Building Labour relations institutions in former communist countries: Reform through the lens of traditional IR theories in Vietnam

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Economic development and the integration of the economies of single party communist regimes into the global economy challenges many aspects of the institutional and political structure of those countries. This paper examines the implications of this process for the representation of labour interests and trade unionism. In particular the paper challenges the view that there is a ‘natural’ path for the development of institutional arrangements in industrial relations in single party communist states. The paper suggests that a more realistic view of labour relations development is to seek an understanding of the political dynamics of the reform process including the weight given to external pressures for change and the degree to which the state is prepared to allow a degree of autonomy in labour relations.

Commentaries on the shape of development in Vietnam cover a spectrum of views, ranging from those suggesting doi moi represents a desertion of socialism (Beresford, 2008) to those which express despair at the tardiness of change (Leung & Riedel, 2004; Sjöholm, 2006). Industrial relations writers and practitioners have tended to adopt an optimistic but cautious view that institutional change will surely follow from the liberalisation of markets, though again there is despair at the pace of change (Bland 2012; AmCham, 2011). By way of contrast there is a growing awareness that reforms should not be judged by absolute standards so much as understood through knowledge of the operation of internal political pressures and arrangements which are shaping institutions and policies in a range of areas (Clarke & Pringle, 2009; Painter 2005; Gainsborough, 2002). This paper reviews these propositions in the light of current developments in labour law and practice in Vietnam which suggest that a uniquely Vietnamese approach to labour relations is a distinct possibility. In the next section the theoretical issues underlying this argument are outlined. The following section then reviews the current situation in Vietnam. The paper concludes with some comments on the need for further field research.

**What is Industrial Relations and does it apply to Vietnam?**

As suggested above much of the discussion of labour relations in Asia has revolved around the degree to which the framework of labour relations is expected to follow the same path is those systems in the developed economies. The institutional framework of labour relations in the Western democracies was first and succinctly summarised by John Dunlop in the late 1950s (Dunlop, 1958).
While Dunlop’s conception of an IRS has been subjected to a wide range of criticism for its narrow focus or institutional bias it remains a simple and effective way of picturing the institutional and legal framework which characterised systems of industrial relations which emerged in advanced economies in the last century. Later work by Kochan et. al. (1994) sought to place greater stress on strategic decisions by the parties and by managers particularly, but the theoretical framework remains one based on the experience of liberal democratic market economies, particularly the USA. As Dunlop described the system it was one in which industrial conflict resolution and rule making is undertaken by independent industry partners, normally Unions and employer groups, within a framework of law. The essential elements of this ‘system’ were independent Unions and employer groups undertaking collective bargaining to establish rules governing workplace relations and conditions. The idea of convergence in industrial relations was a theme in the work of Kerr, Dunlop and Myers in their sweeping exegesis on the development of contemporary capitalism in their book Industrialism and Industrial Man (1973). That book incorporated the notion of the IRS as earlier expounded by Dunlop.

However as Hyman (2004) has observed:

> If ‘institutions matter’, as is commonly argued by those who study industrial relations, then we have to take account of those national differences in institutions that overlie any commonalities deriving from the ‘general laws’ of production.

In relation to Unions more specifically, Herod has observed that (1998:202):

> There is, of course, no single western model of trade unionism. Unions operate under a number of assumptions and in a variety of ways throughout ‘western’ market economies. Such models are clearly more problematic when applied in Asian single party communist states.

At the most obvious level the system of government in Vietnam (and China) is quite different to that of the Anglo Saxon economies. Both are single party states in which ultimate power resides in central party organs. Further as Gainsborough suggests (2002: 706) political and institutional development in Asian states may also reflect different philosophical and cultural heritages which render predictions of convergence quite problematic. He argues that (Gainsborough: 705)

> From the outset this article has emphasized the importance of trying to break free from the mind-set that sees Vietnam as necessarily being embarked on a historical road that ends in Western-style democracy.

