporate activity.

3. Strengthen the role of SOEs to promote gender equality and address discrimination against women to play a leading role in the private sector, including through policies to increase women's representation in senior management and director roles.
4. Continue to close the gaps and completely eliminate retirement age gap between women and men in the Labour Code.
5. Take measures to address violence against women at the workplace and to eliminate all forms of discrimination against women at workplace, such as sexual harassment, including by implementing the relevant provisions of the Labour Code and ratifying ILO Convention on Violence and Harassment (No. 190).
6. Develop policies and invest in women's economic empowerment, entrepreneurship opportunities and promote decent work for women in partnership with relevant international organizations.⁸⁶³
7. Ensure the effective implementation of SDG 5 by ensuring women's full and effective participation at all levels in economic life and undertaking reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services.

5.6 Persons with Disabilities

Persons with disabilities include those who have "long-term physical, psycho-social or sensory impairments which, in interaction with various social barriers, may hinder their full and effective participation with others in society on an equal basis."⁸⁶⁴ Therefore,

⁸⁶³ UNHRC, 'UPR Viet Nam', (2019). Recommendation No. 247 (n. 402).

⁸⁶⁴ UN, 'Convention on the Rights of Persons with Disabilities (CRPD)', (2006). Available at: <https://www.ohchr.org/en/hrbodies/>

disability is not just a health problem but has clear social dimensions, which is a reflection of the combined interaction between features of a person's body, their psychosocial situation, and the context of the society in which the person lives. Overcoming the difficulties faced by persons with disabilities (PWDs) requires interventions to both build capacity and empower PWDs, as well as remove environmental and social barriers to their participation in society.⁸⁶⁵ PWDs face enormous difficulties in accessing and exercising their rights at home, in the workplace and in their community.

International commitments

Viet Nam is the State Party to two relevant legally binding treaties, the Convention on the Rights of Persons with Disabilities (CRPD),⁸⁶⁶ and ILO Vocational Rehabilitation and Employment for Disabled Persons Convention (No. 159).⁸⁶⁷

The CRPD is intended as an instrument with an explicit social development dimension, adopting a broad categorization of persons with disabilities and a social model for ensuring all fundamental freedoms of PWDs. It clarifies and qualifies how all categories of rights apply to PWDs and identifies areas where adaptations are needed to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.⁸⁶⁸ The CRPD calls upon States to “recognize the right of PWDs to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to PWDs.”⁸⁶⁹ At the time of writing Viet Nam was due to undertake

its first review by the CRPD Committee in 2021.

Viet Nam ratified ILO Convention No. 159 in 2019,⁸⁷⁰ which entered into force in 2020. The Convention obligates Viet Nam to develop a national policy to ensure “appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and at promoting employment opportunities for disabled persons in the open labour market.”⁸⁷¹

The UNGPs note that businesses should respect the rights of populations that may face adverse impacts during business operations, including PWDs.⁸⁷² The UN Global Compact reminds businesses that fostering diversity to include PWDs among employees, suppliers, and customers can provide a competitive advantage.⁸⁷³

Various other measures have been taken in the international arena to guarantee the rights of PWDs in the context of business activity. In 2002, the ILO developed a Code of Practice for Managing Disability in the Workplace to guide employers on how to adopt a positive strategy in managing disability related issues.⁸⁷⁴ In 2017 the UN Global Compact and the ILO developed the “Guide for business on the rights of PWDs,” to give suggestions on actions, measures, and good practices businesses can take to ensure the inclusion of PWDs.⁸⁷⁵ While these documents are not legally binding, they provide clear and practical guidance for Viet Nam to ensure the rights of PWDs are respected and supported by businesses.

[crpdp/pages/conventionrightspersonswithdisabilities.aspx](https://www.crpdpages/conventionrightspersonswithdisabilities.aspx). Accessed on 22 September 2020.

865 WHO, ‘Disabilities: WHO Response’. Available at: https://www.who.int/health-topics/disability#tab=tab_3. Accessed on 15 March 2020.

866 CRPD (n. 864).

867 ILO, ‘Vocational Rehabilitation and Employment Convention (Disabled Persons), 1983’ (No. 159). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312304:NO. Accessed on 15 March 2020.

868 CRPD (n. 864).

869 Ibid. Article 27.

870 ILO, ‘Viet Nam to ratify ILO Convention on employment for workers with disabilities’, (26 March 2019). Available at: https://www.ilo.org/hanoi/Informationresources/Publicinformation/news-items/WCMS_679336/lang-en/index.htm. Accessed on 15 March 2020.

871 ILO, ‘Convention on Vocational Rehabilitation and Employment, 1983’ (No. 159). Article 3 (n. 867).

872 UNGPs (n. 2).

873 UNGC, (2000). Available at: <https://www.unglobalcompact.org>. Accessed on 15 March 2020.

874 ILO, ‘Code of Practice for Managing Disability in the Workplace’, (2002). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_103324.pdf. Accessed on 15 March 2020.

875 UNGC, ILO, ‘Guide for business on the rights of persons with disabilities - How business can respect and support the rights of persons with disabilities and benefit from inclusion’, (2017). Available at: https://www.ilo.org/global/topics/disability-and-work/WCMS_633424/lang-en/index.htm. Accessed on 20 February 2020

The SDGs, specifically Goals 4, 8, 10, 11 and 17, call for interventions to support the inclusion and protection of PWDs.⁸⁷⁶ In the context of business activity and employment: SDG4 aims to eliminate gender disparities in education and ensure equal access to education and training for PWDs; SDG 8 addresses the achievement of full and productive employment and decent work for PWDs; SDG 10 empowers and promotes the social, economic and political inclusion of all, including PWDs; SDG 11 provides universal access to safe, inclusive and accessible, green and public spaces, including PWDs, and; SDG 17 aims to enhance capacity-building support to developing countries to increase the availability of high-quality, timely and reliable data disaggregated by, among others, disability, in national contexts.

Both the CPTPP and EVFTA call upon states to ensure trade and sustainable development through full and productive employment for all, including PWDs⁸⁷⁷ and promote equality and the elimination of discrimination with respect to employment and occupation for PWDs.⁸⁷⁸

Regulatory framework

The rights of PWDs are recognized in Viet Nam's legal framework. The Constitution affirms that the State shall create equal opportunities for the citizen to enjoy social welfare, develop a system of social security, exercise a policy assisting disabled persons.⁸⁷⁹ The Constitution provides favourable conditions for the disabled to access to cultural and vocational learning.⁸⁸⁰

Viet Nam adopted the Law on Persons with Disabilities in 2010 to recognize the rights of PWDs and the responsibility of State and relevant stakeholders in protecting the rights of PWDs. The Law affirms that all institutions and organizations, including business enterprises, shall, within their mandates, be responsible for taking care of and protecting

legitimate rights and benefits of PWDs.⁸⁸¹ Furthermore, Chapter 5 on Employment and Vocational Training of the Law requires business enterprises to not reject job applications of PWDs who are qualified for positions, create recruitment criteria that aims at limiting job opportunities for PWDs, or place them in suitable jobs and ensure reasonable accommodation for employees with disabilities.⁸⁸² The Law on Persons with Disabilities also provides incentives for business enterprises employing at least 30 per cent employees of their labour force as PWDs, such as providing state support to businesses to improve working conditions and the working environment for PWDs, access to loans with preferential interest rates, and to rent land with exemption from or reduction of land lease payment.⁸⁸³ Moreover, certain enterprises employing more than 30 per cent employees who are PWDs can also receive tax exemptions in accordance with Law on Enterprise Income Tax.⁸⁸⁴

