

Enhanced employee participation and the influence from below

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Despite its one-party regime, recent changes in industrial relations policy in Vietnam have been increasingly influenced by interactions between grassroots initiatives and the policy-making institutions. By examining how strike-hit enterprises adopted ‘fence-breaking’ initiatives to improve employee participation and how these grassroots changes influenced the policy debates in Hanoi, the paper argues that the driving force of the industrial relations reform in Vietnam has come from the continuous negotiations and interactions between the rules, the rule-makers and the rule-takers at the grassroots level.

Keywords: employee participation, industrial relations reform, strikes, Vietnam industrial relations, workers’ congress

Key points

- 1 Institutional changes in industrial relations in Vietnam have been based on the fact that the policy-makers have been responsive to the feedback from the rule-takers.
- 2 The rise of labour activism, especially wildcat strikes and go-slows, has led a number of non-public employers to encourage genuine employee participation including the election of non-union representatives.
- 3 The experimental initiatives at the workplaces in terms of employee participation have contributed to possible changes of the labour legislation for more participation of employees at the workplace.

Since the launch of the economic reform *Doi Moi* in the late 1980s, the industrial relations system in Vietnam has undergone remarkable changes, especially at the firm level. As the state-owned enterprise (SOE) sector is shrinking, employment terms and conditions in the private workplaces have been supposedly determined by negotiation between employers and workers rather than by central planning. Yet, despite the promulgation of the 1995 Labour Code which provides for the mechanisms of consultation, collective bargaining,

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and dispute settlement, the labour relations institutions at the workplace have seen few changes as the trade unions have not been able to represent workers in negotiations with the employers, and most employment conditions have been set unilaterally by the management on the basis of the minimum labour standards.

However, the wave of 'wildcat' strikes by discontented workers which started in late 2005 has become a major driving force for industrial relations changes in the country. In an attempt to understand the forces and process of change in this period of transition, this study examined recent developments in terms of legislation and practices in the area of employee participation in Vietnam. Understanding the changes in employee-participation legislation and practices provides important insight into the dynamics of industrial relations changes in Vietnam.

Researchers have been active in trying to understand the dynamics of these changes. Proponents of institutional stability have argued that employers who had invested in and developed their strategies around local institutions would build on rather than displace the traditional arrangements despite new market pressures (Hall and Soskice 2001). Pierson (1994), in examining welfare state retrenchments, pointed to the enduring popularity, powerful constituencies and centrality of the existing social policy framework as the reasons for its continuity. However, this emphasis on institutional stability was criticised for oversimplifying all feedback within a system as positive (Kume and Thelen 2002). As a result, it failed to explain the 'indisputable and important change' (Streeck and Thelen 2005, 6) observed in the both advanced and emerging societies. Against the institutional resilience thesis, recent studies of industrial relations in Asia found that institutional transformation emerges from small and gradual changes. After reviewing the empirical evidence of industrial relations transformation in a number of western countries, Erickson and Kuruville (1998, 14) found that 'gradual or revolutionary change can result in major changes in structures, such as institutions, with the passage of time and the development of practice'. This finding was echoed by Campbell (2004), Streeck and Thelen (2005) and Crouch (2005) who argued that the institutions in the advanced capitalist countries have continuously experienced changes not in the form of 'abrupt breakdown or replacement' but 'gradual institutional transformation', which resulted from the accumulation of continuous subtle adaptations (Streeck and Thelen 2005, 6–9). In particular, Streeck and Thelen (2005) argued that there is always a negotiation between the 'rule-makers' and 'rule-takers' within a specific societal context. Because the rules are implemented in different locations, in different environmental conditions, and at different points of time, they can have diverse outcomes. Consequently, the rule-makers, the rule-takers, and the society as a whole are involved in a continuous process within which new interpretations of the rules are 'discovered, invented, suggested, rejected or for the time being, adopted' (Streeck and Thelen 2005, 16), thereby redefining institutions without a major disruption. In short, institutional arrangements can be transformed gradually through small and evolutionary changes which result from the continuous negotiations and reinterpretation of rules between the rule-makers and the rule-takers.