The trade union movement in Vietnam is integral to the state power structure. The organisation of trade unions and of labour relations in Vietnam rests on conceptions of the state based on theories
of the communist state. Pravda and Rubel’s (1987) seminal article suggested that the role of unions in communist states can be examined through the idea of ‘dual unionism’ in which Unions take on both a production and a representative role. Equally important is the view that conflict in this Leninist conception of labour relations is the implication that conflict has been eliminated from the workplace because the State is the representative of worker’s interests. The notion of industrial relations and trade unionism in these states is at its core quite different to the similarly named institutions in western economies. Nevertheless as Pravda and Ruble (1986) observe, the model of trade unionism in communist states is not uniformly followed (1986:10 as referenced in Herod). Herod extends this point to suggest that in Eastern Europe national traditions, organisational responses to popular protest, attempts to create independent unions and changing political economy have all produced variations in application o the dualist model (ibid, 201-2).

Such arguments are certainly relevant to the Vietnamese situation. Gainsborough’s point (above) is equally relevant to variations between Asian states. Chan and Nordlund (1998) for example argue that the Chinese and Vietnamese labour regimes are themselves diverging. More particularly Nordlund (2004) has shown the importance of the particular historical experience of trade unions in Vietnam has shaped both the north-south differences as well as the relationship between unions and other state institutions. It is also evident from recent studies that the opening of markets in Vietnam, as in China, has not only brought about a juxtaposition of western and communist views about unions and labour relations, but it has stimulated change in Union structure and its relation with the state.

With this opening of markets the state in these communist countries has ceded part of its control of production to foreign owned enterprises, and together with the privatisation (known as equitization in Vietnam) of former State owned enterprises (SOE) market relationships have entered into labour management relationships. Workers’ welfare and work relationships are no longer under direct surveillance of the state but are increasingly shaped by market relationships and importantly through the influence of global supply chain relationships in the foreign invested enterprises. As a consequence there are pressures for changes in the governance of workplaces and of the labour market.

This discussion leads to a consideration of the political processes which determine the way union roles and labour relations institutions will be shaped.

The politics of Institutional change in Vietnam
As suggested above the unique characteristics of nations, their history, cultures and institutional arrangements shape the way in which trade unions and labour relations are conducted. In Vietnam it is evident from a range of political studies that the politics of change helps to explain both the direction and pace of reform measures outlined by party leaders.

Contemporary discussion of Vietnamese development focuses on the period from 1986 when a reform process was initiated ‘from above’ (Nordlund, 2004). To that time the party-states had been focussed on consolidating the command of the party over the whole country as part of what Nordlund (2004) termed a ‘classical socialist’ phase of development. The change in direction was signalled at the 6th Congress of the trade union federation, then known as the Vietnam Confederation of Trade Unions (VCTU) in 1986 when the party Secretary General, formerly President of the Union federation, mapped out an agenda for reform which became the basis of the doi moi or economic renovation policy pursued by Vietnam after 1986 (Nordlund, 2004). In his speech he called for the trade union movement to exercise greater independence of the union movement to meet the challenge of an emerging private sector. By 1988 the union congress has adopted a new name, the VGCL, and declared a degree of independence within the structure of the party-state. At the Party congress in 1986 the theme was embodied in the idea of doi moi, or ‘renovation’ signalling a change from a command economy to one in which Vietnam was to become a ‘market economy with socialist direction’ (CPV, 1986). The doi moi process has seen a series of incremental changes in the approach of the government to economic development, the integration of the nation into the international economy, and institutional reforms within the country. It has been described as a dismantling of the command economy and an opening of the door to market led development (Painter, 2005).

The reform process was significantly marked by the passing of a series of legislative Codes beginning with a Trade Union Law in 1990, a new Constitution in 1992 and the first Labour Code in 1994. The 1992 Constitution introduced two concepts which appear to transfigure the way the Vietnamese party-state has since operated. First it introduces the notion of Vietnam as a ‘multi-component commodity economy’ (Article 15) to cover the wider array of economic activities which were to accompany the reforms introduced at the 6th party congress. These included private, joint venture and family enterprises. The second feature of this Constitution was the adoption of a greater stress on ‘rule by law’ (Article 26):
“The state manages the national economy by means of laws, plans and policies; it makes a division of responsibilities and devolves authority to various departments and levels of administration ... 