The Labour Code prohibits discrimination on the basis of disability.⁸⁸⁵ The protection of workers with disabilities is provided for under the Labour Code.⁸⁸⁶ Under the Labour Code, employers must provide reasonable accommodation with respect to working conditions, working tools, and occupational safety and health measures, which are suitable for workers with disabilities, and must consult with workers with disabilities before deciding on matters of relevance to the interests of the workers with disabilities.⁸⁸⁷ Employers are prohibited to employ workers with disabilities to perform overtime work and night work without their agreement, and to employ a worker with disabilities to perform heavy or hazardous work, or work with exposure to toxic substances.⁸⁸⁸

881 Law on Persons with Disabilities, (2010). Article 7 (n. 396).

882 Ibid. Articles 33(2), 33(3) and 33(4).

883 Ibid. Article 34.

884 Law on Enterprise Income Tax, (2013), Law No. 32/2013/QH13. Available at (in Vietnamese): <http://vbpl.vn/TW/Pages/vb-pq-toanvan.aspx?ItemID=30615&dvid=13>. Accessed on 27 March 2020. Article 1(3)

885 Labour Code, (2012). Article 8. Labour Code, (2019). Article 8 (n. 263).

886 Labour Code, (2012). Chapter XI; Labour Code, (2019). Chapter XI (n. 263).

887 Labour Code, (2019). Article 159 (n. 263).

888 Labour Code, (2019). Article 160 (n. 263).

876 UN, 'SDGs' (n. 34).

877 EVFTA. Chapter 13. Article 13.14 (n. 28).

878 CPTPP. Chapter 19. Article 19.10 (n. 29).

879 Constitution of Viet Nam. Article 59 (n. 60).

880 Ibid. Article 61.

Other specific laws such as the Law on Children (2016), the Law on Medical Examination and Treatment (2009), the Law on Investment (2014, revised 2020), the Law on Construction (2014), the Law on Housing (2014), also contain provisions on the protection of PWDs in work, employment, social security, and economic and civil activities. For example, the Law on Children stipulates that children with disabilities have all children's rights and are entitled to special assistance, care and education so that they can receive the necessary rehabilitation and independence to ensure their full participation and inclusion in society.⁸⁸⁹ The Law on Investment gives incentives for investment in sport facilities and care centres which are designed to be accessible for PWDs.⁸⁹⁰ However, there is still a lack of provisions on PWDs in the corporate regulatory framework to further strengthen protection and support for PWDs.

Institutional framework

MOLISA and People's Committees have the executing role of the State management on disability respectively at central and local levels.⁸⁹¹ More specifically, the Department of Social Assistance in MOLISA has the mandate to develop and submit, as well as to enforce the implementation of legal documents, programmes, proposals, and plans on disability.⁸⁹² The National Committee on Disability (NCD) was established under Decision No. 1717/QĐ-TTg of the Prime Minister in 2015 to promote the implementation of CRPD, and promote, monitor and evaluate the implementation of the Law on Persons with Disabilities and disability-related policies.⁸⁹³

According to the Law on Persons with Disabilities, most of the ministries working with the business sector are mandated to

coordinate and implement the law and policy for PWDs, including the Ministry of Culture, Sports and Tourism which is responsible for implementation of activities aiming at improving cultural and spiritual life;⁸⁹⁴ the Ministry of Construction is responsible for enforcing national accessibility building codes and standards to ensure PWDs access and use of public infrastructure,⁸⁹⁵ and; the Ministry of Transport is responsible for implementation of national technical codes and standards in means of transport, transportation infrastructure and supporting tools as well as priority policies for PWDs when they use public transport, including private bodies that operate such transport links.⁸⁹⁶ The Ministry of Information and Communication is responsible for issuing and providing guidance on implementation of national technical codes and standards in ICT accessibility for PWDs, and to instruct and guide mass media agencies to inform and disseminate policies, laws and activities for PWDs. The Ministry of Science and Technology provides guidance on implementation of regulations to encourage study, production and application of assistive devices for PWDs.⁸⁹⁷ MPI provides support for projects in taking care of, nursing, providing orthopaedics and services for PWDs.⁸⁹⁸

Recommendations

1. Develop policies to raise awareness among different target audience groups including business enterprises and PWDs on rights-based approaches for inclusion of PWDs instead of the medical or charity-based approaches to increase access to the labour market for PWDs.
2. Strengthen alignment of the regulatory framework with the CRPD, in particular to prohibit discrimination against PWDs at the workplace, market place, community and to increase employment

889 Law on Children, (2016). Article 35 (n. 395).

890 Law on Investment, (2014). Articles 16(1)(l) and 16(1)(m); Law on Investment. (2020). Articles 16(1)(l) and 16(1)(m) (n. 64).

891 Law on Persons with Disabilities, (2010). Article 49 (n. 396).

892 Ibid. Article 50.

893 National Committee on Persons with Disabilities, 'Function, duties, rights and organizational structure of NCD'. Available at: <http://ncd.btxh.gov.vn>. Accessed on 15 March 2020.

894 Law on Persons with Disabilities, (2010). Article 50 (n. 396).

895 Ibid.

896 Ibid.

897 Ibid.

898 Ibid.

opportunities of person with disabilities in both formal and informal labour market.

3. Ensure the implementation of international commitments for the inclusion of PWDs including SDG 8.5, to ensure the achievement of full and productive employment and decent work for PWDs and equal pay for work of equal value.
4. Take effective measures improve the quality and accessibility of employment training and information services for PWDs, to allow them to access the labour market.
5. Strengthen the regulatory framework to ensure effective incentives are in place for businesses to recruit and build friendly working environments for PWDs.

5.7 Lesbian, Gay, Bisexual, Transgender or Intersex

In many countries, being lesbian, gay, bisexual, transgender or intersex (LGBTI) means living with frequent discrimination. This discrimination could be based on sexual orientation, gender identity (the personal sense of one's own gender), gender expression or sex characteristics.⁸⁹⁹ The homophobic and transphobic attitudes, often combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity, expose many LGBTI persons to violations of their rights and interests, including in the context of business activity.⁹⁰⁰

ILO notes that discrimination at work against people of diverse sexual orientation and gender identity is a serious problem around the world for LGBTI workers.⁹⁰¹ In Viet Nam,

899 Amnesty International, 'LGBTI Rights'. Available at: <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/>. Accessed on 25 March 2020.

900 OHCHR, 'Combatting discrimination based on sexual orientation and gender identity'. Available at: <https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>. Accessed on 25 March 2020.

901 ILO, 'PRIDE at work: A study on discrimination at work on the basis of sexual orientation and gender identity in South Africa', (2016). Available at: <https://www.ilo.org/wcmsp5/groups/public/->

after family and school, workplace is an environment in which LGBTI persons face discrimination the most, with approximately 30 per cent being denied access to employment, 22.6 per cent losing out on promotion opportunities, and 13.5 per cent transferred to different positions within the company due to being LGBTI.⁹⁰²

When LGBTI persons encounter discrimination, harassment or bullying, the avenues for workplace dispute resolution may be scarce.⁹⁰³ Discrimination against LGBTI groups may affect business enterprises and communities due to the undermining of productivity and social and economic development or even the loss of market share.⁹⁰⁴ This section focuses on key international and domestic legal frameworks related to the protection of LGBTI persons in the context of business activity, and proposes recommendations to strengthen protection for their rights and interests.

