



Evaluation Unit (EVAL)

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- **Technical Backstopping Office:** DWT Bangkok
- **Evaluator(s):** Mr. Benedicto Bitonio and Ms. Nguyen Thi Bich Tam
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INDEPENDENT FINAL EVALUATION REPORT

SUPPORT OF INDUSTRIAL RELATIONS AND LABOUR CODE REFORM IN VIETNAM

EVALUATION TEAM

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EXECUTIVE SUMMARY

Background of the Project

A. Fast Facts

- **Country:** Socialist Republic of Viet Nam
- **Project Name:** Support to Industrial Relations and Labour Code Reform in Vietnam
- **Date of Evaluation:** June to September, 2011
- **Mode of Evaluation:** Independent
- **Technical Area:** Industrial Relations, Labour Law
- **Evaluation Team**

Evaluation Management Team

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- **Project Start:** August 2009
- **Project End:** December 2011
- **Project Code:** VIE/09/03/OUF
- **Donor:** One UN Fund

B. Project Context: Purpose, Logic and Structure

The Project supports the reform of Vietnam's industrial relations (IR) system to enable it to respond to the challenges of transition from a centrally planned economy to a socialist market economy. It seeks to set up a market-supporting legal framework to address the dramatic increase in wildcat strikes, the lack of capacity of trade unions to represent rank and file workers, the absence of well-established collective bargaining practices and the lack of effective IR services. The long-term objective of the Project is a "sound industrial relations established through improved representational capacity of the social partners based on democratic principles, improved social dialogue process, and industrial relations support services which are used and effective, and an updated legal framework for minimum labour standards providing workers income security and employers operational flexibility."

C. Present Situation

The Project was originally planned to be completed in two years starting from August 2009. However, Project completion has been reset to December 2011. A number of activities and outputs included in the Working Plan and Activity Timetable has been completed. Others are in the process of completion. By October 2011, the social partners and project owners expect to submit to the National Assembly two of the Project's major outputs, the completed proposed amendments to the Trade Union Law (TUL) and the provisions of the Labour Code on union representation and collective bargaining.

I. Background of the Evaluation

A. Purpose and Scope

The primary purpose of the evaluation is to assess the validity and relevance of the Project's logical framework, and whether the Project has been implemented in accordance with this framework. It covers activities implemented and their corresponding outputs and outcomes from August 2009 to June 2011.

The Evaluation Report has six main parts. Part I covers the context, framework and methodology of the evaluation. Part II includes key findings in relation to specific questions raised in the Project evaluation terms of reference (TORs). Part III includes key findings on the status of implementation of activities and attainment of targeted outputs. Part IV identifies constraints and challenges. Part V summarizes key lessons learned, makes conclusions and proposes recommendations moving forward.

B. Clients of the Evaluation

The primary clients of the evaluation are the Donor ("One UN Fund"), the ILO Regional Office for Asia Pacific in Bangkok, the ILO Country Office for Vietnam, and the Decent Work and

Social Dialogue Teams for South East Asia and DIALOGUE. Secondary clients are other units within the ILO that may indirectly benefit from the knowledge generated by the evaluation. Also considered as clients are the Project partners (also referred to as implementing parties or project owners), namely the Ministry of Labour, Invalids and Social Affairs (MoLISA), the Social Affairs Committee (SAC) and the Legal Committee of the National Assembly (NA), the Vietnam Chamber of Commerce and Industry (VCCI), the Vietnamese General Confederation of Labour (VGCL) and the Vietnam Cooperatives Alliance (VCA).

II. Key Findings, Conclusions and Recommendations

A. Findings and Conclusions

The following conclusions on the Project can be drawn:

- The Project logic is well-conceptualized, is sensitive to the needs, problems and requirements of the the social partners, and is relevant and necessary in modernizing Vietnam's IR system. The Project also supports the country's broader development goals, is consistent with the United Nations Development Assistance Framework (UNDAF), and reinforces the previous and ongoing interventions of the ILO in Vietnam. It also seeks to operationalize the ILO core principles of democratic participation, inclusiveness of representation, social dialogue, tripartism and consensus-building.
- The Project has a broad, comprehensive and ambitious scope that is fully supported and owned by the Project partners and other IR stakeholders.
- The Project is systematically designed and organized. It has a Working Plan and Activity Timetable with clear objectives and outputs to be attained within specified timelines and by specified parties. It is susceptible of measurement, monitoring and evaluation.
- Management arrangements for and Donor support to the Project, in terms of financial resources and provision of expert technical advice and other forms of assistance, are deemed adequate.
- Management capacity of the Project partners, the national level counterparts and focal persons is also deemed adequate.
- The Project Office ensured open and effective communication and immediate feedback between and among the ILO and the Project partners. Technical inputs were made available when needed. Funds were allocated and disbursed in a timely and accountable manner.
- Based on the Working Plan and Activity Timetable, the Project partners have generally completed the primary and second level outputs within timelines and approved

budgets, and in accordance with the parameters of the individual TORs for specific activities. But since the Labour Code amendments have not yet been completed, the realization of the desired outcome to have, by the end of the Project, a revised TUL and Labour Code approved by the NA has been set back.

- Based on completed outputs, the performance of the Project is mixed. Primary or first level outputs, and some second level outputs, were completed on time. Major final outputs, particularly the final proposed revisions to the Labour Code, are behind schedule. It is highly unlikely that the Project will fully attain all its major final outputs, and consequently its three intermediate objectives, within the duration of the Project.
- One of the objectives of the Project – to strengthen representational capacity at the grassroots and make effective collective bargaining widespread – will not be achieved within the duration of the Project.
- Factors intrinsic and extrinsic to the Project contributed to the setting back of timelines.
- The conduct of the researches, surveys and studies – which were packaged as special projects – were necessary to ensure that the Project’s major final outputs are technically supported. Future similar activities should become regular activities of MoLISA and the social partners, for which they will need to be properly capacitated and equipped.
- Specific outcome and impact indicators are still lacking and need to be developed. In formulating these indicators, emphasis will have to be made on measuring the inclusiveness of the reforms on the labour force as a whole, and in particular on the impact of interventions on women.
- The process observed in formulating the Project Document and in crafting the implementation mechanics of the Project through the Working Plan and Activity Timetable can be documented as a good practice. Other activities, once completed, also have the potentials of being considered as such.
- An element of uncertainty exists with respect to the outcome of the revisions of the TUL and the Labour Code. On the other hand, there is a need for a definite plan to sustain the reform process beyond the duration of the Project.

B. Recommendations

Project objectives remain valid and attainable. Toward this end, the following are recommended for the evaluation clients and Project partners to consider:

- Continue to support and enhance the labour law revision process, particularly in terms of technical assistance on identified contentious issues. Ensure harmonization of all completed proposals for labour law amendments.
- Continue support to and extend the base of capacity building activities to complement the reforms.
- Review and where necessary, recalibrate the Working Plan and Activity Timetable. To improve Project efficiency and focus, determine which activities need to be continued, discontinued or started.
- Institutionalize a tripartite performance monitoring for the Project. Shift measurement of progress from output-based to outcome-based system. Through a tripartite process, finetune output indicators and devise outcome and impact indicators.
- Through a tripartite process, devise a post-Project long-term Master Plan to complete and sustain the reforms.

PART I

CONTEXT, FRAMEWORK AND METHODOLOGY

A. Project Context: Purpose, Logic and Structure

The Project supports the reform of Vietnam's IR system to enable it to respond to the challenges of transition from a centrally planned economy to a socialist market economy. It is designed to help set up a market-supporting legal framework to address the dramatic increase in wildcat strikes, the lack of capacity of trade unions to represent rank and file workers, the absence of well-established collective bargaining practices, and the lack of effective IR services.

The long-term objective of the Project is a "sound industrial relations established through improved representational capacity of the social partners based on democratic principles, improved social dialogue process, and industrial relations support services which are used and effective, and an updated legal framework for minimum labour standards providing workers income security and employers operational flexibility."

The Project's intermediate objectives are:

- An improved legal framework through the revision of the Labour Code and the Trade Union Law (TUL) in light of international labour standards;
- Collective bargaining becoming a widely known practice among enterprises in Vietnam; and
- Operational IR services, including a labour dispute settlement system.

B. Purpose of the Evaluation

The primary purpose of the evaluation is to assess the relevance and validity of the Project's logical framework, and whether the Project has been implemented in accordance with this framework. Specifically, it seeks to:

- Determine if the Project has achieved its stated objectives and explain why or why not;
- Identify needs that may not have been addressed or fully met and the reasons why;
- Assess the Projects's implementation status, management, timeliness, and performance monitoring;
- Assess the Project's achievements and priorities in contributing to DWCP Vietnam's immediate outcomes;

- Assess the Project's achievements and synergies in supporting other ILO projects in Vietnam;
- Determine the impact of the Project in terms of sustained improvements achieved and long term benefits to target groups;
- Provide recommendations on how to build on the achievements of the Project and ensure that this is sustained by the relevant stakeholders; identify results that could be emulated in other projects;
- Document lessons learned, success stories, and good practice in order to maximize the experiences gained.