The process of industrial relations reform in Vietnam presents a relevant case to test this ‘imperfect reproduction’ theory (Streeck and Thelen 2005). With a party-state regime, it appears impossible for such negotiations between the rule-makers and rule-takers in Vietnam to reinterpret the rules for the redefinition of institutional arrangements. In principle, the party-state is the most powerful and pervasive institution that makes rules and decisions, with little consultation with societal actors. The official channel for state–society communication is through mass organisations, which are set up by the party to mobilise different population groups in support of the state programs and policies, maintain channels of communication between the party-state, and ensure that these population groups are within control (Kerkvliet 2003). However, the Vietnam Communist Party (VCP) originated from a mass-based, revolutionary party. Its strength was rooted in the population’s support. Though this interdependent relationship with the people changed after the Communist Party seized power, the VCP still wishes to be seen as attentive to the people’s complaints, as long as the party’s supremacy is not questioned (Dixon 2004; Womack 1987). Although the party-state retains its supremacy in rule-making, the people’s voice has recently received more attention. This new attitude of the VCP is reflected in its tolerant reaction to some people’s protests, such as the peasants’ demonstrations in Thai Binh and Nam Dinh in the late 1990s, its refusal to launch a frontal assault against the outlawed Unified Buddhist Church of Vietnam (*Giao Hoi Phat Giao Viet Nam Thong Nhat*), and its concessional responses to the labour strikes that were staged before the right to strike was provided (Kerkvliet 2001). The Central Party Committee even set up the Institute of Public Opinion to investigate the society’s informal and formal feedback on the party-state’s policies (*Lao Dong* 2008a). In short, though the party-state is authoritarian in making rules, it has been more responsive to feedback and pressures from below.

In terms of industrial relations, it has been argued by a number of scholars that informal labour activism, especially the explosion of wildcat strikes since 2005, has become one of the most important driving forces for industrial relations reform in Vietnam (see for example, Chan 2008; Clarke and Pringle 2009; Do 2011; Tran 2007). Tran (2007) found that after the first wave of wildcat strikes in Ho Chi Minh City and the southern region during the 2006 Tet, the government decided to adjust the minimum wage and revise the procedures in the Labour Code for settling strikes. Do (2011) argued that the wildcat strikes have significantly influenced provincial approaches to labour relations and that these provinces, in turn, have had an impact on the formation of the national labour policy and legislation. For example, Decision 35 of Ho Chi Minh City People’s Committee on procedures to settle wildcat strikes, which had not been provided by the national legislation, was later incorporated into the 2006 revision of the Labour Code chapter 14 (Do 2011; Tran 2007). The initiative of HCMC, Binh Duong and Dong Nai authorities in allowing workers in non-union companies to elect their own representatives to participate in strike settlement was later picked up by the Ministry of Labour (MOLISA) as a major proposal in revising the Labour Code in 2012 (Do 2011). These developments suggested an interactive linkage between the grassroots initiatives which may go beyond the current regulatory framework and the legislative changes at the policy level.

Methodology

In order to understand the dynamics of changes in labour relations in Vietnam, the study investigated recent developments of employee participation in legislation and practice by studying the various initiatives of employee participation at the firm level and how these grassroots experiments have been received and interpreted by the policy-makers at the national level. The study was primarily based on a two-phase research carried out by the author in 2009 and 2010. In the first phase, the author selected 22 companies in Hanoi, Hai Phong, Bac Ninh, Hai Duong, Ho Chi Minh City, Binh Duong, Dong Nai and Long An for initial investigation of their initiatives in employee participation. These companies were selected on the basis of three criteria: employing at least 500 workers, operating in the manufacturing industry, and maintaining reasonably stable labour relations. Initial interviews were conducted with the HR managers and union leaders of these companies. Then, six companies with identified best practices in employee participation were chosen for the 'deep-dive' research in the second phase. In each company, in-depth interviews were conducted with the management (director or deputy director and HR manager), the union (union chairperson and a member of the union executive board), and rank-and-file workers (2 to 3 workers at each company). Interviews with the management and the union leadership were conducted on site and separately from one another. The main characteristics of the six companies studied in depth are set out in Table 1.

Although all of the six companies are in manufacturing, the motorbike manufacturing and electronics companies apply higher technology compared to footwear and garment. Apart from Company 1, the other five are large-sized with labour forces ranging from 2200 to 24 000 workers. With such large labour forces, effective employee participation is crucial for maintaining harmonious labour–management relationships and preventing labour activism. The paper also analyses the recent and forthcoming changes to employee-participation legislation, especially the motivations behind these changes, in order to understand the new policy directions.