As Nordlund commented, this brought the party itself under legal control and enhanced the role of the National Assembly (202: 122). However it should be observed that this did not remove the central importance of the party in the Vietnamese state, rather it introduced a form of polycentric power in the various institutions of the state including the unions, a situation which Painter (2008) has described as ‘scattering’ of power. In the years following doi moi legislation became the main device for forging a new framework for managing the Vietnamese economy and its workforce. The post doi moi period is one in which the role and functions of the trade union movement were also changed and the introduction of the Labour Code brought greater oversight into the labour market by the state organisations. The process has not been uniform or even consistently uni-directional (Collins, 2005; Painter, 2005). Collins (2005) describes the process as a ‘learning process’, while Painter explains the uneven progress as resulting from the government’s need to accommodate regional and sectional interests and build a consensus around the direction and pace of reform (2005:26). 

The process of reform has also been accompanied by greater engagement between the Vietnamese government and international agencies. This engagement has been partly a response to requirements of international financial assistance and to gain access to key markets for its products including those of the garments and textiles industry. Accession to the WTO in 2006, and the earlier (2001) bilateral Free Trade Agreement with the USA were of considerable importance in opening the door to exports to Europe and the USA. Painter (2003) has commented on the impact of external pressures for reform in Vietnamese institutions in his examination of the restructuring of SOEs. He concluded that (Painter, 2003: 30?):

... the development of any coherent reform strategy must steer its way through a complicated party-state combination of policy concerns and political interests.

In his analysis the influence of external influences such as the World Bank and the IMF and other international agencies, on whom Vietnam depends for significant revenue flows, was less important than the internal political struggle between the party, state administration and other agencies at central and local levels over control of the reform agenda. This point is reinforced by Gainsborough (2002) who refers to the internal competition between the party and other government institutions and between central and local government organs. Tran (2007: 267) documents the difficulties facing the VGCL in developing pro-labour policies in the central decision making arena where its
views on labour issues might contradict policy directions being pursued the Ministry of Labour Invalids and Social Affairs (MOLISA).

Nevertheless, external influences cannot be discounted completely as external interests engage with domestic politics in various ways. First the economic objective of building an internationally connected economy does mean that the Vietnamese government determines a position in relation to the international community. It is to be expected that obligations in respect of labour and working conditions imposed as a condition of membership of the WTO, for example, strengthens the hand of those seeking to pursue such objectives internally. Vietnam acceded to membership of the WTO in 2006 and was thus bound to observe the labour standards which serve as a platform for the global free trade regime it espouses. It has also joined the ILO and ratified a number of its conventions. ILO is an active partner in promoting improvements in labour standards and in the framework of law governing labour relations. It has also been an open critic of Vietnamese labour relations and trade union policies particularly the lack of independence of the trade unions (Youngmo newspaper articles; Better Work Vietnam 2010).

Second the growth of the foreign invested manufacturing sector has brought many Vietnamese workers into work situations whose conditions are influenced by the logic of global supply chains (Ramiraz & Rainbird, 2006). The management practices of foreign owned companies also bring problems for the Vietnamese government in terms of the treatment of Vietnamese workers. Vo and Rowley (2010), for example, show how the weakness of union organisation at enterprise level allows foreign owned companies to pursue paternalistic or even punitive labour relations policies. This attracts criticism internally and externally. Pressures for cost savings, which result in poor labour practices in parts of the export sector, create difficulties for unions and the party-state in balancing the workers’ needs against the national interest in building an export industry. Disagreements over the level of the minimum wage are one example of the kind of conflict which can result between the VGCL and the Ministry responsible (MOLISA).

Third there has been growing engagement of national business associations representing the interests of companies in the export sector. These foreign chambers, notably the American Chamber of Commerce in Vietnam (AmCham), have taken an increasingly vocal approach to consultation over proposed changes to the Labour Code over recent years for example. This might mark a change in political processes wherein foreign chambers representing the interests of foreign and joint owned companies in Vietnam feel free to directly and publicly enter consultations and discussion over domestic legislation.
This review of the politics of reform suggests that there is considerable scope for disagreement and difference between the constituents of the party-state over the pace and direction of doi moi. Moreover the dispersion of responsibilities for labour market policy between the VGCL and a range of Ministries creates the potential for confusion and the appearance of indecision. It can be expected that proposals for changes in the legislative arrangements which govern the way in which labour markets are organised and managed will go through a process of extensive negotiation between Ministries, unions, provincial and city governments. The outcome is not likely to one where a single blueprint will be presented and implemented, but one where consensus will be developed through extensive dialogue between the constituents of the party-state. The result is summarised in a speech by the Vietnamese Vice Minister from the Ministry of Labour Invalids & Social Affairs (MOLISA) at a conference convened to discuss amendments to the Labor Code. He argues (Hoa, 2010):

In revising the Labour code the government and social partners in Vietnam have deliberated and explored new approaches in a creative manner to develop an IR model that fits with the social cultural, economic and political features of Vietnam.