International commitments

International frameworks for the protection of LGBTI persons are built on the principles of equality and non-discrimination. The UDHR affirmed that: "All human beings are born free and equal in dignity and rights."⁹⁰⁵ IHRL recognizes all human rights norms and standards are applied to everyone without distinction of any kind, such as race, colour, sex, language, religion national or social origin.⁹⁰⁶

Although IHRL does not include specific provisions on protection of LGBTI persons, the monitoring bodies of these treaties have included sexual orientation and

[--dgreports/-/gender/documents/publication/wcms_481581.pdf](https://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/gender/documents/publication/wcms_481581.pdf). Accessed on 25 March 2020.

902 Huy, L., Phuong P., Institute for Studies of Society, Economics and Environment (ISEE), 'Is it because I'm LGBTI? Discrimination based on sexual orientation and gender identity in Viet Nam', (2015). Available at: <http://isee.org.vn/wp-content/uploads/2018/11/nghien-cuu-phan-biet-doi-xu-dua-tren-xu-huong-tinh-duc-va-ban-dang-gioi-tai-viet-nam.pdf>. Accessed on 22 September 2020. Page 14.

903 ILO, 'PRIDE at work' (2016) (n. 901).

904 OHCHR, 'Tackling Discrimination against Lesbian, Gay, Bi, Trans & Intersex People: Standards of Conduct for Business', (2017). Available at: <https://www.unfe.org/wp-content/uploads/2017/09/UN-Standards-of-Conduct.pdf>. Accessed on 27 September 2020. Page 19.

905 UDHR. Article 8 (n. 233).

906 ICCPR. Article 2 (n. 237).

gender identity as prohibited grounds of discrimination. The HRC, the CESCR, the CRC Committee, the Committee against Torture, and the CEDAW Committee have issued general comments with further explanation of the principle of non-discrimination on the ground of sexual orientation.⁹⁰⁷ For example, General Comments No. 18, No. 20, No. 22 and No. 23 of CESCR⁹⁰⁸ prohibit discrimination on the ground of sexual orientation at the work place. Accordingly, States Parties to these treaties have the obligation to prohibit any kind of discrimination against LGBTI persons.

The UNHRC has expressed concern over violence and discrimination based on sexual orientation and gender identity multiple times and created a special procedures mandate, an independent expert, to investigate and report on these issues. While there has not been a legally binding instrument on the protection of LGBTI persons, the UNHRC has adopted a number of political documents to call upon states to address violence and discrimination based on sexual orientation and gender identity.⁹⁰⁹

With regard to the protection of LGBTI in business, UN Office of the High Commissioner for Human rights (OHCHR), in close consultation with relevant stakeholders and business leaders, has developed the 'Standards of Conduct for

Tackling Discrimination against LGBTI people,⁹¹⁰ launched in 2017, to provide a set of benchmarks for assessing the role of business in tackling discrimination and related abuses affecting LGBTI and to offer practical guidance to companies on how to respect and support the rights of LGBTI people in the workplace, marketplace and community. In particular, the Standards call upon business enterprises to:

1. Respect the rights and interests at all time of their LGTBI workers, customers and community members;
2. Eliminate discrimination against LGTBI people in the workplace;
3. Provide support to LGBTI employees;
4. Prevent other violations of rights and interests of LGBTI persons by ensuring that companies do not discriminate against LGBTI customers, suppliers, and distributors – and by insisting that their business partners do the same; and
5. Act in the public sphere by exercising leverage to help stop LGBTI rights abuses against LGBTI people in the countries in which they operate.

Under its international legal commitments, Viet Nam has a duty to eliminate discrimination on the ground of sexual orientation, gender identity and gender expression in both public and private sphere. UN treaty bodies have called upon Viet Nam to take further steps to ensure the protection of all vulnerable groups in society including LGBTI. During the third UPR of Viet Nam in 2019, a number of UN Member States made recommendations to Viet Nam on the protection of LGBTI and to include “sexual orientation” and “gender identity” as forbidden grounds of discrimination in the Labour Code and other relevant laws.⁹¹¹ In 2019, the HRC raised concerns about the lack of a legal framework for full and effective protection against all forms of discrimination in all

907 UN, CEDAW Committee, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW', (2010), CEDAW/C/GC/28. Available at: <https://www.refworld.org/docid/4d467ea72.html>. Accessed on 8 April 2020. Paragraph 18; UN Committee Against Torture, 'General comment No. 3: Implementation of article 14 by States parties', (2012). Available at: <https://www.refworld.org/docid/5437cc274.html>. Accessed on 8 April 2020. Paragraph 8.

908 UN CESCR Committee, 'General Comment No. 18: The Right to Work (Article 6 of the Covenant)', (2006), E/C.12/GC/18. Available at: <https://www.refworld.org/docid/4415453b4.html>. Accessed on 8 April 2020. Paragraph 12(b); CESCR Committee, 'General comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, para. 2, of the ICESCR)', (2009), E/C.12/GC/20. Available at: <https://www.refworld.org/docid/4a60961f2.html>. Accessed on 8 April 2020. Paragraph 32; CESCR Committee, 'General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the ICESCR)', (2016), E/C.12/GC/23. Available at: <https://www.refworld.org/docid/5550a0b14.html>. Accessed on 8 April 2020. Paragraphs 11, 48, and 65(a).

909 For more see UNHRC, 'Resolution - Human rights, sexual orientation and gender identity (2011)', A/HRC/RES/17/19. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19; UNHRC, 'Resolution - Human rights, sexual orientation and gender identity', (2014), A/HRC/RES/27/32. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/32. Accessed on 15 March 2020.

910 OHCHR, 'Tackling Discrimination against Lesbian, Gay, Bi, Trans & Intersex People' (2017) (n. 904).

911 UNHRC, UPR Viet Nam (2019). Recommendations No. 97, 98, 99 (n. 402).

spheres and grounds including sexual orientation and gender identity.⁹¹²

Regulatory framework

While the concept of sexual orientation, gender identity or LGBTI persons has not been formally recognized in Viet Nam, the Constitution guarantees the principle of equality and non-discrimination.⁹¹³ The Constitution affirms that all citizens have the right to work and to select a career, job and workplace, and workers shall be provided equal and safe conditions of work and shall be paid a salary and enjoy leave according to policy.⁹¹⁴ Furthermore, the State protects the legal rights and interests of workers and employers and provides favourable conditions for building progressive, harmonious, and stable labour relationships.⁹¹⁵ The principle of equality and non-discrimination is further affirmed in laws on the protection of vulnerable groups such as the Law on Marriage and Family (2014)⁹¹⁶ and the Law on Gender Equality (2006).⁹¹⁷

Developments in the legal framework of Viet Nam on LGBTI groups include the amendment in the Law on Marriage and Family to replace the ban on same-sex marriage with a provision stating that same-sex marriage is not acknowledged.⁹¹⁸ The Civil Code (2015) also promotes the rights of LGBTI persons as transgender rights are recognized and the right to name changing of transgender persons is guaranteed.⁹¹⁹ The Labour Code (2019) prohibits any act of discrimination in labour.⁹²⁰ However, the definition of discrimination under the revised Labour Code still does not include sexual orientation, gender identity and

gender expression within the prohibited grounds for discrimination, therefore it remains unclear whether LGBTI persons are protected or not under the Code from being discriminated against on these bases.⁹²¹

Overall, there is currently a lack of recognition of sexual orientation, gender identity as a ground for discrimination in the existing laws and legal instruments.