Table 1 Characteristics of companies studied in phase 2

Companies	Location	Industry	Ownership	Labour force
Company 1	Vinh Phuc (North)	Motorbike manufacturing	Italian	550
Company 2	Hanoi – Vinh Phuc – Bac Ninh (North)	Electronics	Japanese	22 000
Company 3	Binh Duong (South)	Footwear	Korean	3 600
Company 4	Binh Duong (South)	Garment	Korean	2 200
Company 5	Binh Duong (South)	Footwear	Taiwanese	7 469
Company 6	Long An (South)	Footwear	Taiwanese	24 000

Regulatory framework for employee participation in Vietnam

The legal provisions for employee participation in Vietnam can be divided into three areas: compulsory consultation with unions; collective bargaining; and workers' congresses. First, the right of workers to be consulted by management in decision-making has been well provided in the Labour Code, which stipulates that the employer is required to consult with unions about decisions relating to: 1) individual and mass lay-offs (Article 17.2 & 38); 2) development of wage tables (Article 57); 3) deduction of workers' wages (Article 60); 4) development of bonus regulations (Article 64); 5) issuance of annual leave schedules (Article 76); 6) issuance of work rules (Article 82); 7) discipline of workers (Article 87); 8) temporary termination of a worker to facilitate the investigation of his/her violation (Article 92).

The Labour Code also provides that the executive committee of the trade union of the enterprise or a provisional trade union organisation can negotiate collectively on behalf of workers. Both the union and the employer can request to negotiate a collective bargaining agreement (CBA). Within 20 days of receiving a request, the other party must agree to bargain and agree on a date to start the bargaining. Negotiations should be carried out in good faith, with both parties negotiating with the expectation and willingness to compromise, discuss, and reach a mutually agreed solution.

However, these first two pillars of employee participation have not functioned effectively mainly due to the dependence of enterprise unions on management, especially in the non-public sector (Clarke, Lee and Do 2007). While trying to improve the capacity of the enterprise unions, the government and the Vietnam General Confederation of Labour (VGCL), the only national trade union organisation, have promoted workplace democracy by encouraging the practice of workers' congresses, the third pillar of employee participation, to increase bipartite communication and information sharing both in the public and private sectors.

Workers' congresses were originally a practice of state-owned enterprises to create an environment of democracy at the workplace. Government Decree No. 07/1999/ND-CP dated 13 February 1999 promulgating the Regulation on Exercising Democracy in state-owned enterprises, which is specified by Joint Circular No. 01 dated 16 May 2005 issued by VGCL and MOLISA, guides the organisation and operation of workers' congresses in state-owned enterprises. Then, in 2007, the government extended workers' congresses to non-state enterprises by Decree No. 87/2007/ND-CP, the implementation of which is guided by the Joint Circular No. 32 dated 31 December 2007 issued by MOLISA and VGCL. Both decrees require the management to inform workers about: 1) business plan and performance; 2) company regulations and labour-related policy; 3) financial situation; and 4) welfare funds. The dissemination of information by management and the feedback from workers can be made through several channels including the enterprise union leadership, production unit meetings, meetings between supervisors and company managers, the collective bargaining process, and particularly the annual workers' congresses. Workers' congresses are jointly organised by management and the enterprise

union leadership on an annual and ad hoc basis. A workers' congress in a company employing fewer than 100 workers will include all workers. However, workers' congresses in larger companies are organised on a delegate basis. In preparation for the company-level workers' congress, each production unit will organise a meeting on their own to discuss all the issues that have emerged from the management and workers' sides as well as to elect the delegates to participate in the company-level workers' congress. A workers' congress is legitimate only when at least two-thirds of the elected delegates attend and a congress resolution should be approved by more than 50% of the participants.

According to the VGCL, the rate of organising workers' congresses was much higher in the SOEs than in the private sector. A VGCL survey over 16 provinces in 2009 showed that while 93.87% of SOEs organised annual workers' congresses, that figure in the private sector was only 60.27% (*Dan Tri* 2009). The approval of CBAs is normally regarded as the key component of a workers' congress. However, the percentage of workers' congresses that resulted in CBAs was low, only 45% in Hanoi, for example. Despite efforts of VGCL and the government in promoting democracy at workplace, workers' congresses have constantly faced criticisms of being formalistic and ineffective in providing a channel for employee participation. An official from the Legal Affairs Department of MOLISA commented:

The Congresses of workers and employees in state-owned enterprises have made progress over the years. Inevitably there were some cases of organising the congress in a token way with poor preparation and deficient in-depth analysis on the specific situation of the enterprise, failure in adherence to laws and regulations and the actual needs of the enterprise. Many congresses were formalistic, not a true democratic forum where workers could express their voices and opinions. The employers did not fully understand the laws and regulations; the fact that newly established trade union lack information and experience was also an obstacle to organising workers' congress in the majority of joint-venture enterprises. (Interview with the Legal Affairs Department, MOLISA, April 2011)