C. Methodology, Scope and Framework

C.1. Methodology

As required by the purpose and objectives of the evaluation TOR, the evaluation methodology consisted of the following:

- Conduct of a desk review of documents like the Project Document, the Working Plan and Activity Timetable, the Mid-Term Progress Report, and the reports and papers prepared by the project owners.
- Carrying out of a field mission consisting of interviews with key informants from the Project partners. The informants included high-level officers and representatives from MoLISA, the Center for Industrial Relations Development (CIRD), and the NA thru the SAC for the Government: the VGCL, the Danang Provincial Federation of Labour, the Binh Duong Provincial Federation of Labour, and the Binh Duong Industrial Zones Union for workers; and the VCCI thru its Bureau of Employers' Activities, VCCI Ho Chi Minh City, and VCA for employers.
- Initial presentation of the evaluation findings before the Project partners, followed by a debriefing session with the ILO Hanoi Project Office.
- Preparation of a preliminary Report which was circulated to the Project partners. Comments and feedback on the preliminary Report were taken as inputs in finalizing this Report.

In the preparation of the Report, the evaluation team found useful the statistical data on union membership and collective bargaining agreements included in the Project's output

documents and relevant labour market data sourced from *Labour and Social Trends Viet Nam 2009/2010*.

C.2. Scope

The evaluation covers the period from August 2009 to June 2011. It looks at attainment of Project and its potentials to contribute to the outcomes of Vietnam's Decent Work Country Programme (DWCP) and create synergies with other ILO projects. The scope of evaluation includes:

- A review of Project performance and status with regard to relevance, strategic design, development effectiveness, and resource efficiency;
- Identification of experiences to learn from and articulation of actual lessons learned;
- Recommendations based on assessment of key success factors, best practices and constraints, consistent with ILO's corporate strategy, and initiatives that promote fundamental principles and rights at work; and
- Assessment of current outputs and outcomes, as appropriate, the sustainability of activities undertaken, and identification of indicators on long-term impact.

C.3. Analytical Framework

The analytical framework used in this evaluation is based mainly on the ILO's Technical Cooperation Manual on Project Evaluation, applicable UN instruments, and the evaluation TOR prepared by the evaluation manager. Consistent with this framework, the evaluation will include the following areas of inquiry:

- Development effectiveness to determine achievement of objectives and intended results;
- Resource efficiency to determine results-oriented use of resources;
- Impact, positive or negative, and intended or unintended long-term effects;
- Relevance to determine satisfaction of beneficiary requirements, country needs, global priorities and partners' and donors' policies;
- Sustainability to determine immediate and probability of continued long-term benefits; and
- Partnerships to assess development of stakeholders' capacity to absorb and address IR challenges.

D. Limitations and Qualifications of the Evaluation

This evaluation recognizes three limitations or qualifications.

First, many of the output documents reviewed were translated from the Vietnamese texts. The opportunity for the stakeholders to validate or affirm the factual statements, findings and recommendations during the initial presentation session and during the circulation of the preliminary Report was important in the finalization of the Report.

Second, the Report's reliance on statistics is limited. While some of the outputs of Project partners offered statistical data that provided context to the evaluation, there is nevertheless no robust system for generating statistical and qualitative data on industrial relations, unionism and collective bargaining is still to be developed in Vietnam.

Third, the ILO's Technical Cooperation Manual on Project Evaluation covers *ex-ante*, mid-term and *post-hoc* evaluation. While the TOR for this evaluation speaks of a final evaluation, it has to be clarified that this does not imply a *post-hoc* evaluation as the Project is still in its concluding stages. While many activities have been started or actually completed, most are preparatory to or supportive of other activities that will lead to the realization of desired outputs, and later on, intended outcomes and impacts. Of the activities completed, most of the outputs are primary and second level outputs, not major final outputs. For instance, consultations, workshops, researches and other studies are activities and outputs intended to make for a more informed formulation of labour law revisions; the major final output is the final draft of labour law amendments to be submitted to the NA for approval. It can also be noted that the activities are organized into clusters, and are expected to produce outcomes and impacts if all or at least most of the major activities and outputs under each cluster have been completed. Accordingly, the focus of the evaluation is on whether the Project is on track to meet its short and long term objectives as stated in the Working Plan and Activity Timetable. Because the Project has not been completed, only a predictive evaluation of outcomes, impacts, sustained improvements, and long term benefits to target groups would be possible.

PART II
KEY FINDINGS
IN RELATION TO PROJECT EVALUATION TERMS OF REFERENCE

A. Relevance and Strategic Fit

A.1. National Priorities in Relation to UNDAF

The Project was developed based on the National Cooperation Framework on Promoting Decent Work in Vietnam for 2006-2010 which was signed by representatives of the Socialist Republic of Vietnam and the International Labour Office (ILO). The Project was designed to contribute to Outcome I of Vietnam's Decent Work Country Programme (DWCP), that is, "Improved policy environment, legislation, programmes and national institutional infrastructure for effective promotion of labour rights and harmonious industrial relations", which in turn is incorporated in Outcome4 of the UN One Plan2 for Vietnam.

The Project aims to contribute to Vietnam's respect, promotion and realization of fundamental principles and rights at work set up in the ILO Declaration on Fundamental Principles and Rights at Work, specifically the democratic principles dealing with freedom of association and the effective recognition of the right to collective bargaining. The broader development context of the Project is to support Vietnam's economic transition from a centrally planned economy to a socialist market economy. In relation to the UN Development Assistance Framework (UNDAF), a key assumption for Vietnam is for assistance to be channeled to the development of democratic and market-supporting institutions. The Project was conceptualized in recognition of a need to restructure and modernize Vietnam's IR system to adapt to globalization and economic liberalization. It takes into account the peculiar setting of Vietnam's IR *vis-à-vis* inroads made by the State in transitioning from a planned to a market economy. The Project is seen as an important part of a larger effort to set up functioning institutions that will support Vietnam's entry and more active participation into the world trading regime. This conceptualization helps ensure continuing relevance and fit of Project outputs, outcomes and impacts not only within the IR sphere, but also with the UNDAF and with the economy as a whole.

A.2. Relevance to the ILO's Initiatives

With the DWCP as overarching framework, the Project is consistent with and builds upon the ILO's previous and ongoing initiatives in Vietnam. The DWCP focuses on the strategic areas of labour market governance, employment and sustainable enterprise development, and social protection and social security. The IR discipline is part of labour market governance, under

which several previous initiatives have been pursued by the Government and social partners. A new Industrial Relations Commission was set up in 2007. The revision of labour and trade union laws started in 2008. ILO provided expert advice on both initiatives, and this has been folded into the Project, providing with the Project the technical foundations to move forward and eliminating duplication of activities and costs. Also complementing the Project and creating more synergy are related projects like *Better Work in Vietnam* which focuses on promotion of labour standards, workplace cooperation, productivity and competitiveness along supply chains in the garment industry, one of Vietnam's primary sources of exports. Following an initial publication in 2008, the MoLISA, in cooperation with the ILO and European Union, also published *Vietnam Employment Trends 2010*. The publication represents an important step in generating labour market information critical in enabling the country to develop a system of quantitatively measuring progress and subsequently cultivating a culture of fact-based decision-making at both policy and operational levels.

While the Project is clearly imbued with a dimension that is wholly supportive and consistent with Vietnam's macroeconomic priorities, IR-specific issues needing institutional responses remain central to the Project. These are clearly defined in the purpose, objectives, scope, areas of intervention, key outputs, outcomes and impact specified in the Project Document and various implementing TORs. The fact that revisions of the TUL and the Labour Code are major final outputs and remain at the forefront of Project milestones is strategic and directly caters to the advancement of the ILO's key corporate goal of ensuring balance between individual and collective rights of workers and the imperatives of economic growth, thereby helping set an enabling environment to achieve more equitable and effective social outcomes.

A.3. Project Partners' Participation and Ownership

A.3.1. Implementing Parties and Project Owners

The Project has taken efforts to involve as wide a base of stakeholder participation as possible. The Project partners, as implementing parties and project owners, represent the three major parties in IR. For the State, the partners are the National Assembly (NA) represented by SAC and the Government, mainly represented by MoLISA and its various offices with specialized areas of competence like the legal and wage departments. Also part of the Government is CIRD, an office created by decree of the Prime Minister presently attached to MoLISA. Other Government agencies are also involved (e.g., the courts and the ministries of justice and economy).

For workers, the main representative is VGCL, which is involved at the national level directly in labour law revision as a member of the Drafting Committee. Also involved are VGCL's

provincial and industry counterparts which are participating as owners of pilot projects, specifically the Danang Provincial Federation of Labour (PFOL), Binh Duong PFOL, Binh Duong Industrial Zones Union, District 12 Trade Union – Ho Chi Minh City, Hai Phong EZ Union – Hai Phong PFOL, and Dong Nai FOL.