The statement cautions against assuming too easily that there will be a convergence towards the patterns of labour relations in advanced economies.

‘Rule by Law’ in the Labour Market post doi moi

The doi moi process was characterised by a range of legislative instruments from the General Assembly which served to shape the way in which the country dealt with its changing economic position. This section reviews these legal innovations as they relate to Unions and the labour market prior to 2012. Substantial changes to this legislation made in 2012 are examined later in the paper after a summary of the impact of the changes described in this section.

The Union - organisation and role

The Trade union law of 1990 was the first of the series of legal prescriptions. It is also important to observe that law affecting the unions was also included in the later Labour Code (1994) and in the Constitution amended in 2002. The Union’s own rules or Charter were amended at the time of the 1988 congress. The new Law acknowledged the leadership of the CPV and defined the VGCL as being part of the state (TU Law Articles 1.1 and 5.2 respectively). The role of the unions is defined in the following manner (TU Law Article 2.1):
The trade unions represent and defend the workers’ legitimate and legal rights and interests; they are bound to join forces with the state in developing production, solving the question of employment and improving the material and spiritual life of the workers.

This is a relatively clear enunciation of the dualist principle (Pravda & Ruble, 1986). Elsewhere the union is held responsible for educating workers to “... work with discipline, productivity, quality and effectiveness” (TU Law Article 4.2). There are several clauses which underline the role of the union in the management of SOEs and their participation along with other state organs in discussion on “workers’ rights obligations and interests”. The Law thus describes an organisation which is bound to support national development, but which is part of national political dialogues about labour regulation more generally. While they are also bound to represent the views of workers, the scope of representation is circumscribed by these considerations. Nevertheless Chan & Nordland have shown from their research, the VGCL did exhibit greater independence in its dealing with the party and government organs over a number of issues. Moreover they refer to debates within the VGCL over the relationship between party, state and union to reaffirm their view that independence was more generally supported (2002: 188). They concluded that (2002: 196)

It cannot be said that the VGCL is independent, but at least it has begun to develop a two-way “transmission belt”. There are signs that the Vietnamese government is genuinely interested in establishing a more clear-cut demarcation between management and trade unions.

The organisation of the union was elaborated in the union ‘statutes’ commonly referred to as the Union charter. The Charter reiterates the position that the VGCL comes under the leadership of the CPV (Preamble), but it also outlines in some detail a structure and organisation designed to engage with membership across all sectors, and in workplaces. In general the structure is complex, involving both a geographic and industry arm, and with a separate structure for SOEs.

As indicated above the 1988 union congress adopted a new constitution and structure and declared a degree of independence from the State. In practice the VGCL remains an integral part of the state-party. Its General Secretary continues to have Ministerial status on the Central Council of the Communist Party (CCCP), and many of its senior officials have leadership positions in SOEs (Clarke & Pringle, 2007). The changes amount to a degree of differentiation in the way power was to be exercised by state organs, the party and the trade unions. In practical terms the change facilitated efforts to affirm a membership base in newly emerging privatised and non-state organisations. While the VGCL has actively supported and advocated policies designed to protect the rights of
Vietnamese workers (Chan & Wang, 2005; Clarke, Lee & Chi, 2007) that were essentially pursued through advocacy within the political structure of the Vietnamese State and Communist Party (Clarke et al. 2007). This comment underlines the importance of differentiation within the overall authority of the CPV. It allows the interests of workers’ rights, issues often driven by external agencies such as the ILO, and by foreign governments, to be negotiated within the context of a system devoted to maintaining control over the processes of change in Vietnamese workplaces.