Institutional framework

There is no specialized institution on the protection of LGBTI rights in Viet Nam. The responsibility of issues related to discrimination in the context of business activity is with MOLISA, similar to that of other workers.

Recommendations

1. Take appropriate measures to eliminate all forms of discrimination and violence against and social stigmatization of persons, in the context of business activity, based on their sexual orientation and gender identity by adopting an anti-discrimination law that includes provision on equality and elimination of discrimination against LGBTI persons in business.
2. Strengthen the regulatory framework to ensure effective incentives are in place for businesses to recruit and build friendly working environments for LGBTI persons.

912 HRC, 'Concluding observations of Viet Nam'. Paragraph 13-16 (n. 265).

913 Constitution of Vietnam. Article 26 (n. 60).

914 Ibid. Article 35.

915 Ibid. Article 57(2).

916 Law on Marriage and Family, (2014). (n. 488).

917 Law on Gender Equality, (2006) (n. 852).

918 Law on Marriage and Family, (2014). Article 8(2) (n. 488).

919 Civil Code, (2015), Law No. 91/2015/QH13. Available at (in Vietnamese): http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=183188. Accessed on 14 March 2020. Articles 28 and 37.

920 Labour Code, (2019). Article 8 (n. 263).

921 Ibid. Article 3(8).

CHAPTER 6

ACCESS TO REMEDY



The UDHR sets out that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁹²² As a State party to the ICCPR, Viet Nam must ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy and competent judicial, administrative or legislative, or any other competent authorities shall enforce such remedies when granted.⁹²³

In the specific context of responsible business practice, the UNGPs also provides similar provisions to ICCPR, and further requires States to take “appropriate steps to ... investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”⁹²⁴ The UNGPs envisage that remedies for business-related harm may take a range of forms including, “apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions ... as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”⁹²⁵ The UNGPs also set out that: “Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.”⁹²⁶ The UNGPs further requires States to “facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.”⁹²⁷

Within this framework provided by the UNGPs, this chapter assesses the general regulatory framework for State-based judicial, State-based non-judicial and non-State-based grievance mechanisms available to victims of business-related abuses in Viet Nam. Meanwhile, assessment of the regulatory framework for the settlement of industrial disputes is addressed in the ‘Industrial Relations’ section of the ‘Labour Rights’ chapter, while assessment of the

regulatory framework for specific categories of grievances, such as those of Vietnamese migrant workers, are addressed in other specific sections and chapters of the report, for example the ‘Migrant Workers’ section of Chapter 5 on Responsible Business Practice and Vulnerable Groups.

6.1 State-Based Judicial Mechanisms

International commitments

The UNGPs set out that: “Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.”⁹²⁸ The UNGPs call upon States to “take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”⁹²⁹

The UNGPs further stipulate that: “States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors.”⁹³⁰ The UNGPs specify further that: “Particular attention should be given to the rights and specific needs of ... individuals from groups or populations at heightened risk of vulnerability or marginalization ... at each stage of the remedial process: access, procedures and outcome.”⁹³¹ The UNGPs enumerate a number of legal, practical and procedural barriers that can prevent

922 UDHR. Article 8 (n. 233).

923 ICCPR. Article 2 (n. 237).

924 UNGPs. Principle 1 (n. 2).

925 Ibid. Principle 25.

926 Ibid.

927 Ibid.

928 Ibid. Principle 26.

929 Ibid.

930 Ibid.

931 Ibid.

legitimate cases involving business-related abuse from being addressed.⁹³²

Regulatory framework

The Constitution provides for the responsibility the people's courts to exercise judicial power in Viet Nam, as the judicial organ of the State.⁹³³ The people's courts are "responsible for the protection of justice, human rights, citizen's rights, socialist regime, interests of the State, and legal rights and interests of organizations and individuals."⁹³⁴

The Constitution also provides for the role of the people's procuracies with responsibility for "the protection of law, human rights, citizen's rights, socialist regime, interests of the State, and legal rights and interests of organizations and individuals, thus contributing to ensuring that laws are strictly and uniformly observed."⁹³⁵

• *Criminal liability*

The Penal Code (2015, amended in 2017) introduced important new provisions on corporate criminal liability.⁹³⁶ Whereas under earlier versions of the Penal Code, only natural persons (individuals) but not legal persons (including companies) could be criminally liable, under the 2015 Penal Code, corporate entities may now be criminally liable.⁹³⁷ One of the objectives of the Penal Code is to "protect ... human rights."⁹³⁸ The People's Procuracy has the power of prosecution, and is "responsible for the protection of law, human rights, citizen's rights, socialist regime, interests of the State, and legal rights and interests of organizations and individuals, thus contributing to ensuring that laws are strictly and uniformly observed."⁹³⁹

A large number of offences for which corporations may be liable are newly

established in the 2015 Penal Code, namely:⁹⁴⁰

- *Prohibited business activities*
 - Smuggling
 - Illegal trafficking of goods, money across the border
 - Manufacture, trading of banned commodities
 - Store, transport of banned commodities
- *Intellectual property crimes*
 - Infringement of copyrights, relevant rights
 - Infringement of industrial property rights
 - Manufacture, trading of counterfeit foods, foodstuff, food additives
 - Manufacture of trading of counterfeit medicines for treatment or prevention of diseases
 - Manufacture or trading of counterfeit animal feeds, fertilizers, veterinary medicine, pesticides, plant varieties, animal breeds
- *Financial crimes*
 - Hoarding
 - Tax evasion
 - Illegal printing, issuance, trading of invoices or receipts
 - Deliberate publishing of false information or concealment of information in securities activities
 - Use of internal information to deal in securities
 - Cornering the stock market
 - Commitment of frauds in insurance business
 - Evasion of social insurance, health insurance, unemployment insurance payment for employees
 - Violations against regulations on competition

932 Ibid.

933 Constitution of Vietnam. Article 102 (n. 60).

934 Ibid. Article 102(3).

935 Ibid. Article 107(3).

936 Penal Code, (2015) (n. 460).

937 Ibid. Article 3 and Chapter XI.

938 Ibid. Article 1.

939 Constitution of Vietnam. Article 107 (n. 60).

940 Penal Code, (2015). Article 76 (n. 460). The sub-headings have been added to the list for the purposes of presentation in this report. These sub-headings do not appear in the Penal Code.

- *Environmental crimes*

- Violations against regulations on survey, exploration and extraction of natural resources
- Violations against regulations on forest extraction and protection
- Violations against regulations on management and protection of wild animals
- Causing environmental pollution
- Violations against regulations on environmental emergency prevention, response, and relief
- Violations against regulations on protection of irrigation works, embankments, and works for protection against natural disasters
- Violations against regulations on protection of riverbanks
- Import of wastes into Vietnam's territory
- Destruction of aquatic resources
- Forest destruction
- Violations against regulations on management and protection of endangered, rare animals
- Violations against regulations on management of wildlife sanctuaries
- Import and spread of invasive alien species

Private sector corruption is also criminalised in the 2015 Penal Code, with provisions establishing individual criminal liability of individuals working for corporate entities for corruption-related offences (but not establishing criminal liability of corporate entities themselves).

Specific criminal penalties for corporate entities that commit criminal offences introduced in the Penal Code include fines, the amount of which depends on the nature of the offence, the company's financial capacity to pay, as well as temporary or permanent closure of the business, prevention from raising further capital, prevention from engaging in particular lines of business.⁹⁴¹

⁹⁴¹ Ibid. Articles 33 and 34.