For employers, the main representative is VCCI through its Bureau of Employers' Activities in Hanoi and VCCI-HoChi Minh City, and VCA. Within employers, VCCI at the national level is a project owner and also coordinates matters with its provincial networks. VCA is also directly involved representing cooperatives as small enterprises and employers. VCCI and VCA directly participate in labour law revision, with both of them also represented in the Drafting Committee.

A.3.2. Project Partners' Roles

As the national authority in charge of labour, MoLISA is the primary focal and coordinating agency for the entire Project. It has a central role in coordinating all the activities and outputs in the Working Plan and Activity Timetable, providing substantive technical inputs to the revision of the Labour Code and TUL, and leading in the drafting of the proposed labour law revisions as chair of the Drafting Committee. For its part, CIRD's main contribution is to provide data and analysis, through researches and studies, for a more informed revision process.

On the other hand, the NA's role is to consider and approve the labour law revisions to be proposed by the Government. According to an SAC representative, the first part of the Labour Code revisions dealing with collective bargaining will be formally placed in the NA's agenda when it meets in July 2011. The NA expects the draft Labour Code and TUL to be formally submitted in October 2011, in time to be considered for approval by May 2012. The SAC representative emphasized that the Government's submission will still be subjected to parliamentary scrutiny and deliberation. While expressing the NA's appreciation to the inputs and assistance from international organizations, he also emphasized that the NA will follow its own internal processes in considering the revisions, consistent with Vietnamese policies and laws. Therefore, it is not far-fetched that the Government draft will be modified in the course of legislative deliberations. Nevertheless, through the SAC, the NA has been participating in consultations and workshops on the proposed revisions. This has allowed for early resolution of differences on specific provisions which can subsequently facilitate approval.

According to VGCL representatives, VGCL's role focuses on three areas – participation in the revision of the TUL and the Labour Code including as part of the Drafting Committee, participation in longer-term IR reforms, and overseeing pilot projects in provincial federations and district, industrial or zone level unions.

So far, VGCL's specific contributions have been to provide inputs and identify needs in the development of the Project proposal, to implement its assigned tasks under the approved Working Plan and Activity Timetable (e.g., conduct of surveys, participation in workshops, preparation of reports, helping organize trainings), and to assign a focal person/unit as implementer (mainly the organizing and policy department and the legal department).

With respect to labour law revisions, VGCL supports the process with emphasis that the Labour Code revisions must be harmonised with the TUL revisions. VGCL is optimistic that Government will be ready to submit a draft to the NA by October 2011, but emphasized that the draft should have provisions to strengthen enterprise level unionism and collective bargaining. Although a VGCL report describes the incidence of anti-union discrimination as "not serious", VGCL nevertheless sees a need to provide protection against anti-union discrimination. Other chapters of the Labour Code can be subsequently revised such as those on wages, contract/part-time labour, occupational safety and health, and employment services. On this, VGCL plans to conduct its own independent study on wages to complement MoLISA's own study.

For VCCI, its role as implementing party is to represent employers, consisting of 10,000 dues-paying enterprises with more than 10 workers each. Like VGCL, VCCI is also represented in the Labour Code Drafting Committee. According to its representative, VCCI sees the Project as part of a series of IR initiatives that started six years earlier when Vietnam adopted its DWCP. All previous projects were helpful. But this is so far the best-designed ILO project because it focuses on the interests of Vietnam's social partners, supports the objective of IR reforms to make social partners work together, and has more activities for less financial resources. Though the VCCI representative claims that MoLISA and NA still tend not to listen enough to the positions of enterprises, he also conceded that through the Project, MoLISA has been encouraged to work more closely with stakeholders and is now more focused on IR issues than in previous projects.

For VCCI, the focus of revisions and reforms should be to rationalise workers representation at the enterprise level, provide mechanisms to settle wildcat strikes thru social dialogue, tripartism and arbitration, and rationalise and strengthen the arbitration mechanism. The arbitration structure should be a government structure at the provincial level with power to stop or pass upon the legality of strikes. VCCI expressed concern that the labour dispute mechanism has not yet been included in the proposed Labour Code revisions. Also to be included should be minimum wages, dispatch workers, and exemptions of SMEs from certain provisions of the Labour Code. VCCI-Ho Chi Minh City also stressed that employers should bear no responsibility for encouraging formation of unions in enterprises.

VCCI sees benefits from the Project in terms of providing opportunities for capacity building (learning by doing), enabling employers to develop clearer positions on specific issues and giving them more voice in consultative processes. Nevertheless, VCCI expressed concerns on the attainment of the Project's objectives within set timetables. It noted that while deferment of submission of the draft Labour Code was necessary and would allow all stakeholders more time to study it, the business sector requires quicker action. Also, the revisions may not be approved in the form that the social partners have agreed upon because there are still significant differences among stakeholders.

With respect to VCA, its role as implementing party is to represent employers with 10 workers or less. Though VCA's activities are focused on cooperatives, it is prepared to assume an expanded role in IR because of its wide membership base extending to the provincial level. VCA's specific activities under the Project includes participation in the Drafting Committee of the Labour Code revisions; organization of IR workshops for members; conduct of consultations with cooperatives on Labour Code revisions, including survey on labour and employment issues in non-agricultural cooperatives; and participation in trainers training course on negotiation and bargaining skills.

A.3.3. Project Partners' Ownership of the Project; Technical Inputs

Since conceptualization and inception, the Project followed a process of stakeholder participation. Through dialogues and consultations, the Project partners identified their needs, agreed on the objectives as incorporated in the overall Project TORs as well as in the TORs for the specific activities undertaken by the project owners, and drew up activities, targets and outputs. All these were eventually consolidated into the Working Plan and Activity Timetable which clarifies and assigns roles, responsibilities and accountabilities. Given the process that led to its formulation, it can be said that the Working Plan and Activity Timetable is a document over which the Project partners can claim full ownership.

The Project partners are unanimous in their assessment that the Project approach significantly is an improvement over similar projects in which they have previously participated. They expressed appreciation on how the ILO Project Office sought their active involvement at the earliest stages of Project conceptualization. Technical support and inputs from the Project Office were also seen as adequate and timely. In particular, VCCI noted that the Project presents a new way of implementation and process. The Project partners became more independent and empowered in expressing and identifying their needs and in working together.

The Project partners were also appreciative that international institutions, consultants and experts involved in the Project remained mindful of the unique state of the country's IR system.

Their inputs provided broader perspectives, knowledge, information and insights on models that have worked in other countries. These also guided Vietnam's IR players to directly work out and evolve their own solutions to the country's particular issues and challenges. In particular, they expressed appreciation to the *Memorandum of Technical Comments on the Second Draft Labour Code of Vietnam*, prepared by the ILO in July 2010 and presented in a workshop conducted under the auspices of the Project in November 17-18, 2010, which provided expert technical inputs and advice on the drafting of proposed amendments to the TUL and the Labour Code.

The evaluation mission confirmed the Project partners' strong sense of ownership over the Project. The designation of MoLISA as the government's focal agency in coordinating the Project activities jointly with the ILO Project Office and in drafting revisions of the Labour Code, the direct participation of VGCL, VCCI and VCA in tripartite and social dialogue processes and their participation as members of the Labour Code Drafting Committee, and the direct involvement of provincial and industrial zone level organizations in pilot projects on strengthening organizational and representational capacity, are positive indications of commitment to take responsibility in bringing about results at both national and enterprise or grassroots levels. Equally important is that nascent forms of social dialogue and tripartite coordination, which underpinned the Project starting at the conceptualization stage, continue to be observed in the implementation and monitoring of Project activities. If nurtured and sustained, this can play a critical role in solidifying stakeholder ownership while strengthening legitimacy of the Project.

A.4. Consensus for Reforms and Political Support

The discussions with key informants during the evaluation mission confirm a broad stakeholder consensus of a need to reform Vietnam's labour laws and IR system. While emphasizing that the reforms must take into account Vietnam's unique history, experience and context, the key informants expressed openness to international labour standards and best IR practices that have not been assimilated into Vietnam's system, particularly freedom of association and collective bargaining. Constraints and challenges in introducing reforms were also acknowledged. But there appears unanimity toward an incremental approach. This is already evident in the prioritization of the areas for labour law revisions.

The Project had appropriate political support from inception. It was formally elevated to and approved by the Prime Minister on January 20, 2010. The Project Document was approved by the Minister, MoLISA, on March 24, 2010. These approvals, as well as the inclusion of the NA and VGCL as implementing agencies, give the Project the advantage of political support

from the State's highest levels of policy and decision-making. And in spite of changes in the NA's composition as a result of the recent elections, the NA through the SAC has indicated its continuing commitment to act on a proposed Labour Code from the Government.