The existing regulatory framework for employee-participation grants all of the mandate and authority to the (enterprise) unions, which in reality have become a barrier to improving the workers' voice in cases where the workplace has not been organised or when the unions are dependent on management. Unfortunately, the weakness of the unions, not only in extending membership in the private sector but also in representing workers at the workplace has become more a norm than an exception. Most of the companies in this study are faced with the challenge of having weak unions but employers have initiated voluntary measures to improve communication with workers and encourage their participation to harmonise labour relations.

Initiatives of employee participation

All of the studied companies adopted the employee-participation initiatives out of their fear of informal labour activism, most notably wildcat strikes, go-slows and mass exits. Most of these companies originally adopted an authoritarian approach to labour relations,

in which the (foreign) management made all the decisions without consulting either the enterprise unions or the workers. But workers' industrial actions soon proved that their authoritarian approach was not effective in maintaining a stable labour force and harmonious labour–management relationships, which seriously hurt their production and prestige. The employers in this study, consequently, had resorted to various forms of employee participation with different purposes in an attempt to improve labour–management relations. Some of these are discussed below.

Team leaders as workers' representatives

Labour organisation in manufacturing companies is often based on production lines. Workers in one line or several lines are grouped into a team, headed by a team leader. The team leaders are normally promoted from rank-and-file workers. Although team leaders are the lowest level of management in a company, they play a crucial role in labour management. First, they are in charge of work assignments, performance evaluations, wage calculations, on-the-job training etc. for workers in the teams. Therefore, they have significant power and influence over the team members. Second, they are the first ones who receive and address workers' queries and grievances before they are transferred upward. At the same time, they receive orders and information from the company and disseminate them to workers in the teams. With their authority over workers and their intimate contacts with them, team leaders naturally rose as *de facto* workers' leaders. Both Company 1 and 2 relied on team leaders to communicate with workers:

The workers may not listen to me but they will definitely listen to their team leaders. So when the company makes any important changes, I will have to talk them through to the team leaders. If the team leaders are persuaded, the workers will be persuaded. (Interview with the HR manager of Company 1, July 2011)

Company 1 and 2 were significantly different in terms of labour force size and labour skills. While Company 1 employed only experienced technicians and had a total labour force of 550, Company 2 had 22 000 workers, most of whom were unskilled. However, both companies managed to be the top payers in their respective region and industry, which effectively released the pressure of wage negotiation from the employers. Even so, communication with workers over management decisions had become increasingly important to ensure employees' satisfaction and co-operation. The enterprise union leadership in both companies, as the interviewed workers and managers commented, was not effective. Apart from organising annual sport events for workers, they would rarely be involved in addressing workers' grievances or voicing workers' opinions to the management. The labour–management communication, consequently, was handled by the HR department and the production unit supervisors or 'team leaders'.

The team leaders would be asked to meet with the HR manager and top executives when an important decision was to be made. Meetings between team leaders and management at both companies were far from a regular or compulsory practice. Instead, they grew out of the practical need to ensure that workers understood and complied with

management decisions. And if workers had any negative feedback, they would be addressed in a timely fashion through the meetings with the team leaders. Topics for discussion, which ranged from changing working hours, welfare benefits, annual leave, overtime arrangements, quality control, production targets, occupational safety and health issues, would be communicated to all team leaders. Team leaders were required to consult their workers in advance on the subject, which often occurred informally between team leaders and individual workers rather than at official meetings. In team-leader-management meetings, the union chairman acted as the intermediary. Wages had never been discussed because as the director general of Company 2 explained: 'we do not negotiate wages with workers. But we guarantee that we set the wages at the level that workers are satisfied with'.

Shop stewards-based participation

While almost all of the companies in this study had low confidence in their enterprise unions, Company 3 showed that the enterprise union could become an effective representative body of workers if it was elected and run by the workers themselves rather than by the management. Company 3 is a Korean-owned garment company located in an industrial zone of Binh Duong province, supplying t-shirts to a European corporation. During its early years, Company 3 had a difficult time with labour conflicts. The Korean managers were reluctant to allow an enterprise union, which, based on their experience, would be adversarial to the management. However, a strike at the company in 2008 and the frequent loss of its most experienced workers forced the company to change its approach to labour relations. Prior to 2008, the union leadership was controlled by personnel picked by management, including a member of the HR department and a department manager. After the 2008 strike, the Korean management decided not to intervene in union elections. Workers of each production team were allowed to vote for their shop stewards who could not be the team leaders. At the company level, the union election was organised free from management intervention. The current union chairman was on the staff of the administration department and the vice union chairwoman was a worker. The criteria for shop stewards and union leaders, according to the workers and union officials, were the willingness to speak for workers in meetings with management, responsiveness to workers' concerns and questions, and good leadership capacity. These criteria were different from those for union officers of VGCL, which included good knowledge of the law, holding a high position and having prestige in the company, and a good relationship with the employer (see Clarke 2005).