Additional available judicial measures that courts may take against corporate entities that are found to have committed a crime include: confiscation of money and items directly related to the crime; return, repair of property or provision of compensation; offering of public apology; restoration of original state, and; implementation of other measures for mitigation and prevention of consequences.⁹⁴² In terms of aggravating factors, criminal offences committed by corporate entities by "making use of sophisticated tricks to commit or conceal the criminal offence; committing the criminal offence in collusion with another corporate legal entity, [or] deliberately committing the criminal offence to the end" shall be "strictly punished."⁹⁴³ On the other hand, in terms of mitigating factors, enterprises that "are cooperative during the proceeding, voluntarily compensate for damage they inflict, proactively prevent or alleviate consequences, making considerable contributions to implementation of social policies" may be shown leniency in sentencing.⁹⁴⁴

- *Civil liability*

The Civil Code (2015) establishes legal standards of conduct for, and obligations of, juridical persons (legal persons, including corporate entities),⁹⁴⁵ including specifically: "Commercial juridical persons include[ing] enterprises and other business entities",⁹⁴⁶ and establishes civil liability of juridical persons,⁹⁴⁷ including for breach of contractual as well as non-contractual obligations. Any person who has her or his civil rights as set out in the Civil Code violated may request the competent authorities to: "Recognize, respect, protect and guarantee of his/her civil rights; ... Order the termination of the act of violation; ... Order a public apology and/or rectification; ... Order the performance of civil obligations ... [and/or cancel an] isolated unlawful decision of competent agencies,

⁹⁴² Ibid. Article 82.

⁹⁴³ Ibid. Article 3.

⁹⁴⁴ Ibid.

⁹⁴⁵ Civil Code, (2015). Articles 1 and 74 (n. 919).

⁹⁴⁶ Ibid. Articles 1 and 75(2).

⁹⁴⁷ Ibid. Articles 1, 87 and 351.

organizations or persons.”⁹⁴⁸ A juridical person may have a general obligation under the Civil Code to “adopt the necessary and reasonable measures to prevent or limit its damage.”⁹⁴⁹ Specific rights set out in the Civil Code include the right to life, right to safety of life, health and body,⁹⁵⁰ and the right to private life, personal secrets and family secrets,⁹⁵¹ amongst others.

Regarding compensation for damages, any person that “has his/her civil rights violated shall be eligible for total damage, unless otherwise agreed by parties or unless otherwise prescribed by law.”⁹⁵² Damages provided for by the Civil Code comprise both “physical damage”, defined as “actual physical losses, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income”, as well as “spiritual damage”, defined as “losses related to life, health, honor, dignity or reputation and other personal benefits.”⁹⁵³ Juridical persons may be liable to pay specific compensation for damages relating to infringement of property,⁹⁵⁴ harm to health,⁹⁵⁵ harm to life,⁹⁵⁶ and harm to honour, dignity or reputation,⁹⁵⁷ irrespective of whether the harm was intentional or unintentional.⁹⁵⁸ All such damages “must be compensated in full and promptly.”⁹⁵⁹ Regarding the amount payable for damages: “Unless otherwise provided by law, parties may agree on the amount of compensation; on the form of compensation, which may be money, in kind or the performance of an act; lump sum payment or payment in instalments; and on the method of compensation.”⁹⁶⁰

The Civil Code specifically provides for compensation for environmental damage:

948 Ibid. Article 11.

949 Ibid. Article 362.

950 Ibid. Article 33.

951 Ibid. Article 38.

952 Ibid. Article 13.

953 Ibid. Article 361.

954 Ibid. Article 589.

955 Ibid. Article 590.

956 Ibid. Article 591.

957 Ibid. Article 361.

958 Ibid. Article 584(1).

959 Ibid. Article 585(1).

960 Ibid. Article 585(1).

“Any entity polluting the environment, thereby causing damage, must compensate in accordance with the law, including when the entity polluting the environment was not at fault.”⁹⁶¹ Companies are subject to further specific civil liabilities regarding compensation in relation to certain “sources of extreme danger” which are defined as “motorized means of transport, power transmission systems, operating industrial plants, weapons, explosives, inflammable substances, toxic substances, radioactive substances ... and other sources of extreme danger as provided by law.”⁹⁶² An owner of any such “source of extreme danger must comply strictly with the regulations on taking care of, preserving, transporting and using sources of extreme danger in accordance with law,”⁹⁶³ and “must compensate for damage caused by such source.”⁹⁶⁴ Owners of construction works are specifically obligated to “compensate for damage if such house or construction causes damage to another person,” and obligation that maybe be jointly held with the executor of the construction work.⁹⁶⁵ Compensation for environmental damages are also stipulated in Chapter 19 of the Law on Environmental Protection (2014).⁹⁶⁶ Under the Law, such environmental damages include: deterioration in environmental function and productivity, and; loss of human life, health, property, legal interests of organizations and individuals, due to environmental deterioration.⁹⁶⁷

Regarding consumer protection, the Civil Code stipulates that: “A natural person or juridical person carrying out production or business and failing to ensure the quality of goods,therebycausingdamaget consumers, must compensate for such damage.”⁹⁶⁸ In terms of the liability of companies for the conduct of individual persons belonging to the company, the Civil Code is clear that: “A juridical person must compensate for any

961 Ibid. Article 602.

962 Ibid. Article 601(1)).

963 Ibid. Article 601(1)).

964 Ibid. Article 601(2).

965 Ibid. Article 605.

966 Law on Environmental Protection, (2014). Chapter 19 (n.195).

967 Ibid. Article 163.

968 Civil Code, (2015). Article 608 (n. 919).

damage caused by any person belonging to the juridical person during the performance of duties assigned by it to such person”,⁹⁶⁹ and are further required specifically to “compensate for any damage caused by any worker or trainee belonging to it during the performance by the employee or trainee of his or her assigned duties.”⁹⁷⁰ The Law on Consumer Protection (2010) stipulates on compensation for violations of consumers’ rights and interests.⁹⁷¹

Institutional framework

As mentioned above, the Constitution establishes the overarching framework for the judiciary and the role of people’s procuracies through Chapter VIII.⁹⁷² As set out in the Constitution: “The Supreme People’s Court is the highest judicial organ” that “supervises and directs the judicial work of other courts.”⁹⁷³

6.2 State-Based Non-Judicial Mechanisms

International commitments

The UNGPs set out that: “States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse ... Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms.”⁹⁷⁴ The UNGPs specify that: “States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or

marginalization.”⁹⁷⁵ The UNGPs set forth a number of ‘Effectiveness criteria’ for non-judicial grievance mechanisms.⁹⁷⁶

Regulatory framework

In Viet Nam, the Constitution provides for the right “to lodge complaints and denunciations with the competent State bodies, organizations, and individuals ... against the illegal acts of State organs, organizations, and individuals”, and further provides that: “The competent State bodies, organizations, and individuals must receive and handle the complaints and denunciations”; “The person who has suffered loss and injury shall be entitled to damages for any material harm suffered and his reputation rehabilitated”; and that: “It is strictly forbidden to take vengeance on the person making complaints and denunciations, or to misuse the right to make complaints and denunciations with the aim of slandering and causing harm to another person.”⁹⁷⁷