The overarching message from the Project partners is that they recognize the urgency of IR reforms in Vietnam and the indispensable role of international technical cooperation in achieving this objective. But in the end, the reforms should always be of, by and for Vietnam. Toward this, a representative of one of the project owners underscored the importance of getting all IR actors in Vietnam to develop a common and broad understanding not only of the process but also the substance of reforms. This common understanding, to be developed and nurtured through education, training, dialogue and consultations, should ideally encompass the technical, conceptual, policy, political, administrative, practical and capacity-building dimensions of the reforms.

B. Validity of Design

B.1. Project Logic

The Project logic assumes that promoting fundamental principles and rights at work, particularly freedom of association and the right to collective bargaining, is a cornerstone of sound IR in the long term. The objective of the Project is to promote collective bargaining at the enterprise level as a way of resolving the increasing incidence of workplace grievances, especially wildcat strikes. This is a direct response to what is described as the low overall proportion of enterprises with collective bargaining agreements (CBAs). According to VGCL data, only 25 percent of domestic non-state enterprises, 40 percent of foreign-invested enterprises and 95 percent of SOEs were covered by CBAs. In addition, provisions of these CBAs resulted from an inadequate negotiation process. Trade unions at the grassroots level have limited capacity to bargain, leaving them in a weaker position (See *Labour and Social Trends in Viet Nam 2009/2010*).

Historical statistics validate the Project's logic. Figures gathered by MoLISA from 2000 to 2008 show the seriousness of the problem of wildcat strikes in foreign-invested and private domestic enterprises, as shown in the table below. On the incidence of wildcat strikes after 2008, no statistics were provided but anecdotal accounts from the social partners indicate that the problem remains to be a major concern.

Table 1. Number of strikes by enterprise ownership, 2000-2008.¹

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total	70	90	99	142	124	152	390	551	720
State-owned	15	9	5	3	2	8	4	1	0
Foreign-invested	38	65	55	104	92	105	287	438	584
Private domestic	17	26	29	35	30	39	99	112	136
Share of total (%)									
State-owned	21.4	10.0	5.1	2.1	1.6	5.3	1.0	0.2	0.0
Foreign-invested	54.3	61.1	65.7	73.2	74.2	69.1	73.6	79.5	81.1
Private domestic	24.3	28.9	29.3	24.6	24.2	25.7	25.4	20.3	18.9

Given the current situation on wildcat strikes, there is causality between the Project logic with outputs, outcomes and broader development objectives. For instance, among the outputs of the Project is the completion of capacity building activities for union members to be able to represent their members in CBA negotiations more effectively, with the desired outcome of improving CBA content and quality and making collective negotiations as an effective tool in preventing and resolving wildcat strikes and other disputes. In turn, a significant reduction in the incidence of wildcat strikes or an improvement in the performance of IR institutions in resolving them would have a beneficial impact in making the country more attractive to investments.

¹MoLISA: Report of the National Industrial Relations Center (NIRC) on various years, as cited in *Labour and Social Trends in Viet Nam 2009/2010*, p. 24.

B.2. Project Objectives

The Project has two strategic objectives, first to support policy choices and decisions toward labour law reforms, and second to build capacity among institutions and social partners. On the other hand, the long term objective is framed as “sound industrial relations established through improved representational capacity of the social partners based on democratic principles, improved social dialogue process, and industrial relations support services which are used and effective, and an updated legal framework for minimum labour standards providing workers income security and employers operational flexibility.”

Consistent with its strategic and long term objectives, the Project focuses on three areas of intervention:

- Intermediate Objective 1 aims for an improved legal framework through the revision of the Labour Code and the Trade Union Law in light of international labour standards;
- Intermediate Objective 2 envisions collective bargaining in enterprises becoming a widely known practice in Vietnam;
- Intermediate Objective 3 seeks to establish operational industrial relations services, including a labour dispute settlement system.

Along these lines, the Project envisions complete reform of the labour laws, not only of the TUL but also of the Labour Code. Nevertheless, the Project partners recognize that the objectives are not easy to attain nor can any of them be realistically attained within a short period of time. Accordingly, the Working Plan and Activity Timetable have spaced out the activities and expected outputs as much as the two-year Project duration and available resources (including human resources) would allow.

As gathered from the key informants it is not realistic, given the pre-existing conditions and limitations on resources and human resource capacity, that all areas of the Labour Code will be amended at the same time. The approach at reform is therefore incremental. Within the Project duration, the priority areas for amendment have been focused on the TUL and the Labour Code provisions relating to workers’ representation, collective bargaining and dispute settlement. The next areas for revision will be minimum wages, employment services, occupational safety and health and social insurance. The prioritization indicates the Project’s responsiveness to actual facts actual needs, i. e., the need to have better CBA quality and to respond to the phenomenon of wildcat strikes. Further, starting with these priorities is highly strategic because they necessarily cut across the three intermediate objectives of the Project.

To enhance the policy framework for labour law reforms, the Project partners have also agreed to consider ILO Convention No. 122 (Employment Services) as a priority for ratification. Further, they have identified ILO Conventions No. 87 and 98 as priorities for research and

technical study, with a view toward considering the possibility of ratification. In all, the objectives are fully aligned with Vietnam's DWCP and also seek to help strengthen the institutional foundations for promoting the fundamental principles and rights at work, and for establishing a more modern IR services delivery mechanism.

C. Project Progress and Effectiveness: Greatest Achievements and Gender Dimensions

The Working Plan and Activity Timetable is the main guide for implementation and monitoring Project progress and effectiveness. The Project partners have completed many of the targeted activities and outputs under the Plan. The effects and benefits of these outputs have been strengthened capacity and heightened awareness of workers at lower levels of union organization to participate in social dialogue and enterprise-level collective bargaining processes. Most of the completed activities and outputs, however, require follow-up to attain broader Project objectives, outcomes and impacts.

Although there are no gender disaggregated data to determine whether women have been benefitted equally as men from the Project activities, there is no indication from the outputs or from the key informants that women were excluded or were ever placed at a disadvantage in any way. On the contrary, the Project may have opened more opportunities for women to participate. This is especially the case in the pilot projects which are being implemented in industries known to be dominated by women, such as the garment and apparel industry. It also bears pointing out that in these projects, women are among the key members of the project teams and of the executive committees of enterprise and upper level unions.

D. Significant Achievements and Contributing Factors; Alternative Strategies

To the extent of completed activities and delivery of actual outputs, the Project components with the highest level of achievement would be the direct participation of the social partners in designing and implementing the Project, thus making them its real owners; the conduct or completion of surveys, studies, researches and reports by the social partners themselves; and the wider base of participation among the social partners, particularly the workers, in social dialogue and tripartite fora.

The factors contributory to what has been accomplished are the clarity of Project objectives, the technical support given by the ILO, and the high level of commitment from Project partners. Further, the Project was systematically designed in such a way that a set of outputs is a direct input to a more advanced level of the reform process. In this manner, the entire exercise of reforming the labour laws and improving IR services becomes a progressive chain or continuum of events, with Project outputs building on previous ones toward desired outcomes.

With respect to alternative strategies, the implementation of some aspects of the Project and delivery of some outputs are admittedly behind schedule. But this in itself should not be taken as a sign of failure, given the magnitude and ambitiousness of the Project. It is not for this Report to suggest that there could have been better or more effective alternative strategies in attaining Project outcomes. The Project partners devised their own strategy and timetable in a consensual way, through consultation, social dialogue and tripartism. Should the Project partners find it necessary to shift strategies or undertake additional activities, this should be done in the same consultative process that characterized the conceptualization and formulation of the Project.

E. Efficiency in the Use of Resources

E.1. Organization of Activities and Outputs

The Project is broken down and organized along its intermediate objectives, with each objective dependent on clusters of specific outputs, each of which require the completion of a combination of activities within set timetables. In turn, the activities are organized into sub-projects or processes focusing on specialized areas. These were set up to complement and mutually support each other. These were then collated into the Working Plan and Activity Timetable, which identifies the outputs to be delivered and the corresponding activities, the implementing party for each activity, and the other stakeholders, partnerships and networks with which the implementing party should coordinate.

An output or a combination of outputs assigned to an implementing party or project owner is covered by a separate and detailed TOR. Clusters of activities also have corresponding TORs with detailed funding requirements. Execution of TORs is through service contracting or external collaboration, either through State agencies like the MoLISA or its specialized departments or through the implementing parties and project owners.

Most of the activities are to be performed by or in coordination with MoLISA. For some activities involving technical expertise, such as research and conduct of further studies, these are coordinated by MoLISA under separate and more specific TORs. Through these TORs, provision of technical inputs are contracted out to Vietnamese experts in particular fields. On the other hand, under the TORs for the pilot projects, the project owners are the provincial or industry level counterparts of VGCL.

The following observations can be made on the organization of activities and outputs:

- The Working Plan and Activity Timetable serves as a road map for Project partners and allows them to see the bigger picture (i.e., the immediate objective or outcome to which its outputs and activities will contribute), while at the same time emphasizing the urgency of accomplishing specific tasks.