Every month, the enterprise union had four rounds of union meetings, with production lines, shop stewards, union executive board, and finally the union leadership and management. At the beginning of each month, the union executive board would prepare a schedule of meetings for all four rounds and send it to the management. Management would inform the managers at factory and team levels to allow the necessary time for these union meetings. The cost of these meetings was funded from the union fund rather than from the management's budget. The issues that workers raised through union meetings

were wide-ranging from occupational safety, meal quality, adjustment of allowances, and calculation of bonuses, to increases in wages. But what makes this union different from most of the other enterprise unions in Vietnam was its capacity to negotiate with the Korean management on behalf of workers over wages and working conditions. For example, in the beginning of 2011, the double-digit inflation rate was causing difficulties for workers, especially the migrant workers who were faced with high food and rental costs. The union leadership negotiated with the Korean management, demanding a living cost allowance of 150 thousand dong/person/month for all workers. It took the management two weeks to consider the claim and it finally agreed with the proposal.

Elected workers' representatives

Most other companies found that they had to figure out an alternative way to encourage workers' participation when the enterprise unions were not representative of their members. While many companies relied on team leaders as workers' representatives, others allowed workers to choose their own representatives who were not necessarily the team leaders. Encouraging workers to elect their own representatives other than union officers and team leaders was the case in companies 4, 5 and 6. However, the extent of participation within these three companies varied, resulting in different outcomes in labour relations.

Company 4 had a 'go-slow' in 2009 when the workers demanded the payment of a travel allowance of 70 thousand dong like other companies in the industrial zone. Workers' demands were reported to the management by the union leadership, but the company turned them down, reasoning that it already paid a higher-than-average basic wage. One week after that, workers of two production lines went slow, followed by workers in other sections of the company. After two days, the company gave in and paid workers the travel allowance they had demanded. The go-slow had become the major leveraging factor for the management to change their approach to labour relations. After the go-slow, the Korean director wanted to talk directly to the rank-and-file workers instead of relying totally on the HR department. Every week, the director and vice director met with the representatives of one factory. Each production line would nominate two representatives to meet with the Korean managers. The nomination was rotated to make sure that all workers would have the chance to talk to the executives. The most common questions raised during these meetings concerned wage increases and more overtime work. After the weekly meeting with workers, the company would announce the minutes of the meeting on the next Monday with replies from the management. However, the interviewed workers complained that while the management were responsive to questions about quality, productivity, work organisation, arrangements for annual leave and worker-supervisor relationships, they often turned down workers' demands for improved wages. Yet the interviewed Korean managers found that these meetings with workers were not as effective as they expected, as workers were not willing to speak out about their concerns and demands. Company 4 has improved their communication with workers, especially about non-wage issues, but communication break-downs still occurred especially when it came

to such complicated issues as wage-related ones, which probably required not only more effort from both labour and management but also a more sophisticated mechanism of negotiation.

While Company 4 aimed to improve communication with workers by addressing their grievances only, Companies 5 and 6 took a further step further by initiating negotiations with workers' representatives on wages and working conditions. Again, both companies were motivated by the need to prevent labour strikes which they had experienced in the past. In the beginning, Company 5 convened meetings between union officials, workers' representatives and management only when a potential labour conflict needed to be prevented. First, meetings at production lines were organised for the workers to elect their representatives. The representatives should not be the team leaders. In some cases, the worker representatives were the shop stewards but in most cases, those elected were rank-and-file workers who were outspoken and willing to take part in the meeting with management. The workers were requested to refrain from taking industrial action until the negotiations with management were over. The worker representatives were responsible for collecting all the demands and sending them to the union chairman.