While the Union movement has thus taken an active role advocating for worker protection generally the formation of Unions at the plant level is problematic (Wang, 2005; etc). Wang observes that in many Taiwanese-owned plants management have been forced to undertake the role of Union formation to avoid criticism by government agencies over their poor labour practices (2005: x). Similar comments have been made more generally about the establishment of Unions at the enterprise level. Clarke and Pringle observe that trade unions were generally well established in SOEs and consequentially in the joint stock companies which were the outcome of the process of privatisation or equitization of former SOEs. However, in the private sector, where foreign invested companies have been established since doi moi, Unions must be formed if employees request one. In many cases senior managers have taken on the role of Union organiser formally, thereby integrating management policy into the operation of the union at plant level. The actual role and operation of Unions within enterprises appears to vary widely. Clarke and his colleagues identified four different patterns of representation which ranged from elected leaders to Unions led by senior managers. Chan and Wang suggest that HR Management led Union organisations were common in the Taiwanese plants they examined. In a study undertaken by the author a Taiwanese owned company defined the union’s workplace role in company documents as an important part of the overall management communication processes (MacIntosh, 2013) while in a former SOE, now privatised, a more subservient role appeared to exist. Discussions with managers in each of these companies suggested that Unions were integrated into the managerial process with regular consultative meetings with staff and managers. They were not seen as a conduit for alternative views about employee grievances and aspirations of their members. To this extent they might be characterised as conforming to the idea of a ‘company Union’ a role which acknowledges the formal legal responsibility of Vietnamese Unions to ensure production and efficiency (above and Clarke et.al, 2007).

The weakness of workplace representation is widely seen to be one factor facilitating the wave of ‘wildcat’ strikes in recent years (Clark, 2006; Clarke & Pringle, 2009; Teicher & Van Grandenberg, 2012; ILO: ).
Employment regulation and conflict resolution

Employment rights and obligations were formally recognised in the Labour Code of 1994 (Collins, 2009). That Code, amended in 2002, made provision for basic employment conditions including minimum wage rates and collective agreements at the enterprise level. Minimum wages were to be established by decree for geographic and industrial areas [Clarke 2006]. While the Code provided for Collective agreements at industry level these do not appear to have been pursued widely (AmCham, xxxx). Employment conditions of workers were to be contained in an enterprise level agreement which was required to cover a range of conditions including wages, hours, overtime etc. However the role of Unions is less clearly specified at this level with the enterprise agreement defined as (Article 44):

A collective agreement shall be negotiated and signed by the representative of the labour collective and the employer based on the principles of voluntary commitment and fairness, and shall be made public.

The Code (Article 45) describes the involvement of the union in negotiating enterprise agreements ambiguously in the following terms:

The representative of the labour collective shall be the executive committee of the trade union of the enterprise.

While this legislation offers a framework of rights and labour relations processes synonymous with the regulation of labour relations in the developed economies of the West the reality is more ambiguous. The provisions for industry collective agreements in the Labour Code did not appear to have been pursued widely and the independence of enterprise level agreements appear to have been compromised where leadership of the enterprise Union was led by management personnel.

Labour relations in practice

In recent years there have been some fundamental changes in the balance of interests in labour relations following the growth in numbers of both joint stock companies based on ‘equitized’ former SOEs and the establishment of foreign owned and joint ventures in the export sector. The companies in this new independent corporate sector are more sensitive to labour market pressures because of their involvement in export markets. This sector has been the focus for a growth in worker unrest with ‘wild cat’ strikes increasing dramatically. Local observers have increasingly described the system as one of a formal and an informal system of industrial relations, echoing terminology used to describe the shop floor disputation experienced in the UK in the 1970s (see Clarke, 2006).
The wild cat strikes which are the feature of this strike wave are strikes not formally sanctioned or not following prescribed procedures. Clarke (2006) noted that strikes had grown from 100 in the period 1989-1994 to 978 in the period 1995-2008. However, in 2011 it was reported that in 11 months of 2011 857 strikes were recorded and that was double the number for 2010 (Financial Times, January 12th 2012). The issue has sparked comment from many foreign observers and has drawn comment from senior political figures. The ILO’s technical advisor in Vietnam commented (as reported in Financial Times ibid.):

> If the disputes and strikes do not take place in an orderly and regular manner, there’s the potential for these strikes to spread and take on political aspects, which is what the government fears a lot.

The strikes also have the potential to damage Vietnam’s ability to attract foreign capital (Clarke, 2006).