- Project outputs and activities were dispersed and decentralized. Each project owner is directly accountable for the outputs delivered under its own TOR. This decentralization gives project owners direct participation, accountability and ownership over outputs.
- The decentralized approach enabled the Project partners to tap into their own internal expertise (for instance, MoLISA is tapping the internal expertise of its Legal and Wage Departments and CIRD for specific sets of activities). Where internal expertise is not available, there is resort to service contracting with Vietnamese experts and other networks. Either way, the contributions from Vietnam's own pool of experts and IR institutions more familiar with the country's needs and realities are maximized, allowing for intimate appreciation of issues and better customization of options and choices in the reform process.
- In general, the crafting of the TORs appears to recognize the inherent limitations in the capacities of the project owners. The TORs detail the scope, methodology to be used, output, sample forms, among others to guide the project owners. Further, each TOR has its own budget requirements. This ensures transparency in the use of funds and ease in monitoring disbursements in relation to outputs.

E.2. Use and Deployment of Funds and Resources

In relation to the Working Plan and Activity Timetable, the organization of activities, identification of outputs, and realization of outcomes appears to optimize the use and deployment of funds and resources and to achieve outputs that project owners can own, support or accept. This is done by:

- Dispersing accountability and making the project owner directly responsible for specific activities and outputs.
- Maximizing the use of existing institutions and internal expertise and knowledge.
- Making sure that outputs are clearly-defined, measurable and time-bound. Accordingly, outputs are matched with identified objectives, predetermined timelines, and available financial resources.
- Creating synergy among the various stakeholders by providing them a comprehensive perspective of the entire Project and connecting the specific contributions to the identified objectives.

The general view of Project partners is that careful and participative planning has made for an efficient deployment and utilization of resources. As one officer from among the implementing parties observed, the Project has high value-for-money ratio, with relatively

more activities for the amount of financial resources available compared with other similar projects.

F. Effectiveness of Management Arrangements

F.1. Management Capacities and Governance Structure

The governance structure of the Project is founded on shared responsibility and accountability. The three major parties have their roles clearly cut out for them under the Working Plan and Activity Timetable and project TORs. This delineation of roles, combined with the Project Documents approved by the Prime Minister and by the Minister of MoLISA, provides the governance parameters of the Project. The Project partners have their designated focal persons, all of whom are among the highest ranking officers of the organization they represent (for instance, MoLISA's representation is headed by the Deputy Minister of MoLISA supported by senior officers) and who have experience in project implementation and management. Coordination of all activities enrolled in the Working Plan and Activity Timetable is ensured by MoLISA. The ILO Project Office has a Chief Technical Adviser (CTA) to coordinate and oversee all activities and to ensure continuing technical support and regular communication with all Project partners and other stakeholders and with the ILO Regional and Head Offices.

Also part of the governance structure is in the financing of the Project and the access, administration and disbursement of funds. The implementing parties co-financed the Project through in-kind contributions while the ILO provided the funds from the One UN Fund. Disbursement of the funds was based on specific TORs for specific activities and outputs, thereby making for a transparent and accountable monitoring in fund use. It should also be mentioned that access to the One UN Fund and similar funding sources is governed by a decree on accessing to Official Development Assistance (ODA) funds. Therefore, the decree should be considered as part of the broader governance framework in the funding of the Project.

F.2. Political, Technical and Administrative Support from National Partners

With the One UN Fund as the main budget source, the ILO provides human resource contributions by way of policy advice, technical assistance and relevant information or data from its pool of international experts based in Geneva and Bangkok. The resource contributions of Project partners are "in-kind contributions" mainly by way of human resources, facilities and services. MoLISA, in particular, assigned the Deputy Minister of Labour and some of its key officers and agencies as focal persons for the Project. These officers are paid salaries by the Government. VGCL, VCCI and VCA assigned high-level officers as their focal persons, who also draw their salaries from their respective organizations. For pilot projects, the project implementers, particularly the grassroots organizers and those who undertake surveys, are

provided with additional allowances from Project funds. This provision appears necessary as the pilot projects require the implementers to move around, for which upper level unions do not provide funding support.

F.3. Monitoring of Performance and Results

The Working Plan and Activity Timetable and the TORs specific to each project provide the ILO Project Office and the Project partners with a handy tool to monitor progress and performance. The ILO Project Office maintains open communication lines with MoLISA and Project partners. Follow-up meetings are organized as needed, and these serve as a further venue for exchanging information, experiences and perspectives as the Project progresses and the various sets of activities are undertaken.

With respect to the activities that were contracted out, an essential monitoring tool is the inclusion of the specific outputs and budgetary requirements in the applicable TORs. Each TOR specifies the activities to be undertaken, the outputs to be delivered, and the estimated amount needed for each activity. With respect to documented outputs such as studies and researches, payment is output-based, Full payments are not made until submission and acceptance of the desired output.

Specific activities and outputs on data and information gathering are integral parts of the Project. These activities are necessary considering that Vietnam does not appear to have a systematic, consolidated and robust database on key IR indicators. Each implementing party contributes to data gathering by generating these from within its ranks (for instance, union membership data is one of VGCL's contributions). The data are usually presented as background information integrated to output documents. VGCL, VCCI and VCA provided data in this manner through their position and discussion papers. With respect to data generated from surveys in the pilot projects, the project owners say that some data were gathered using the survey questionnaires suggested by the ILO Project Office. However, apart from the fact that the data gathered in one pilot project will be submitted to VGCL and data from another project will be shared with workers at the enterprise level, the evaluation team had no information on how the data is being further processed and analyzed. At some point, data being generated should be systematized and supported by a reporting system to be complied with by concerned parties so that baseline information on key IR indicators can be progressively built. This database is also essential to monitor long-term impact of Project interventions. In this regard, relevant training on statistical gathering and analysis may be helpful.

At this point, the Working Plan and Activity Timetable is sufficient to evaluate and monitor the Project progress. Later, however, a more systematic monitoring and evaluation system for the entire Project needs to be set up. It is noted that apart from the Project's strategic and

intermediate objectives, there are no specific measures for the effects of Project outputs as well as intended long-term outcomes and impacts. In line with the emerging direction of project evaluation to shift focus from outputs to outcomes, it is important for the Project partners to evolve a system of measurement in these areas.

G. Impact Orientation and Sustainability

G.1. Positive Changes in Stakeholders' Attitudes and Capacities

Although many of the Project objectives may not have been attained at this stage, the Project has impacted on the Paroject partners in qualitative ways.

Project partners expressed their appreciation that through the Project, they were provided with capacity building interventions such as orientations, trainings and workshops. These helped equip them with the necessary technical information and knowledge to participate more meaningfully and with more confidence in the continuing reform process.

The Project also encouraged Project partners to identify their own needs and problems and to be direct participants in helping craft appropriate responses. The Project has an empowering effect to the extent of making the implementing parties and project owners assume direct responsibility and accountability for outputs.

Through social dialogues, workshops, consultations and conferences, the Project opened an arena for tripartite engagement on common issues. This enhanced Project partners' perspectives by providing them information on IR models that Vietnam can learn from. It also enhanced their capacity to debate on technical and policy issues. On the whole, these continuing activities fostered understanding of the reform process, priming Project partners to be more open and cooperative in addressing difficult and complex choices.

G.2. Partners' level of commitment and ownership; Sustainability

As mentioned elsewhere, one of the Project's strengths is the high degree of ownership and involvement that it has been able to engender from partners and stakeholders. The national partners have a high level of commitment in seeing to it that the Project objectives are attained. But the question of sustainability should not be focused only on the Project's two-year duration. Rather, it should be on whether the stakeholders themselves will be able to continue pursuing these objectives beyond the term of the Project.

A key determinant for sustainability is actual delivery of major outputs. There has to be acceptable amendments to the TUL and the Labour Code within the targeted timelines. Otherwise, Project partners will lose credibility, legitimacy and enthusiasm to pursue further reforms.

Another key determinant of sustainability will be how to implement the reforms once amendments are approved. This will depend to a large extent on MoLISA, which will have to adapt its structure and enhance its capacity in labour administration.

Finally, it is expected that at some point when the labour law reform process shall have been completed and the appropriate administrative machinery shall have been set up, the State must provide its own funds or budget to ensure the institutionalization and enforcement of reforms.

G.3. Building an Enabling Environment; Consolidation of Achievements

The participatory manner under which the various Project activities were conducted heightened the Project partners' appreciation of the value of consultation, social dialogue and tripartism, and how these processes can help identify and resolve problems and differences. Project partners are now more open and willing to engage in debates toward more informed decision-making. Anecdotal evidence from the key informants suggests that there is now more active interaction among the tripartite partners. Regular and periodic interactions should enable the Project partners to continue identifying and discussing issues bilaterally. This experience is a foundation for institutionalizing social dialogue and tripartism in Vietnam's IR system.

