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Changing Labour Laws and Worker Welfare in Vietnam and China

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Summary

China and Vietnam started market reforms about four decades ago, transforming the socialist labour regime into a market-oriented one. Labour legislations and regulations have been prolific in keeping up with the rapidly changing labour markets as both countries became part of global supply chains, especially in mass consumer goods manufacturing. In general, labour law offers greater space for labour association and collective bargaining in Vietnam than in China, although the Communist Party in both states keep a cautious and sceptical eye on independent labour unionisation. Both countries have made numerous labour legislations to regulate workplace conditions and labour dispute resolution, prioritising strategies for industrial mediation and legal channels to de-escalate labour grievance and pacify workers' unrest. Meanwhile, both China and Vietnam's legislatures have also formalised labour social protection toward integrated universal resident-based social protection. However, the problem of law enforcement is pervasive in all three areas above, despite the principle of "rule by law". Both countries' judiciary is dependent on central and local governments for financing and personnel appointment. With local officials' favourable treatment of businesses, the party state in both countries has considerable discretion in shaping the rights and welfare of workers through the legal system.

Introduction

In Vietnam and China, migrant workers' welfare is deeply impacted by changes in labour laws, which have been introduced to keep up with the changing labour relations brought about by economic reforms and globalisation. This policy brief comparatively examines the changing labour law systems in these countries and how the formulation and implementation of labour laws have impacted on migrant workers' struggles for better working conditions and social protection.

China

Among the more than 400 laws enacted by the National People's Congress since 1979 are major labour legislations, including the landmark Labour Law (1995), the revised Trade Union Law (1992 and 2002), the Labour Contract Law (2007), the Employment Promotion Law (2007), the Labour Dispute Mediation and Arbitration Law (2007), and the Social Insurance Law (2010, 2018). Additionally, a large number of State Council edicts and ministry regulations with various shades of legality stipulate everything from minimum wage levels, workplace injury compensation, to medical and pension coverages.

The landmark 1995 National Labour Law was formulated to protect the legitimate rights and interests of workers after market reform, ultimately serving to promote economic development and social progress. It set the parameters for working times in which labourers shall work for no more than 8 hours a day and no more than 44 hours a week. Employers can prolong work hours

due to the requirements of production or business after consultation with its trade union and the workers. However, the work time to be prolonged shall not exceed 3 hours per day, 36 hours a month. The labour law also had regulations for social insurance and welfare provision, requiring the state to establish a social insurance system contributed to by both employers and workers through which the latter could receive support when it comes to old-age support, illness, work-related injuries, unemployment, and maternity leave. The protection of the right of association was left out in this pivoted legislation. Workers' right to association and collective action were absorbed into the party-led All-China Federation of Trade Unions (ACFTU), after the constitutional right to strike was removed in 1982 (Chen 2009, Lin 2020).

The 2008 Labour Contract Law is commonly regarded as the most important development following the 1995 Labour Law. This legislation formalised the role of labour contract in the market economy, providing legal protection for growing forms of flexible employment with heightened labour precarity. The law emphasised the importance of labour contracts as the authorities need written contracts to adjudicate labour disputes, thereby preventing workplace conflicts from expanding to the street. The law is generally viewed as state's attempt to 'rule by law' and to provide individualised solutions to workers' grievances (Friedman & Lee, 2010).

Also taking effect from 2008, The Law on Promotion of Employment provided local governments with strong leverage to

integrate labour regulations into industrial policy, urbanisation, and economic development. Some of the important policy signals included the shift from encouraging outward labour migration to retaining migrant workers by attracting investment in local development. It made clear that it is the local governments' duty to promote employment through developing the regional economy. Local governments should guide surplus agricultural workers to find jobs at or near the places where they live, and rural workers shall enjoy equal rights to employment as urban workers do. Moreover, the law also required an employment aid system for workers, especially those who have difficulty in finding jobs, with measures ranging from exemption and deduction of taxes and fees, loans with discount interest, social insurance subsidies, post subsidies, to providing public welfare.

Concerning more directly with workers' social protection, the Social Insurance Law 2010 (revised in 2018) was a groundbreaking legislation that aimed to extend social insurance to migrant workers who had been excluded for decades. However, the law provided insufficient protection for informal and flexible workers due to its ambiguity, weak legal bindingness, and poor policy design. For instance, while requiring all employees to participate in the basic endowment insurance, with the premiums jointly paid by employers and employees, those who are in flexible employment, i.e., the vast majority of migrant workers, would need to pay the basic endowment insurance premiums themselves. Moreover, the stipulation that no early withdrawal from the personal account is allowed had largely discouraged migrant workers to participate

in the basic endowment scheme, as they moved frequently between jobs and places. Such consistent disregard of migrant workers' social protection rights has increasingly led to worker protests and demands for better social protection from employers, including pension (see Hui & Chan, 2021).