The strikes tend to be concentrated in the FIE sector and are most evident in the South where the greatest level of manufacturing activity has taken place. Clarke (2006) in a detailed review of the strike question Clarke (2006 ) attributed the strikes to economic causes, arguing that they became focussed on rights only because of the fact that they tended to fall outside the legal rules. He noted that abusive behaviour by managers in FIEs often lay in the background but that the underlying causes of strikes could be found in the high inflation rates, high cost of living in urban areas and the inadequacy of (statutory) minimum wages (ibid: 348). Clarke’s case studies also demonstrate that the strikes tend to be solved through the combined intervention of the relevant administrative agency (DOLISA), VGCL representatives from the sectoral level and the Vietnamese employers chamber the VCCI. Clarke also observes that legal sanctions are rarely used against strikers as the situation could be exacerbated. Nevertheless there are reports of harassment and intimidation by authorities against protesters who may have been involved in strike action (Human Rights Watch 2012). It appears on available evidence that these situations might be related more to social protest than industrial unrest.

Two issues emerge from the recent experience. The first is the question of adequacy in the country’s existing institutions for dealing with strikes. The strike wave has drawn attention to the role of the VGCL and its ability to lead and articulate workers’ grievances in a more orderly manner. There are also questions about the adequacy of collective bargaining and other dispute resolution mechanisms more generally. Clarke observes that formal conciliation or arbitration processes provided in the Labor Code are not used. As indicated above, strike resolution tends to be through the...
intermediation of the provincial or city union body together with DOLISA and in some cases the VCCI. These are ad hoc interventions and while they are invariably effective in resolving the immediate issues they are by their nature likely to be inconsistent and reactive.

The second issue relates to strike leadership and the role of workplace union organisations. As noted above, workplace unions in the FIE sector tend to be management controlled. However strikes do not occur without some level of leadership. Clarke speculates that line managers and workers may equally involved in such action as all workers are affected by the economic conditions in these workplaces. This remains an area for more detailed investigation. In particular it would be useful to know to what degree there is a connection between broader social protest movements and strikes. An article published by the Committee to Protect Vietnamese Workers August 2012) for example outlines to situation facing two ‘pro democracy’ activities one of whom was described as an ‘outspoken union activist’. The existence of a prodemocracy movement and its connection with economic strikes begs further investigation.

The strike wave was the focus of a public discussion of labour relations which has taken place since the announcement that would begin over revisions to the Labor Code (CPV, 2008) with the objective of:

... enhancing leadership, providing direction for the development of harmonious, stable and progressive labor relations within enterprises. With a view to perfect the legislative environment so that strikes at enterprises can take place in a legal manner, to maintain the harmonious, stable employer-employee relations for the protection of legitimate rights and interests of both sides while at the same time ensuring a stable investing environment and social order, the Prime Minister hereby requests that Ministries, line agencies and competent local entities to execute the Directive

The long gestation of the new laws reflected the wide range of interests and representation which were presented during consultation.

The 2012 legal amendments

After extensive consultation over almost 6 years the National Assembly issued decrees updating both the Trade Union Law and the Labor Code in June 2012 with their implementation deferred to 2013 to allow for a variety of administrative instruments to be put in place to support the laws.
The new Law on Trade unions (National Assembly, 2012) enunciates the role of the union in representing workers more clearly. Dualist overtones have disappeared, though the Law retains the reference to the VGCL being a (Law on Trade Union: Article 1):

... component part of the political system of the Vietnamese society, placed under the leadership of the Communist Party of Vietnam.

The union is given explicit rights to “represent labour in collective agreements (Art 10.2)” and to organise and lead strikes. These clauses are clearly intended to improve the legitimacy and capacity of the VGCL to take stronger leadership within the enterprise.

It is also of interest that a chapter of the Law refers directly to the “duties of state agencies, organisations and enterprises with respect to Trade unions”. There is no prior parallel for this provision which appear to be aimed at improving interaction between the VGCL and these agencies over industrial matters. This suggests that the leadership position of the VGCL is being reinforced.

Another area of some interest, with some parallels in the earlier legislation is the enunciation of the rights and obligations of members. To some extent these are aimed at reinforcing the broader social role of workers to (Article 19):

   Studying and improving cultural and political level, professional and specialised skills;
   training quality of the working class; living and working under the constitution and laws”

On the other hand union members are accorded a right to be represented by the union, being informed, voting in union election and making suggestion to the union on policies and laws (Article 18).