With respect to Project outputs, it is observed that the sheer volume and number of output documents may make it difficult for social partners to find common ground on key issues. It may be worthwhile for the Project Office to organize a tripartite workshop, as an additional activity of the Project, to generate options and alternatives on these key issues.

On whether Project has been able to initiate or influence changes in policies and laws, evaluation on this matter will have to await the NA's action on the proposed amendments to the TUL and the Labour Code.

F. Other Key Findings in Relation to the Project Evaluation TORs

Partners are one in generally affirming the relevance, design, effectiveness, efficiency and sustainability of the Project, especially in Vietnam's continuing transition to a market economy. On more specific issues, the results are varied.

F.1. Revision of the Legal Framework: Achievements and Further Work Needed

So far, the main achievements of the proposed revision of the legal framework for improvement of industrial relations are the drafts of the TUL and the third draft of the Labour Code (May 2011 version) released by MoLISA. The priorities for Labour Code revision are those on union representation, union structure and collective bargaining procedure. The revision

process is unfinished and needs to be pushed to its final stage, that is, submission to and approval by the NA.

Further work is also needed on the other areas of the Labour Code which Project partners have identified as needing reform, such as dispute settlement, minimum wages, occupational safety and health, aspects of working conditions, among others. Much of this work can go beyond the duration of the Project. Likewise, further work still needs to be done by way of advocacy, education and consensus-building in supporting the ratification of ILO Conventions, particularly the core conventions. Ratification of these conventions can reinforce the policy foundations of labour law reforms.

Along with the revision process, an administrative structure compatible with the reforms is needed to ensure implementation and enforcement. This will require continuous retooling and upgrading of competencies of labour authorities. It may also require restructuring the State authorities involved in labour administration, primarily MoLISA and DoLISA and other agencies involved in labour dispute settlement. With respect to the social partners who are the direct beneficiaries of the reforms, extensive education and information campaign will be needed in order to apprise their members of the changes and enable them to maximize potential benefits.

F.2. Consistency of MoLISA in Implementing Project Plan and Institutional Reforms

From the available documents and interviews with key informants, the evaluation team is of the opinion that MoLISA has been consistent in its commitment to reforms and in seeing to it that the Working Plan and Activity Timetable is implemented. MoLISA representatives, however, acknowledge the difficulty and complexity of the reform process, especially given Vietnam's little or no experience with a more modern and market-oriented IR system. Particular challenges are encountered in ironing out the details of the revisions into a coherent set of provisions.

F.3. Project Effectiveness in Improving Upper Level-Enterprise Union Linkage

It is too early to tell if the Project has been effective in improving the linkage between immediate upper level unions and workers' representatives at the enterprise level. Pilot Project 1 is a first-level intervention toward improving this linkage. But it is still in the process of implementation and has not produced definitive and measurable outputs or outcomes.

F.4. Capacity Building Interventions

On capacity building, selected union and employer representatives underwent appropriate capacity building and awareness raising experiences to equip them with the technical knowledge and skills to engage in policy discussions, debates and collective bargaining. A significant amount of the Project's budget was used for capacity building activities. This came

mostly in the form of seminars, workshops and orientations. Some of the activities by Project partners, like preparing position papers, participating in the drafting of the labour law amendments, and undertaking researches, studies and surveys, in themselves had the effect of capacity building. In most cases, project owners are doing these activities for the first time, thus building their capacity through the principle of learning by doing. The dissemination and discussion of ILO's technical inputs to the labour law revision process also brought all participants up to speed with technical issues as well as with issues at the international level concerning Vietnam.

According to the key informants and project owners, the capacity building activities and the outputs of studies and researches enhanced their knowledge of modern IR as a whole, and allowed them to participate more actively and with more confidence in the consultations, workshops and discussions leading to the formulation of the present TUL and Labour Code proposed amendments.

F.5. Project Impact on Collective Bargaining Coverage and Gender Equality

VGCL reports that it is on track to attain its organizing targets, thereby increasing its membership and widening its collective bargaining coverage. But while some of the increase in membership and CBA coverage was recorded during the duration of the Project, no causal connection can be drawn between this increase and the Project itself. On the question of whether the use and coverage of collective bargaining in Vietnam has improved as a result of the Project's interventions, the Project tries to support this goal through labour law reforms and the three pilot projects. In turn, the pilot projects are subsumed under Intermediate Objective 1 which is to build representational capacity among workers and employers so that collective bargaining becomes a widely known practice in enterprises by the end of the Project. While there are encouraging preliminary observations from the project owners, it is too early to draw definitive conclusions on whether collective bargaining practice and quality has in fact been improved because of the Project. A more detailed discussion of the pilot projects is found in Part III.E of this Report.

Gender equality dimensions do not appear to be a collective bargaining issue yet in Vietnam. Although the key informants say that existing collective bargaining agreements cover many women, as in fact the pilot projects are focused on the female-dominated garment and apparel industry, there are no gender disaggregated statistics on union and collective bargaining coverage. Thus, there are no statistical baselines to measure progress in this area.

F.6. Incidence of Wildcat Strikes and Strengthening of Bipartite Social Dialogue

With respect to the major concern on wildcat strikes statistics provided by MOLISA from 2000 to 2008, or prior to the inception of the Project, indeed shows a dramatic increase in the

incidence of strikes in foreign-invested and private domestic enterprises. The increase in the incidence of strikes in the private sector is consistent with the increasingly market-oriented behavior of enterprises. On the incidence of wildcat strikes after 2008 and the period coinciding with Project implementation, no statistics on wildcat strikes were provided. But anecdotal evidence from the social partners manifests a serious concern that the incidence might be increasing, or at least not being reduced. There was also no documented evidence that bipartite social dialogue has been practiced as a means of resolving wildcat strikes.

While social dialogue has been taking place at the national level as an integral part of labour law revisions, there is no evidence at the enterprise, industry, zone or provincial level of an increased preference to use tripartite or bipartite dialogue or negotiation as an approach in resolving wildcat strikes. In this connection, IR services – particularly labour dispute settlement at central and local levels – did not demonstrate marked improvement as a result of the Project's interventions.

F.7. Improvement of IR Services and Reform of Dispute Settlement Mechanisms

A key outcome of the Project is to set up modernized labour dispute settlement system. This outcome seems to depend on the approval of the proposed revisions on the TUL and the Labour Code. The conventional view, given the legalistic elements inherent in dispute settlement systems, is that until new laws are in place Vietnam will have to make do with its existing IR services and institutions to resolve disputes, however limited these are. The social partners agree that the system must be reformed and have come up with various positions on how this might be done. The latest draft of the Labour Code, however, still does not include specific proposals. In view of the various positions of the social partners, the Project should support and assist activities toward facilitating an agreement among the social partners on how the system should be reformed.

At this stage of Project implementation, it can be stated that the objective of the Project in helping reduce the incidence of wildcat strikes or in offering a more efficient means of resolving disputes has not converged with realities on the ground. It is probably by design that the Project did not include resolving actual wildcat strikes in selected industries or enterprises as one of its pilot activities. While social partners are working on a consensus on what kind of labour law revision can best improve dispute settlement services, a more unconventional approach in helping attain this particular objective can be considered. This will call for the dispatch of properly-trained quick response dispute settlement teams, preferably tripartite in composition, to conciliate and mediate wildcat strikes in selected enterprises and draw lessons from these actual cases. The hindsight is that experimentation with ground conditions through pilot cases, using conciliation and mediation techniques or even arbitration where

appropriate, may be useful before the social partners can develop some confidence and agree on what labour dispute settlement structure or design is suitable for Vietnam.

F.8. Establishing the Network for Industrial Relations Development

On whether the Project has succeeded in establishing the Network for Industrial Relations Development (NIRD), which should include IR practitioners, HR managers, academic researchers and media reporters, the evaluation team did not get information on the status of setting up the network, whether formally or informally. There are, however, activities to build on. As mentioned elsewhere, the Project has tried as much as possible to tap into Vietnam's internal pool of IR and HR experts by inviting them to participate in technical workshops or by engaging local experts through contracting arrangements for studies or researches needed by the Project. Project partners have also welcomed the initiative of the ILO Project Office in organizing and coordinating "mini-talks." Oriented partly toward information dissemination and partly toward advocacy, the mini-talks are informal focused group discussions where resource persons are invited to discuss or share experience on a topic of common concern. It is attended by stakeholders and interested persons on a voluntary basis.

The internal pool of experts and participants in mini-talks can be organized into a knowledge network and given regular opportunities to share and disseminate their expertise through tripartite policy fora and other engagements. What is needed is a focal agency to coordinate the activities under the NIRD on a regular and long-term basis, including the provision of research, secretariat and other support services. This focal agency shall also serve as repository of shared knowledge and experiences. In the long term, Project partners may consider recommending for full staffing and budget support for NIRD, or in designating a focal agency to support it. CIRD, for instance, can be designated to serve as such support agency considering its mandate as a research institution. CIRD is well-positioned for this task also because being a government agency, it has the legal standing to link up with similar institutions overseas either by way of country-to-country bilateral arrangements or through regional networks like the ASEAN or other organizations.