Non-judicial mechanisms of the State are further stipulated under various legal documents, including the Inspection Law (2010), the Law on Denunciations (2018), the Law on Grassroots Conciliation (2013), the Law on Handling Administrative Violations (2012) and the Law on Commercial Arbitration (2010). For example, the Law on Grassroots Conciliation has provisions guiding conciliators to help involved parties in reaching agreement on voluntary settlement between themselves of conflicts, disputes or law violations, and the State shall provide financial supports for grassroots conciliation works.⁹⁷⁸

Under the Law on Handling Administrative Violations,⁹⁷⁹ business enterprises (being “organizations”, defined by the Law to

969 Ibid. Article 597.

970 Ibid. Article 600.

971 Law on Protection of Consumer Rights, (2010). Articles 41- 46 (n. 631).

972 Constitution of Vietnam (n. 60).

973 Ibid. Article 104.

974 UNGPs. Principle 27 (n. 2).

975 Ibid.

976 Ibid. Principle 31.

977 Constitution of Vietnam. Article 30 (n. 60).

978 Law on Grassroots Mediation, (2013), Law No. 35/2013/QH13. Available at: <http://vbpl.vn/botuphap/Pages/vbpg-van-ban-goc.aspx?ItemID=32515>. Accessed on 22 September 2020. Articles 6 and 21.3.

979 Law on Handling Administrative Violations, (2012), Law No. 15/2012/QH13. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn080en.pdf>. Accessed on 17 September 2019.

include “economic organizations”),⁹⁸⁰ may be subject to a range of administrative sanctions. The Law specifically states that: “Organizations shall be administratively sanctioned for all administrative violations they have committed.”⁹⁸¹ Under the Law on Handling Administrative Violations, “administrative violations” include “acts at fault committed by ... organizations that break the law provisions on State management, which, however, do not constitute crimes.” The Law requires that such acts “must be administratively sanctioned.”⁹⁸² The Law specifies that: “All administrative violations must be detected and stopped in time and handled strictly and clearly, all consequences caused by administrative violations must be overcome strictly according to law provisions ... The sanction of administrative violations must be conducted fast, with publicity, objective and proper competence, ensure fairness, in accordance with law provisions ... [and that] The sanction of administrative violations must be based on the nature, seriousness, consequences of the violations, the subjects of violations and the extenuating as well as aggravating circumstances.”⁹⁸³ Regarding compensation for damages arising from an administrative violation, the Law on Handling Administrative Violations specifies that violators “must pay for those damages as compensation” which must “comply with the provisions of the Civil Law.”⁹⁸⁴ Under the Law on Handling Administrative Violations, business enterprises, being “organizations”, have the obligations to “strictly abide by the law provisions on administrative violation handling” and are “responsible for educating members of their organizations on awareness of protection and compliance with the law, the rules of social life, to take measures in time to eliminate the causes and conditions that cause violations in their organizations.”⁹⁸⁵

The specific forms of sanction provided for by the Law on Handling Administrative

Violations include: warnings (for minor administrative violations), fines, temporary removal of the right to use permits and/or professional practice certificates, temporary suspension of operations, and confiscation of material evidence and/or the means of administrative violation used to commit administrative violations, amongst others.⁹⁸⁶

Aggravated circumstances that may give rise to more severe administrative penalties include, amongst others: Violations committed in an organized manner; repeated violations; abuse of position and power to commit administrative violations; concealing violations; administrative violations “of large-scale, large quantity or large value of goods”; administrative violations “against many people, children, the elderly, people with disabilities, [or] pregnant women.”⁹⁸⁷

Examples of specific maximum fine amounts set out under the Law on Handling Administrative Violations that may be of particular relevance to administrative violations by business enterprises include:⁹⁸⁸

- VND 60 million for “environmental hygiene” violations
- VND 1000 million for “chemicals” and “business registration” violations
- VND 150 million for “labor”, “health insurance” and “social insurance” violations
- VND 300 million for “mining”, “manufacturing and trading [of] ... building materials”, “management”, “bidding”, “investment” violations
- VND 400 million for “production”, “trading forbidden goods” and “fake goods” violations
- VND 2 billion for “precious metals”, “precious stones”, “banking and credit”, “exploration and exploitation of oil and gas and other minerals” and “environmental protection” violations.

980 Ibid. Article 2(10).

981 Ibid. Article 5(1)(b).

982 Ibid. Article 2(1).

983 Ibid. Article 3.

984 Ibid. Article 13(1).

985 Ibid. Article 14.

986 Law on Handling Administrative Violations. Articles 21 and 23 (n.979).

987 Ibid. Article 10.

988 Ibid. Article 24.

Remedial measures provided for by the Law on Handling Administrative Violations include amongst others: Forcible restoration of the initial state; Forcible dismantling of works, parts of works; Forcible application of measures to overcome the environmental pollution; Forcible destruction of goods, articles which cause harms to human health [and/or the] environment; Forcible correction of false or misleading information; Forcible removal of infringing goods or packaging, means of trading, and/or other articles; and forcible recall of goods or products.⁹⁸⁹

The Law requires “public announcement by mass media” and via the respective websites of the competent authorities upon the issuance of administrative sanctions upon organizations relating to food safety; product and goods quality; pharmacy; medical treatment and examination; labour; construction; social insurance; health insurance; environmental protection; tax; securities; intellectual property; measurement; production and/or trading in counterfeits” that cause significant consequences or that badly affect social opinion, including information relating to the name of the enterprise, the violating acts, and the forms of sanctions and remedial measures applied.⁹⁹⁰

The Law on Commercial Arbitration provides jurisdiction to settle disputes by way of commercial arbitration for “disputes among parties which arise from commercial activities,” “disputes among parties at least one of whom conducts commercial activities,” and other “disputes among parties which are stipulated by law to be settled by arbitration.”⁹⁹¹ The Law sets out the key principles by which arbitration is to be conducted, including: “Arbitrators must respect the parties agreement if such agreement neither breaches prohibitions nor contravenes social ethics”; “Arbitrators must be independent,

objective and impartial and shall observe law”; “Disputing parties are equal in their rights and obligations”; “The arbitration council shall create conditions for disputing parties to exercise their rights and fulfill their obligations”; “Dispute settlement by arbitration shall be conducted in private, unless otherwise agreed by the parties”; “Arbitral awards are final.”⁹⁹² The Law on the Protection of Consumers Rights (2010) provides for a number of modes of settling disputes outside of judicial means, including by way of negotiation, mediation, or arbitration.⁹⁹³ The Law however does not permit negotiation or mediation to settle disputes “causing damage to the interests of the State, the interests of many consumers, the public interest.”⁹⁹⁴

In terms of alignment of the regulatory framework on access to remedy with Viet Nam’s international commitments, the CESCR has expressed concern at the absence of effective remedies for victims of violations of economic, social and cultural rights,⁹⁹⁵ as well as at reports of intimidation of and reprisals against individuals claiming violations of their rights, such as forced evictions or poor working conditions.⁹⁹⁶ The CEDAW Committee has recommended that Viet Nam enhance the implementation of relevant national laws that accord priority to the judicial process rather than to reconciliation or mediation for the resolution of disputes, and that Viet Nam undertake awareness-raising among community leaders, law enforcement officers, lawyers and the judiciary in order to improve access to justice for women.⁹⁹⁷

989 Ibid. Article 28.

990 Ibid. Article 72.

991 Law on Commercial Arbitration, (2010), Law No. 54/2010/QH12. Available at: http://www.itpc.gov.vn/investors/how_to_invest/law/Law%20No.54_2010_QH12/mldocument_view/?set_language=en. Accessed on 30 August 2020. Article 2.