Finally the Law refers to dispute settling and violations of law. The section spells out the requirement for disputes of all kinds to be settled according to the relevant law (Article 30). The Law then refers to government issuing decrees sanctioning violations of the Law. These clauses appear to be an attempt to impart a greater degree of workforce and union discipline in the management of disputes.

The Law on the trade Union is in this summary a document which attempts to establish the union and its members as authoritative in their areas and part of the larger political system, and to prescribing their role as being within defined legal parameters.
The Labor Code (National Assembly, 2012) is a significantly expanded legal instrument over its predecessor. It is to become effective in 2013 once unspecified enabling decrees are brought down. The Code very clearly sets out to define the basis of a system of collective bargaining, with closer attention to the role of unions in representing workers in collective bargaining. Refer minimum wage decision to bargaining processes, and provide finer detail of labour contracts.

Three changes of are of particular interest. The first is the extensive provision for ‘dialogue at the workplace’ (Chapter V). This chapter is set out under the intention to ‘enhance the understanding between the employer and employee’ and to provide a requirement for collective negotiation with the objective of (Article 66):

1. Building harmonious, stable and progressive labour relations
2. Establishing new working conditions as a basis for signing collective agreements;
3. Settling the problems and difficulties in implementing the rights and obligations of each party …

Representation is carefully articulated (Article 69) with enterprise level issues represented by the labour collective, and issues effecting the industry representation to be undertaken by the union. As the Library of Congress Global Legal Monitor (2012) observes, the Code creates a system of industry level collective bargaining with greater authority on such issues as minimum wages at industry level.

It is interesting in this context to observe that in the consultation preceding the legislation, that AmCham had suggested that the introduction of a provision for compulsory Industry level Collective Labour Agreements would (AMCHAM, 2010):

...discourage private and foreign investment, especially in the fields dominated by state-owned enterprises.

They suggested that such agreements should be voluntary rather than mandatory. Their proposal was aimed at ensuring that control over the workplace would reside at the enterprise level. FIE companies in that reading would be able to make distinctive enterprise approaches to labour relations. However such a provision might not have responded to the abuses of law and human resource management practice which have been identified over the years (Clarke, 2007; Wang, 2005, Chan & Wang, 2005).

The second area of significance is the change in responsibility for the establishment of wage minima. These are to be established by government (and the relevant Ministry would be MOLISA) for
geographic areas. However industry collective agreements are enable to establish minima at least equal to those standards, allowing the potential for an expansion of wage minima in industries where employers are prepared to agree to higher standards, the export sector being the obvious example.

Third employee rights and obligations are extensively defined. This codification of working conditions and processes for establishing them and reviewing goes some way to meeting the suggestion, given voice in Clarke’s research (2006), that communication and lack of understanding of rights and obligations lay behind many disputes.

Finally there is an extensive section on education and training which for the first time prescribes that employers’ should develop training plans and report periodically on steps they have taken to improve the skills of their workers. This provision reflects the deep concern with workforce skills and the way this might influence the ability of the country to attract new foreign investment (Manpower Group, 2011).

**Summary and conclusion**

It appears from this review that the dualist model has been seriously modified, though the integration of state-party interests and the unions is not abandoned completely. Firstly it may be observed that the trade union role in promoting productive working practices has not appeared in the new legislation. Unions do however retain their position as an integral part of the state, and there remains some ambiguity over the relationship between Ministries, other state organisations and the union in terms of representation. While there is some ambiguity about workplace representation, there is no suggestion that independent unions are being encouraged or sought. Finally the possibility of conflict in the workplace is recognised in the many references to consultation, discussion and negotiation, ideas which are inconsistent with the stricter use of the Leninist approach to labour relations in a communist state.

In general the legislation which has emerged on trade Unions and the Labor code is aimed principally at labour relations in the export sector, and to some extent the SOEs operating in that sector. As such the Laws on labour relations can be seen as laws related to the market sector of the economy and regulating that sector of activities in the party-state. This is consistent with the idea of a multi-component economy, and it does not signal a wholesale opening of political processes. The underlying political control of the party-state and has not changed and labour relations has not been left entirely to market forces. On the contrary the government has pursued greater regulation of
labour market rights and obligations. The role of the unions as a part of the state apparatus has not changed though dualist objectives have been reduced in the market sector.

References