In this regard, the NIRD can also be linked up with the ILO-ASEAN/Japan Programme on Industrial Relations, a program for improving IR in ASEAN countries. The programme, which runs from 2008 to 2011 on funding by the Government of Japan, seeks to promote constructive industrial relations among ASEAN countries, support the ASEAN Secretariat in building its capacity to disseminate knowledge and information about IR among its members, and strengthen the relationship between the ASEAN and ILO's Regional Office for Asia and the Pacific.

PART III

KEY FINDINGS ON STATUS OF IMPLEMENTATION OF ACTIVITIES AND OUTPUTS

A. Measurements, Indicators and Monitoring of Performance and Results

A.1. Bases of Measurement

This section focuses on evaluating the performance of the Project in terms of how the Project inputs, outputs, outcomes and impacts have been attained, specifically in relation to the three intermediate objectives of the Project. To reiterate:

- Intermediate Objective 1. An improved legal framework through the revision of the Labour Code and the Trade Union Law in light of international labour standards.
- Intermediate Objective 2. Building representational capacity among workers and employers so that collective bargaining becomes a widely known practice in enterprises in Vietnam by the end of the Project.
- Intermediate Objective 3. Establishing operational industrial relations services such that by the end of the Project, the industrial relations service function of the Government, including the labour dispute settlement system, will have been reformed and strengthened at central and local levels.

The inputs to the Project are the technical assistance and guidance provided by the ILO, funding from the One UN Fund, and the in-kind contributions of Project partners. Feedback from the key informants indicates that inputs were adequate and were provided in a timely and highly professional manner.

The desired outputs are in the Project's Working Plan and Activity Timetable and in the various projects with specific TORs contracted out to project owners. A detailed discussion of outputs is included below.

As for outcomes, the Project's intermediate objectives are actually statements of desired outcomes, where outcomes are understood as the effects or results of outputs which represent the immediate achievements of the implementing parties and project owners. More specifically, outcomes are the specific dimensions of the well-being and progress of people (in this case, in their capacity as workers, employers and community members) that motivate policy action and that result from policy or project interventions. Impact is the positive and negative, primary and secondary long-term effects produced by the Project intervention, directly or indirectly, intended or unintended. It is the result that links to the development

objective of the Project which consists of the intermediate objectives as stated above, as well as the long-term objective of establishing a sound and modern IR regime in Vietnam. Apart from the general statement of desired outcomes from the Project's intermediate objectives, specific indicators of Project outcomes as well as impacts need to be developed.

A.2. Evaluating the Outputs, Outcomes and Impacts

With respect to outputs included in the Working Plan and Activity Timetable, these are clustered under the Project's three intermediate objectives, as follows:

For Intermediate Objective 1:

- Labour Code and TUL revision process is informed and technically supported
- International labour standards disseminated; comparative labour law experience built and disseminated
- Consideration of the ratification of fundamental and priority ILO Conventions
- Employers and their organizations capable of making effectively collective inputs for Labour Code and TUL revisions
- Supporting VGCL in revision of TUL and IR-related chapters of the Labour Code

For Intermediate Objective 2:

- Bottom-up organizing campaign developed and implemented, making unions' activities at the enterprise level more democratic
- Core group of union negotiators and trainers are trained in enterprise level collective bargaining and put in operation
- Capacity of employers' organizations to articulate and represent various groups of employers in selected number of localities improved and strengthened
- Coherent mid-term plan for social dialogue and CB promotion developed in a tripartite manner
- IR outcomes improved through bipartite sectoral dialogue with improved government IR services

Intermediate Objective 3:

- Collection, analysis and dissemination of IR-related information/data and advisory notes developed
- Network for Industrial Relations Development (NIRD) established and become operational under the coordination of CIRD

- Develop and implement media campaign for the revised Labour Code, TUL and promoting new industrial relations practices and culture
- Current labour dispute settlement system reviewed, problems identified, and policy options for improving labour dispute settlement outcomes by policy-makers and social partners
- Operational guidelines for mediation and arbitration services prepared and tested, mediators and arbitrators equipped with gender sensitive mediation and arbitration skills
- Various models of workplace cooperation reviewed and pilot plan for Vietnamese workplace cooperation model developed

Outputs are in most cases documented. The evaluation team gathered that the ILO Project Office and MoLISA regularly update the status of activities and expected outputs. Completion of activities and outputs within timelines and within budget are the Project's indicators of efficiency. Unmet timelines are subject to discussion by the social partners and are adjusted as necessary (for instance, the submission of the draft Labour Code was deferred as the social partners needed more time to study and work on it).

Quality indicators are not expressly stated in the Working Plan and Activity Timetable. However, the details of the activities, expected outputs and methodologies to be used in accomplishing these outputs as stated in the TORs can serve as quality parameters to evaluate specific outputs. On the other hand, an implied qualitative and normative measure for labour law amendments, once the drafts are completed by the social partners and submitted and approved by the NA, is that these amendments should be able to cover the key needs and gaps identified by the parties, be consistent with the revisions proposed by the social partners, and be compliant with applicable international labour standards.

For convenience, the outputs can be generally categorized into 1) immediate or primary outputs, or those which are the direct result of a specific activity or set of activities undertaken by a project owner and which is intended to support or provide inputs to subsequent activities; 2) second level outputs, or those which result from activities which put together the various primary outputs of project owners, leading to another output (most of the output indicators specified above are of this nature); and 3) major final output, which combines various second level outputs to produce an output that represents the end of a process over which the project owners have full control. With this categorization in mind, the key performance indicators of the Project include the following:

- Completion of activities with documented outputs. These include researches, surveys, studies, documented meetings, workshops and consultations. Some of these are

immediate or primary outputs which are meant to provide inputs toward the drafting or completion of labour law revisions. Some are second level outputs, i.e., number of identified areas for revision, or number of corresponding legislative proposals formulated.

- Completion of activities to capacitate the social partners. Capacity building is focused on building knowledge and skills on technical matters concerning freedom of association, trade unionism, collective bargaining, social dialogue and tripartism. These have come in the form of briefings, workshops and study tours. The quality of these completed activities can be measured by the extent, level, process and inclusiveness of participation (i.e., number, level and representativity of participants). The identified capacity building outputs include heightened understanding of freedom of association and collective bargaining principles by the parties, enhanced ability to debate on these issues, and heightened ability to apply these in real life situations especially at the lower levels of union organization.
- Actual conduct of pilot activities or implementation of pilot projects. These pilot activities and projects are aimed at strengthening the linkage between upper level and grassroots unions and using innovative approaches to union organizing to demonstrate the workability and viability, as well as to determine the practical constraints, in promoting trade unionism and collective bargaining at the enterprise level. Evaluation of outputs can focus on the number of activities actually conducted in relation to targets, resources used, and time within which the activities were completed. Outcome measures should be related to the effects of the outputs in the pilot areas, and can include number and percentage of new unions organized at the enterprise level, unions with officers duly chosen by workers themselves, collective bargaining agreements with “better terms” negotiated at the enterprise level, among others. It should be made clear, though, that these success indicators should be applied only to the sectors and areas covered by the pilot projects, and not to Vietnam as a whole.
- Major final outputs. As far as MoLISA and the social partners are concerned, the major final output of the Project would be the final draft amendments of the TUL and Labour Code and ready for submission to the NA. If this major final output is duly reflective of the combined primary or second level outputs of the social partners and is consistent with international labour standards, it can also serve as a barometer for measuring outcomes (i.e., informed and technically-supported decision-making in the labour law revision process, heightened capacity of the parties to engage in tripartism and social dialogue, and heightened awareness of international labour standards).

The outcomes of the Project will be achieved if the three Intermediate Objectives shall have been met, i.e., approval of the Labour Code Amendments by the NA, effective collective bargaining shall have become a widespread practice, and suitable and effective IR services such as dispute settlement, enforcement, employment services and general labour administration shall have been established.

With the foregoing premises, what follows is an evaluation of specific Project outputs.

B. Studies, Researches and Related Activities

Most of the studies and researches undertaken relate to Intermediate Objective 1, which seek to improve the legal framework for IR through the revision of the Labour Code and the TUL. These studies and researches seek to ensure that the revision process is informed and technically supported. These were undertaken through various service and external collaboration contracts with individual TORs and budget allocations. Contracted to undertake these studies and researches were MoLISA and its specialized departments, CIRDC, VGCL and its provincial/district levels, VCCI and its provincial/district level unit in Ho Chi Minh City, and VCA. The activities supported by the Project are in the nature of gathering information, issues and opinions (oftentimes through consultations, seminars and workshops), conducting surveys, and preparation of position papers. A special consideration in these activities is to support a gender sensitive collection and analysis of information from stakeholders and promote its continuation in the future.