992 Ibid. Article 4.

993 Law on the Protection of Consumers Rights, (2010). Article 30 (n. 631).

994 Ibid.

995 CESCR, ‘Concluding observations of Viet Nam’. Paragraph 9 (n. 266).

996 Ibid. Paragraph 12 (n. 266).

997 CEDAW, ‘Concluding observations of Viet Nam’. Paragraphs 10 and 11 (n. 409).

Institutional framework

- *Administrative authorities*

The Law on Handling Administrative Violations sets out the respective competencies to administer sanctions of, amongst others, the Inspectorates, People's Courts, the Market Management Force, the Overseas Labour Management Department, the People's Committees (and their Chairpersons), the People's Police, members of Coast Guards operations teams, boarder guards, customs officials, and rangers.⁹⁹⁸

- *National Human Rights Institution (NHRI)*

The UNGPs set out the important role that NHRIs can play in promoting implementation of the State duty to protect, the corporate responsibility to respect human rights, and the need of victims for improved access to effective remedy.⁹⁹⁹ Amongst others, the UNGPs state that: "National human rights institutions that comply with the Paris Principles¹⁰⁰⁰ have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors."¹⁰⁰¹ The UNGPs further highlight that "National Human Rights Institutions have a particularly important role to play" as State-based non-judicial grievance mechanisms.¹⁰⁰² UN Member States under the UPR mechanism, the CESCR and the Special Rapporteur on the right to food have all called upon Viet Nam to establish an NHRI that is compliant with the Paris Principles.¹⁰⁰³ At the time of research, Viet Nam has accepted to

continue studying and considering the possibility of establishing a national human rights institution.

- *Government-run complaints offices*

The UNGPs highlight the important role that Government-run complaints offices can play as State-based non-judicial grievance mechanisms.¹⁰⁰⁴ Viet Nam has established a number of such offices with the potential for receiving complaints on wrongdoing or violations of law and policy,¹⁰⁰⁵ including independent state agencies with responsibilities for the management of state capital,¹⁰⁰⁶ and inspections of government operations and anti-corruption.¹⁰⁰⁷

- *International and regional mechanisms*

As noted by the UN Office of the High Commissioner for Human rights (OHCHR), "the ability of individuals to complain about the violation of their rights in an international arena brings real meaning to the rights contained in the human rights treaties."¹⁰⁰⁸ The UN treaty system provides for individual complaints procedures,¹⁰⁰⁹ as well as inquiry procedures.¹⁰¹⁰ At

1004 UNGPs. Principle 25 (n. 2).

1005 Law on Complaints, (2011), Law No. 02/2011/QH13. Available at: <https://m.thuvienphapluat.vn/van-ban/thu-tuc-to-tung/Luat-khieu-nai-2011-132446.aspx>. Accessed on 16 July 2020.

1006 See the Commission for the Management of State Capital of Viet Nam. Available at: <http://cmsc.gov.vn/web/english/trang-chu>. Accessed on 22 September 2019.

1007 See the Government Inspectorate of Viet Nam. Available at: <http://www.thanhtra.gov.vn/en/Pages/Home.aspx>. Accessed on 22 September 2019.

1008 OHCHR, 'Human Rights Bodies - Complaints Procedures: Complaining about human rights violations'. Available at: <https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrbpetitions.aspx>. Accessed on 16 September 2019.

1009 In particular: Committee Against Torture, Article 22 - Individual complaints procedure under the Convention against Torture; CCPR-OP1 Optional Protocol to the ICCPR; Committee on Enforced Disappearance (CED), Article 31 - Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance; CEDAW-OP Optional Protocol to the CEDAW; CERD, Article 14 - Individual complaints procedure under the CERD; CESCR-OP Optional protocol to the ICESCR; Committee on Migrant Workers (CMW), Article 77 - Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; CRC-OP-IC Optional Protocol to the CRC; and CRPD-OP Optional protocol to the Convention on the Rights of Persons with Disabilities.

1010 In particular: Committee Against Torture, Article 20 - Inquiry procedure under the Convention against Torture; Committee on Enforced Disappearance (CED), Article 33 - Inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance; CEDAW-OP, Article 8-9 Inquiry procedure under the Optional protocol to the CEDAW; CESCR-OP, Article

998 Law on Handling Administrative Violations, (2012) (n. 979).

999 UNGPs (n. 2).

1000 OHCHR, 'Principles relating to the Status of National Institutions (The Paris Principles)', (1993). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>. Accessed on 16 September 2019.

1001 UNGPs. Principle 3 (n. 2).

1002 Ibid. Principle 27.

1003 CESCR, 'Concluding observations of Viet Nam'. Paragraph 10 (n. 266).

the time of research, Viet Nam had not accepted any of the individual complaints or inquiry procedures provided for by the UN treaty system.¹⁰¹¹ The Special Procedures of the UNHRC have a mandate to act on individual cases alleging abuses of IHRL.¹⁰¹² At the time of research, Viet Nam had not extended a standing invitation to the Special Procedures, and 15 Special Procedures mandates, including the UNWG had requested invitations for country missions that had not yet been accepted.¹⁰¹³ The most recently completed country visit by the Special Procedures was that of the UN Special Rapporteur on the right to food, conducted in 2017.¹⁰¹⁴ Since 1998, only five other country visits of the UN Special Procedures have been undertaken.¹⁰¹⁵

Countries that adhere to the OECD Guidelines for Multinational Enterprises, including both OECD Member States as well as non-member countries, namely Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Kazakhstan, Morocco, Peru, Romania, Tunisia, and Ukraine, establish and maintain National Contact Points (NCPs) that are responsible for promoting the Guidelines and helping to resolve issues that arise under the specific instances procedures, as a non-judicial grievance mechanism.¹⁰¹⁶ Viet Nam is not an adhering country to the OECD Guidelines, and therefore does not maintain an NCP.¹⁰¹⁷

The OECD database of specific instances

brought to NCPs alleging breach of the OECD Guidelines records one specific instance notified to Germany's NCP in 2012 by two trade unions alleging breach of the employment and industrial relations, and provisions of the OECD Guidelines by a German multinational enterprise (MNE) operating in Viet Nam and various other countries. The main assertion in the specific instance was that the company had failed to respect the rights of workers to establish and join trade unions and that the company's due diligence procedures were insufficient to respect these rights. Germany's NCP undertook an initial assessment and concluded that the request merited further consideration. Mediation meetings were convened between the parties who cooperated in dialogue and information sharing. As a result, a joint final statement was agreed and published, in which the parties agreed that by means of the NCP mediation process, the alleged complaints had either been clarified or could be resolved by further bilateral dialogue. The NCP duly concluded the specific instance.¹⁰¹⁸

The Compliance Advisor Ombudsman (CAO) of the World Bank Group (WBG) is mandated to address complaints by people alleging that they have been adversely affected by IFC and Multilateral Investment Guarantee Agency (MIGA) projects. The CAO's case database does not record any cases regarding IFC-supported projects in Viet Nam.¹⁰¹⁹

6.3 Non-State-Based Grievance Mechanisms

International commitments

The UNGPs call on States to "consider ways to facilitate access to effective non-State-based grievance mechanisms dealing

11 Inquiry procedure under the Optional Protocol to the ICESCR; CRC-OP-IC, Article 13 Inquiry procedure under the Optional Protocol to the CRC; CRPD-OP, Article 6-7 Inquiry procedure under the Convention on the Rights of Persons with Disabilities.