The union chairman then translated them into Cantonese before sending them to the management at least one week prior to the meeting. At the meeting, the union leadership would act as both the facilitator and co-ordinator for the 28 workers' representatives in negotiating with the management. By May 2011, when our last interview occurred, there had been three episodes of negotiations. Normally each episode lasted between one and four days. For example, the negotiations in July 2010 lasted three days. Workers proposed an increase of 200 thousand dong/person/month but the management offered only 150 thousand. Finally, the two parties agreed to an increase of 180 thousand. The increase was a victory for the union leadership and workers, according to the union chairman, because they did not expect that the company would agree to such a high rate.

Companies 5 and 6 applied a similar model. The workers' representatives, once elected, would serve for at least two years and participate in all meetings with the union leadership and management. Also, the workers' representatives were provided with training in labour relations skills such as public speaking, the collection of workers' opinions, and grievance-handling by the company union. On a daily basis, the team delegates informed the union leadership and the management about workers' grievances and gave feedback on management policy. According to both the union chairman and the HR manager, the team delegates provided the fastest and most effective channel to communicate with workers. In wage negotiations, the workers' representatives did not sit in the discussion with the management but consulted with the union leaders separately.

The union leaders of companies 5 and 6 saw no potential threat or competitive pressure from the workers' representatives. Instead, they regarded them as complementary to their work and had actively engaged the workers' representatives in their interactions with management. The larger extent of participation of workers' representatives in companies 5 and 6 compared to Company 4 has resulted in better impacts on labour relations: while the threat of wildcat strikes was effectively removed in the former, Company

4 is constantly faced with the risk of labour activism. Over 60% of interviewed workers in companies 5 and 6 said they were satisfied with management while that figure in Company 4 was only 40%.

In short, while some companies utilised initiatives built on the existing employee-participation mechanism such as the enterprise union, others resorted to new ones. The team-leader-based model is the most popular employee-participation mechanism employed by strike-hit companies although most of the time, the team leader-management meetings were no more than ad hoc and preventive measures against workers' adverse reactions rather than a regular practice. In the meantime, the employers such as those of companies 4, 5 and 6, have realised that the team-leader model is not necessarily the most effective one. When the law does not allow workers to elect non-union representatives, the initiatives adopted by companies 4, 5 and 6, though not official, have broken the legal fence. However, as the economic historian Dang Phong argued, after *Doi moi*, the fence-breaking yet effective initiatives would not necessarily be sanctioned by the authority. Instead, these suggestions from the ground have been regarded as extending the policy options for the government (Dang 2009).

Workplace initiatives and policy developments

When the wave of wildcat strikes first exploded in the southern provinces, the government focused mainly on settling strikes. The VGCL interpreted the main reason for wildcat strikes to be the employers' violation of workers' rights. However, after 2006, when the vast majority of strikes occurred over interest-based disputes, the government of Vietnam gradually realised that, to stabilise labour relations, harmonising the labour-management relationship is very important, especially by improving workers' representation at the workplace, rather than by simply fire-fighting strikes. Party leader Truong Tan Sang, at a meeting in 2008 with VGCL leaders and provincial government officials, pointed out the key reason for wildcat strikes was the shortage of *real* components of a working IR system, including: real representation, real negotiation, real issues, and real implementation (*Lao dong* 2008b). The trade union, thus, must be strengthened to represent workers in consultations and negotiations with employers.

The VGCL, however, has made little progress in improving their representation at the workplace despite various efforts including a major member recruitment campaign, the promotion of collective bargaining, and participation in strike settlement taskforces. Therefore, the government has been looking for alternative measures to improve workers' participation apart from the existing trade union structure.

Based on the success of the workers' representative models which enabled strike settlement in non-union enterprises and the various employee-participation initiatives in strike-hit companies, especially in the southern provinces, MOLISA made a bold proposal at the beginning of the 4th revision of the Labour Code in 2009. The ministry wanted to extend the authority of workers' representatives in non-unionised enterprises beyond strike settlement to include collective bargaining and social dialogue with the employers

(Labour Code Revision 1st Draft, Article 188). While the 2006 chapter 14 provides that workers in non-unionised enterprises can elect their representatives to organise strikes, the 2009 proposed revision has gone further by granting almost equal authority to enterprise unions including the negotiation of collective agreements, the settlement of disputes and the regulation of employment relations, to the so-called 'group of workers' representatives' (*Ban dai dien cong nhan*).