In summary, labour laws in China set high standards for the protection of workers on paper in the name of 'rule by law', thereby channelling industrial disputes and potential worker unrest into individualised legal cases. However, the problem has always been that of enforcement. As local governments prioritise economic growth over workers' rights, they have less incentives to strictly enforce the law, which leads to the 'state-endorsed exploitation by non-enforcement of laws' (Siu, 2020). Hence, in reality, the non-compliance rate is high. Government statistics shows that only 19.9% of migrant workers signed labour contracts lasting one year or above in 2015 (NBS, 2016). The limited duration of most labour contracts is closely linked to low social insurance participation rates, with only 16.7% in pension, 26.2% injury, 17.6% health, 10.5% unemployment, and 7.8% maternity (NBS, 2015). Critical labour study literature argues that the labour law system in China serves to preserve the hegemony of the state and the ruling class, as it buffers against workers' criticism and collective actions (Hui, 2016).

Vietnam

The country's first-ever Labour Code was passed by the National Assembly of the Socialist Republic of Vietnam in 1994 and came into force in 1995. It formed the backbone of Vietnam's labour regime under

market reform, as it provided, for the first time, a systematic codification of labour standards, definition of labour relations, and the mutual rights and obligations of workers and employers bound by labour contracts (CRS Report, 2001). The law applied to all types of industries and cover various areas of labour and social protection, including minimal wage, maximum working hours, workers' right to strike, maternity leave, overtime payment, etc. Under the Labour Code and a 1994 decree, regular working hours are not to exceed 8 hours per day and 48 hours per week, and overtime work cannot be over 300 hours per year, that is, 25 hours per month. In terms of worker association, all unions are affiliated with the party-led Vietnam General Confederation of Labour (VGCL). It has also legally granted workers' right to strike. Despite considerable policy constraints, unions have played important roles in collective bargaining in improving working conditions and worker welfare. The government has tolerated and, in some cases, even supported workers' collective actions, as long as they do not threaten the party's legitimacy. The Labour Code has paved way for governing labour relations by market principles in Vietnam and reaffirmed the state's pursuit to become a 'law-based state' (Nguyen, et al., 2020).

The 1994 Labour Code was increasingly in need of revision to meet major changes to Vietnam's economic structure, as foreign investment and private sectors increasingly dominated industrial output, reaching over 50% by 2001 (CRS Report, 2001). Further, a weak legal system in a market-oriented economy struggled to cope with the growing number of conflicts and strikes. As labour disputes became more frequent and more

complex in Vietnam, the National Assembly revised a number of articles in 2006, especially those in relation to the settlement of labour disputes. Similar to China, the implementation and enforcement of labour laws are major problems in Vietnam. There are issues with the shortage of staff and funds in relation to law enforcement, employers and workers' lack of knowledge of the labour laws and the weak role of the unions. The Congress Research Service Report (2001) shows that Vietnamese authorities had relaxed their labour law enforcement in the textile and apparel sector since the 1997 Asian financial crisis, under the pressure from multinational textile companies and their governments.

The 2012 Labour Code was passed after prolonged debates and was considered 'ground-breaking' in the developments of Vietnam's labour governance. Similar to China's 2008 Labour Law, the emphasis of this new labour law was on the regulations of labour contracts, which must be signed before the employment commences. It stipulates three types of labour contracts: (i) an indefinite-term labour contract; (ii) a fixed-term labour contract with duration of 12 to 36 months; and (iii) a labour contract for a specific or seasonal job of less than 12 months. Unsurprisingly, workers with indefinite-term contracts or medium-term contracts are more likely to have social protection and overtime remuneration (Nguyen et al, 2020). The 2012 Labour Code also modified other key areas of employment relationships, including further clarifying the probation period, recognising the interests of part-time employees, increasing the length of maternity leave to 6 months, and setting out a more detailed

principle for collective bargaining (Nguyen & Lieu, 2012). Due to weak implementation, however, 40.5% of workers were still without any labour contracts years after the introduction of the 2012 Labour Code (Nguyen et al., 2020).