1011 OHCHR, 'Ratification Status for Viet Nam' (n. 312).

1012 OHCHR, 'Special Procedures of the Human Rights Council'. Available at: <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>. Accessed on 15 September 2019.

1013 OHCHR, 'Country visits of Special Procedures of the Human Rights Council since 1998: Viet Nam'. Available at: https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=VNM. Accessed on 15 September 2019.

1014 Ibid.

1015 Ibid.

1016 Organisation for Economic Co-operation and Development (OECD), 'OECD Declaration and Decisions on International Investment and Multinational Enterprises'. Available at: <https://mneguidelines.oecd.org/oecddeclarationanddecisions.htm>. Accessed on 15 September 2019.

1017 Organisation for Economic Co-operation and Development (OECD), 'List of National Contact Points'. Available at: <https://mne-guidelines.oecd.org/ncps/>. Accessed on 15 September 2019.

1018 Organisation for Economic Co-operation and Development (OECD), 'Alleged human rights violations in various countries'. Available at: <http://mneguidelines.oecd.org/database/instances/de0014.htm>. Accessed on 16 September 2019.

1019 Compliance Advisor Ombudsman (CAO), 'CAO Cases'. Available at: <http://www.cao-ombudsman.org/cases>. Accessed on 16 September 2019.

with business-related human rights harms”, noting that such mechanisms “may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.”¹⁰²⁰

Operational-level grievance mechanisms

Regarding operational-level grievance mechanisms maintained by businesses enterprises, the UNGPs consider that: “State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution.”¹⁰²¹ In particular, the UNGPs highlight that: “Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights ... First, they support the identification of adverse human rights impacts as a part of an enterprise’s ongoing human rights due diligence ... by providing a channel for those directly impacted by the enterprise’s operations to raise concerns when they believe they are being or will be adversely impacted. By analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly; ... Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.”¹⁰²² The UNGPs note that: “Operational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise” and that: “They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.”¹⁰²³

During the mandate of the UN Special

1020 UNGPs. Principle 28 (n. 2).

1021 Ibid. Principle 25.

1022 Ibid. Principle 29.

1023 Ibid.

Representative of the Secretary-General, John Ruggie, principles for effective company/stakeholder grievance mechanisms were piloted at an operational level in Viet Nam with the Esquel Garment Vietnam, a wholly owned supplier of the Esquel Group (a Hong Kong-based apparel company).¹⁰²⁴ Key lessons learned from this pilot, which were appended to UNGPs, included amongst others:

- Workers favoured their immediate supervisor for whom to take their complaints. Open Talk sessions were run and a notice board for grievances was erected to further facilitate exchanges and offer mechanisms for airing grievances.¹⁰²⁵
- Data collection was critically important for assessing performance in terms of receiving and addressing grievances raised, as before data collected there was an underlying assumption that targets related to grievances were being met. Vietnamese law provides for strict timelines for the handling of grievances and for their escalation through to the courts.¹⁰²⁶
- Transparency in dealing with grievances was a critical element in building the trust of workers in the grievance mechanisms and procedures. The company posted information about actions taken in response to grievances on notice boards in and around the factory.¹⁰²⁷
- Working with a trusted third party further strengthened the effectiveness of the grievance process and in Esquel Garment Vietnam benefitted from its membership in the Fair Labor Association (FLA) in this regard.¹⁰²⁸

1024 UNHRC, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – Addendum - Piloting principles for effective company-stakeholder grievance mechanisms: A report of lessons learned'. (2011), UN Doc A/HRC/17/31/Add.1. Available at: <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#srepresentative>. Accessed on 16 September 2019.

1025 Ibid. Paragraph 34.

1026 Ibid. Paragraph 38.

1027 Ibid. Paragraph 56.

1028 See further Fair Labour Association (FLA). Available at: <https://www.fairlabor.org>. Accessed on 16 September 2019.

- The Performance Improvement Consultative Committees established in a number of garment factories by Better Work (an initiative of the ILO and the IFC to improve compliance with labour standards in Viet Nam's garment sector)¹⁰²⁹ provided a helpful model for effective enterprise-level grievance mechanisms in Viet Nam.¹⁰³⁰

Industry, multi-stakeholder and other collaborative initiatives

As noted by the UNGPs: "Human rights-related standards are increasingly reflected in commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, through codes of conduct, performance standards, global framework agreements between trade unions and transnational corporations, and other similar undertakings. Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both. These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.¹⁰³¹ As such, the UNGPs recommend that: "Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available."¹⁰³²

In Viet Nam, initiatives such as the Fair Wear Foundation (FWF), for example, routinely handle worker grievances.¹⁰³³ FWF has

received 45 complaints about workplace violations since 2012, the majority concerning legally binding employment relationships, working hours, and wages, with the number of complaints received increasing year-on-year.¹⁰³⁴ Working together with brands and factories, FWF resolved and closed 10 of these complaints.¹⁰³⁵ FWF "considers a growth in complaints to be a good sign. This means that workers are becoming more aware of their rights and are more comfortable coming forward with grievances about their working conditions and the way Fair Wear Foundation's Code of Labour Practices is implemented in these factories."¹⁰³⁶

Recommendations

1. Establish a NHRI that is compliant with the Paris Principles, in line with the corresponding recommendations of the CESCR and the Special Rapporteur on the right to food.¹⁰³⁷
2. Establish an independent agency with a mandate to handle complaints of business-related harm, in line with the criteria for effective State-based non-judicial grievance mechanisms set out in the UNGPs.
3. Ensure the provision of judicial or other effective remedies for violations of economic, social and cultural rights, in line with the corresponding recommendation of the CESCR.
4. Develop policies to raise awareness among the public about mechanisms and procedures available to seek remedies, including those for corporate abuses of rights, in line with the corresponding recommendation of the CESCR.

1029 See further Better Work Vietnam. Available at: <https://better-work.org>. Accessed on 16 September 2019.

1030 UNHRC, 'Piloting principles for effective company-stakeholder grievance mechanisms: A report of lessons learned'. Paragraph 46 (n. 1024).

1031 UNGPs. Principle 30 (n. 2).

1032 Ibid.

1033 Fair Wear Foundation (FWF), 'Vietnam'. Available at: <https://www.fairwear.org/country/vietnam>. Accessed on 16 September 2019.

1034 Ibid.

1035 Ibid.

1036 Ibid.

1037 CESCR, 'Concluding observations of Viet Nam'. Paragraph 10 (n. 266).

5. Condemn acts of intimidation or reprisals against individuals claiming violations of their rights and to take appropriate measures against those found responsible for such actions, in line with the corresponding recommendation of the CESCR.¹⁰³⁸
6. Consider becoming an adhering country to the OECD Guidelines for Multinational Enterprises, and establishing a National Contact Point (NCP) thereunder.
7. Promote establishment of enterprise-level grievance mechanisms that meet the effectiveness criteria set out in Principle 31 of the UNGPs,¹⁰³⁹ drawing on lessons learned from the UN Special Representative of the Secretary-General's operational-level pilot of principles for effective company/stakeholder grievance mechanisms in Viet Nam, including a focus on gender equality and providing redress for violating or abusing women's rights.¹⁰⁴⁰

1038 Ibid. Paragraph 9.

1039 UNGPs. Page 60 (n. 2).

1040 UNHRC, 'Piloting principles for effective company-stakeholder grievance mechanisms: A report of lessons learned' (n. 1024).