The National Assembly Committee for Social Affairs which oversees the revision of labour and union legislation has voiced its support for non-union representation at the workplace. In an interview with *Sai Gon Tiep Thi*, a popular newspaper in HCMC, Dang Nhu Loi, the vice chairman of the National Assembly Committee for Social Affairs, praised the new provision on workers' representatives in the draft Amendment to the Labour Code as a necessary change. He said:

I think this provision is necessary ... The trade union organisation has not been genuinely representative of workers. I am not talking about state-owned companies because in these companies, unions and management are the same. But this is not the case in non-public enterprises. In these companies, the unions must prove their role in representing the rights and interests of workers. That is the best answer to the current problem. (*Sai Gon Tiep Thi* 2009a)

In line with the proposal of non-union representation in the draft law, the National Assembly has introduced a master plan for the formation of labour councils from national to enterprise level (*Sai Gon Tiep Thi* 2009b). Tripartite labour councils will be set up at national and provincial levels to provide guidelines on wages and working conditions for enterprises. Labour councils at enterprises will consist of management and unions or workers' representatives. The enterprise labour council will negotiate and regulate employment relations at the workplace. The architects of the master plan emphasised that 'the labour council will exist in parallel with, but not replace enterprise unions' (quoted in *Sai Gon Tiep Thi* 2009b).

The VGCL strongly opposed the non-union workers' representative proposal not only by running a vehement media campaign through the union-affiliated newspapers but also through political lobbying. The proposal was postponed at the end of 2009 but it was raised again in late 2010, especially because of the rise of wildcat strikes and the VGCL's inability to improve enterprise unions' representative capacity. In early 2011, the prime minister approved the non-union worker representative proposal by MOLISA so that it was further developed before being submitted to the National Assembly.

In parallel, MOLISA, VGCL, and the National Assembly Committee of Social Affairs have agreed to develop a chapter on social dialogue and workplace co-operation in the revised Labour Code. In May 2011, in preparation for the chapter, the Legal Affairs Department, MOLISA proposed a draft decree to provide guidelines on the social dialogue chapter of the revised Labour Code. The draft decree defined social dialogue at the enterprise as 'bipartite communication and consultation about all issues of mutual interests so as to ensure the legitimate rights and interests of both workers and the employers' (Article 3). The issues that are subject to bipartite dialogue include all employment

conditions ranging from recruitment, work assignment, training and retraining, working hours and rest time to settlement of labour disputes and grievances (Article 8). The draft decree also prescribed a variety of social dialogue forms including regular and ad hoc meetings at production unit and factory levels and annual workers' congresses.

In response to the draft decree proposed by MOLISA, VGCL introduced its own draft of the social dialogue chapter of the revised Labour Code in September 2011. While the provisions on forms and issues of social dialogue are similar to the MOLISA's proposal, the VGCL proposal had two significant differences. First, the social dialogue provisions are expected to be compulsory for all enterprises employing over 50 workers, with smaller companies being encouraged to comply with it (Article 1). Second, in the non-union enterprises, the representatives of workers will be the upper level union and the workers' representatives nominated by the upper level union officials (Article 3). In other words, VGCL still disagreed with MOLISA's proposal to allow for workers in non-union enterprises to elect their own representatives.

Conclusion

The industrial relations system of Vietnam has reached the point where the existing institutional arrangements have become ineffective and must be reformed. In that context, the management of companies that have been affected by the unlawful industrial actions of discontented workers has been quick to adapt their approach to labour relations, even though they might risk going beyond the law. From an authoritarian approach, the employers in this study have enhanced workers' participation for different purposes and to various extents. The mode used to enhance workers' participation could be improved two-way communication, active grievance-handling, or even consultation and negotiation over wages and working conditions.

Against the traditional view that the one-party regime holds all power in law-making, the fence-breaking initiatives from the grassroots have been tolerated, studied and incorporated in the policy debates at the central level as feasible options for institutional reform. Although the MOLISA's proposal of 'non-union representatives in unorganised enterprises' still faced opposition from the trade unions, the fact that the prime minister stood on the side of the former signalled that this proposal has gained important support at the highest level of the government and has good chance of being approved at the National Assembly. The gradual change which results from the interactions and negotiations between the rule-takers (the firms) and rule-makers (the national government) supports the 'imperfect reproduction' model of Streeck and Thelen (2005).

The findings of this study also support the argument that informal labour activism has become the most important force driving industrial relations reform in Vietnam (Chan 2008; Clarke, Lee and Do 2007; Clarke and Pringle 2009; Do 2011). However, this study showed that not only did informal labour activism encourage the provincial and national governments to reform as Do (2011) and Clarke and Pringle (2009) argued, but it also forced the employers to adapt the activists' approach to labour relations and adopt new

initiatives which might go beyond the existing regulatory framework. The employers' active search for solutions, in turn, has influenced the direction of reform at the national level.