In January 2021, a further revised Labour Code was approved by Vietnam's National Assembly. As the country became more integrated in the world economy, the 2021 code was considered a progress, aligning Vietnam with international labour standards. Before the approval, there had been heated debates on the overtime work limit, with a proposal to increase the overtime cap from 300 hours to 400 hours per worker per year. Eventually, the proposal was declined, and the overtime limit remained at 300 hours per year. This is regarded as a victory for the actors who claim to support the workers¹, yet it failed to address the deeper structural problems that required workers to heavily rely on overtime compensation to maintain their livelihood (Luong, 2020). In terms of

labour contracts, the aforementioned three types of labour contracts were reduced into two types: definite-term contracts (no longer than 3 years and can only be renewed once) and indefinite contracts. Seasonal contracts will no longer be allowed. Most notably, independent trade unions will be allowed to operate as long as they get permission from the state authorities. However, there were no detailed guidance yet on how this new arrangement would work in practice (Dezan Shira & Associates, 2021). There is widely shared doubt that the new labour code would grant workers the rights of labour organization, as it only allowed workers to collectively bargain and organise strikes at the enterprise level. In other words, general freedom of association and the rights to independent unionisation were not yet permitted at broader industrial and national level (Hutt, 2021). The on-the-ground effect of the new labour code on worker association needs to be further monitored and examined.

Comparison between China and Vietnam

In general, Vietnam's labour law system gives greater space for workers' association compared to China's. Unlike Vietnam's Labour Code, neither the Trade Union Law nor the Labour Law of China explicitly requires the establishment of trade unions. Also, the right to strike in China is in a state of legal limbo, as there is no provision in any Chinese labour law granting it, nor is there any constitutional guarantee of that right. Even though there are brief articles on workers' right of association under the Trade Union Law, such collective contracts become 'relatively meaningless' without the right to take collective actions (Josephs, 1995, p. 571; Nguyen T.P., 2019). Nevertheless, wildcat strikes and micro-strikes were common in both China and Vietnam for the

¹ In March 2022, Vietnam's National Assembly decide to temporarily increase overtime working cap from 40 hours to 60 hours per month until the end of the year, due to labour shortage in relation to the Covid-19 pandemic. However, the annual overtime cap

maintains unchanged at 300 hours for each worker. See:

<https://www.vietnam-briefing.com/news/vietnam-increases-overtime-hours-until-year-end.html/>

last two decades as employers had found ways to make formal employment increasingly informalized (Lin, 2019; Buckley, 2021). Meanwhile, Vietnam has made greater efforts than China to comply with the international labour standards. The 2020 EU-Vietnam Free Trade Agreement (EVFTA) also subjected Vietnam to greater international scrutiny regarding labour rights (Hutt, 2021). The following table further indicates Vietnam's greater level of formal compliance with the International Labour Organisation's standards in comparison to China.

Table. ILO Core Conventions ratification by Vietnam and China

Eight Fundamental Conventions	Vietnam	China
C029 - Forced Labour Convention, 1930	05 Mar 2007 In Force	No.
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948	No. But it was passed at the National Assembly session in 2019, set to be ratified by 2023	No.
C098 - Right to Organise and Collective Bargaining Convention, 1949	05 Jul 2019 In Force	No.
C100 - Equal Remuneration Convention, 1951	07 Oct 1997 In Force	02 Nov 1990 In Force
C105 - Abolition of Forced Labour Convention, 1957	14 Jul 2021 In force	No.
C111 - Discrimination (Employment and Occupation) Convention, 1958	07 Oct 1997 In Force	12 Jan 2006 In Force
C138 - Minimum Age Convention, 1973	24 Jun 2003 In Force	28 Apr 1999 In Force
C182 - Worst Forms of Child Labour Convention, 1999	19 Dec 2000 In Force	08 Aug 2002 In Force

Source: developed by authors, data from the ILO website: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F (accessed on May 16 2022).

Conclusion

Despite the differences, both China and Vietnam face the similar challenges when it comes to the implementation of their labour laws and regulations. While both countries' labour laws have detailed regulations on workers' labour rights and social welfare provision, in reality, workers' access to rights and welfare is contingent on many factors, including but not limited to their household registration status, whether or not they have employment contracts, as well as national and local governments' willingness to strictly enforce these laws and regulations.

Meanwhile, labour laws in both countries ultimately serve to maintain party legitimacy and social stability by individualising worker's grievances, thereby creating a compliant labour force to attract foreign investment (Nguyen, 2019). Under the similar one-party system, the rights and labour protection that workers enjoy largely depend on the party state's discretion, and labour relations are shaped by the broader state-society dynamics and historical trajectories specific to either country.

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