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References

- Campbell JL (2004) *Institutional change and globalisation*. Princeton University Press, Princeton, NJ.
- Chan A (2008) Strikes in Vietnam and China in Taiwanese-owned factories: Diverging industrial relations patterns. Paper presented at the Vietnam Labour Update Conference of the Australia National University, 6–7 November, Canberra, Australia.
- Clarke S (2005) Post-socialist trade unions: China and Russia. *Industrial Relations Journal* 36(1), 2–18.
- Clarke S, CH Lee and QC Do (2007) From rights to interests: The challenge of industrial relations in Vietnam. *Journal of Industrial Relations* 49(4), 545–568.
- Clarke S and T Pringle (2009) Can party-led trade unions represent their members? *Post-Communist Economies* 21(1), 85–101.
- Crouch C (2005) *Capitalist diversity and change. Recombinant governance and institutional entrepreneurs*. Oxford University Press, Oxford.
- Dan Tri (2009) Nhiều hoi nghi nguoi lao dong bi quen lang, 8 July. <http://dantri.com.vn/c133/s133-335920/nhieu-hoi-nghi-nguoi-lao-dong-bi-quen-lang.htm> (accessed 12 Oct 2011).
- Dang P (2009) 'Pha rao' trong kinh te vao dem truoc Doi Moi [Economic 'fence-breakings' on the eve of Doi moi]. Nha xuất bản Tri thuc, Hanoi.
- Dixon C (2004) State, party and political change in Vietnam. In D McCargo (ed) *Rethinking Vietnam*, 15–24. Routledge Curzon, London.
- Do QC (2011) Understanding industrial relations transformation in Vietnam: Towards a multi-dimensional approach. PhD thesis, University of Sydney.
- Erickson CL and S Kuruvilla (1998) Industrial relations system transformation. *ILR Review* 52(1), 3–21.
- Hall PA and D Soskice (eds) (2001) *Varieties of capitalism: Institutional foundations of comparative advantage*. Oxford University Press, Oxford.
- Kerkvliet BJT (2001) An approach to analysing state–society relations in Vietnam. *Sojourn* 16(2), 238–278.
- Kerkvliet BJT (2003) Authorities and the people: An analysis of state–society relations. In HV Luong (ed) *Post-war Vietnam: Dynamics of a transforming society*, 27–54. Rowman & Littlefield Publishers, Inc, Singapore.
- Kume I and K Thelen (2002) Coordination as a political problem in coordinated market economies. *Governance* 19, 11–42.

- Lao Dong (2008a) Ra mắt Viện Nghiên cứu dư luận xã hội [Launching the Institute of Public Opinion], 28 Jan. www.laodong.com.vn/Home/Ra-mat-Vien-Nghien-cuu-du-luan-xa-hoi/20081/75059.laodong (accessed 28 June 2010).
- Lao Dong (2008b) Xây dựng cơ chế thương lượng '4 thật' [Development of 4 reals in collective bargaining], 21 July. www.laodong.com.vn/Home/Xay-dung-co-che-thuong-luong-4-that/20087/98348.laodong (accessed 24 Sept 2009).
- Pierson P (1994) *Dismantling the welfare state? Reagan, Thatcher and the politics of retrenchment*. Cambridge University Press, Cambridge.
- Sai Gon Tiep Thi (2009a) Công đoàn cần mô hình mới? [The trade unions need a new model?], 11 Aug. www.sgt.com.vn/detail23.aspx?newsid=55345&fld=HTMG/2009/0809/55345 (accessed 24 Sept 2009).
- Sai Gon Tiep Thi (2009b) Mô hình mới cho quan hệ lao động [A new model for industrial relations], 27 Sep. www.sgt.com.vn/Detail.aspx?ColumnId=23&NewsId=57388&fld=HTMG/2009/0924/57388 (accessed 5 Oct 2009).
- Streeck W and K Thelen (2005) Introduction: Institutional change in advanced political economies. In W Streeck and K Thelen (eds) *Beyond continuity: Institutional change in advanced political economies*, 1–39. Oxford University Press, Oxford and New York.
- Tran AN (2007) The third sleeve: Emerging labor newspapers and the response of the labor unions and the state to workers' resistance in Vietnam. *Labour Studies Journal* 32(3), 257–279.
- Womack B (1987) The Party and the people: Revolutionary and post-revolutionary politics in China and Vietnam. *World Politics* 39(4), 479–507.