In the case of MoLISA and its specialized departments, the studies and researches conducted or to be conducted fall under Intermediate Objective 1, particularly in the areas of labour sub-leasing, domestic work, part-time work, strikes and labour dispute settlement, mechanism of collective representation of workers and of employers including employers organizations, exemption of SMEs from certain provisions of the Labour Code, overview of wages, study on collective bargaining at various levels and industrial relations process at the enterprise level with policy recommendations, and social dialogue at the workplace. Among the activities and outputs completed are the translation of the Labour Codes of members of the Association of South East Asian Nations and an assessment of the application of conventions ratified by Vietnam. These activities enabled the participants in the revision process to have a wider comparative perspective. Another activity is the preparation of MoLISA's position paper on the legislative framework for effective IR which was eventually discussed at the high-level tripartite meeting held in November 17, 2010. Among the documents produced was one identifying seven issues for discussion. Also part of the supported activities is the compilation of tripartite feedbacks to the ILO's Technical Comments on Draft 2 of the Labour Code. On the side of Government, among the agencies from which comments were elicited, in addition to

MoLISA and its specialized agencies, include the Ministry of Justice and the Labour Court (which is under the Supreme Court).

CIRD has also undertaken several activities, studies and researches as an implementing party and project owner separate from MoLISA. Three sets of CIRD's activities are outputs under Intermediate Objective 1 – the issuance and preparation of briefing papers on key issues in the revision of the Labour Code and the TUL, translation and publication of three books on basic and comparative industrial relations, and compilation of case studies on strikes. One CIRD study relates to Intermediate Objective No. 2, consisting of an evaluation of the collective bargaining process that covers 1,000 enterprise-level collective bargaining agreements. The basic output is a completed study, while a second-level output is to develop, through a tripartite process, a coherent mid-term plan to promote social dialogue and collective bargaining. This output is yet to be completed. In relation to social dialogue, CIRD informed the evaluation team that it is also undertaking an activity intended to assist social partners in Ho Chi Minh City and Vinh Phuc Province to develop and conduct new social dialogue initiatives on wage negotiation at the regional and sectoral levels. Finally, CIRD is responsible for an output under Intermediate Objective No. 3. This involves a study on how the labour dispute settlement system may be improved through channeling the actions on wildcat strikes toward building a mechanism of pro-active conciliation and mediation support services. This study is still to be completed.

With respect to the studies and researches undertaken by VCCI, one relates to Intermediate Objective No. 1. The specific output is to come up with VCCI's position paper on issues on the revision of the TUL and the Labour Code. This output was completed and used during the high-level tripartite workshop in November 2010. The other relates to Intermediate Objective No. 2, which is to strengthen the capacity of employers' organizations to represent various employer groups as well as to document best IR practices of employers. The study on best IR practices in the southern part of Vietnam was carried out by the VCCI-Ho Chi Minh City while the study in the northern part, which produced a detailed paper entitled "Industrial Relations Practices in the North and Attributing Factors," was carried out by VCCI's Bureau of Employer Activities. These studies were completed. But it is not clear whether the findings were considered in the formulation of the latest draft of the Labour Code.

VCA is responsible for one activity which relates to Intermediate Objective No. 1. It is a study on labour and employment issues in cooperatives, including the preparation of a preliminary report providing an overview of employment relations and identification of issues suggested for further study, a policy paper which provides a detailed analysis of the key features in employment relations in cooperatives, and a seminar to present the study results and consult relevant participants about possible revisions. This study was completed though it

is also not clear whether the findings were considered in the formulation of the latest draft of the Labour Code, or has led to a discussion on further follow-up activities.

VGCL undertook researches and studies in a wide number of areas. In relation to all the three intermediate objectives, VGCL published fact-finding reports and research papers on trade unions. In relation to Intermediate Objectives 1 and 2, it prepared a position paper on the legislative framework for effective industrial relations for discussion at the high-Level tripartite technical meeting. It also conducted a survey on the roles and capacity of upper level trade unions and establishment of grassroots trade unions. These activities resulted in two survey reports, one dealing with the completion of law reforms toward building harmonious and progressive industrial relations. The other is a survey report on the establishment of local trade unions. In support of Intermediate Objective No. 1, VGCL conducted a several researches, studies and surveys, among which inquired into the actual work of upper level trade unions, and a survey study on discrimination and harassment against trade union officials, members, and workers for their trade union activities. The latter activity produced a detailed report that includes an assessment of the situation of trade union discrimination in Vietnam (described as “not very alarming” as there are only a few cases), evaluation of sufficiency and relevance of current legislation on trade union discrimination, and recommendations for revising and amending relevant provisions of the TUL. In support of Intermediate Objective 2, VGCL conducted a survey research on initiatives on new approaches in union organizing, producing a document entitled “Report of Survey and Research on Organizing and Recruiting Members at Enterprise Level” (October 2010). The outcome of all these reports was to enable VGCL to have a more informed and technically-supported participation in the labour law revision process, while heightening the awareness of its key members on international labour standards particularly on unionism and collective bargaining.

C. Labour Law Revisions

C.1. Technical Inputs

Because of the systemic and comprehensive nature of labour law revisions, Project partners agree that reforming the system will, for a long time, be a work in progress. The process will certainly extend beyond the term of the Project, and will be deemed substantially complete only when the necessary amendments in all targeted areas have been passed.

Project partners have made substantial progress in drafting proposed Labour Code amendments. They have taken a pragmatic, incrementalist approach by prioritizing revisions in the areas of trade unionism, representation and collective bargaining. A draft of the proposed revisions on the TUL was prepared in 2010, while the latest draft of the Labour Code was released by MoLISA in May 2011. The Government projects that by October 2011, it shall have

submitted to the NA the final draft revisions pertaining to trade unions, representation and collective bargaining. Amendments in these areas were originally targeted to have been passed by the NA within the two-year duration of the Project. The new timeline of the NA, assuming the proposed amendments are submitted in October 2011, is to have the amendments passed by May 2012. Through its SAC, the NA expressed the view that the Government should try its best to complete the draft on the three priority areas within the new timetable.

The process of revision has been participatory and dynamic, as can be seen from the interplay of technical inputs and issues arising from three documents. The first, prepared in March 2010 by the ILO Office in Vietnam, is the *“Revision of Trade Union Law and Labour Code: Enhancing and Ensuring the Independence and Representativeness of Trade Union to Participate Substantially and Effectively in the Processes of Industrial Relations.”* This document focuses on the revision of the trade union laws and the characteristics, structure and operation of trade unionism in Vietnam. It identifies what should be the scope of trade union law revision and the critical areas that remain contentious and therefore should be tabled for further discussion. The second document is the ILO’s *“Memorandum of Technical Comments on the Second Draft Labour Code of Vietnam,”* issued in July 2010. This document consists of the ILO’s technical inputs to the revision process. The third document, an offshoot of the second, is the *“Tripartite Feedback to ILO’s Technical Comments on Draft 2 of LC.”*²

The ILO’s technical memorandum led to a series of inter-related activities coordinated by the MoLISA’s Legislation Department, which then requested MoLISA’s specialized units and other agencies which have functions and mandate in State management to make their respective comments on the contents of the ILO memorandum. In line with this, the Legislation Department hosted five workshops from October 27 to November 11, 2010 to discuss the ILO’s comments. Participating were experts experienced in the field of State management on particular issues, the members of the Labour Code Drafting Committee, and other IR professionals. The workshops were organized into five topics: 1) occupational safety, time of work and time of rest; 2) general provisions and employment; 3) collective labour agreement and labour inspection; 4) labour dispute settlement and female workers; 5) labour contracts and trade unions. It is to these workshops that most of the researches and studies previously described above were inputted.

² Technically, the two ILO documents, i.e., *“Revision of Trade Union Law and Labour Code: Enhancing and Ensuring the Independence and Representativeness of Trade Union to Participate Substantially and Effectively in the Processes of Industrial Relations”* and *“Memorandum of Technical Comments on the Second Draft Labour Code of Vietnam”* are in themselves outputs of the ILO. These documents are referred to as inputs in this Report because these served as guide to the project owners in preparing and completing their own outputs.

Based on these workshops, the Legislation Department compiled several issues which have “controversial opinions”, namely: 1) specification of contents of the exemptions of enterprises employing less than 10 employees; 2) definition of workers can be restrictive, i.e., it may be limited only to those with labour contracts; 3) addition of prohibited acts of sexual harassment; 4) ILO’s suggestion that there should be no limitation on the right to terminate the labour contract by giving reasons, but with prior notice; 5) selection of bargaining representative freely and voluntarily as set out in Convention No. 98, at the enterprise, industry, regional and national level; 6) participation of upper level trade union as it relates to the voluntary nature of negotiation and independence of the enterprise level union in collective bargaining; 7) standards of work and rest time; 8) occupational safety and health, particularly on the need for regulations on declaration of dangerous circumstances; 9) regarding HIV/AIDS as occupational disease for which the employer should provide training and information; 10) trade union issues, including respect of negotiation freedom and choice of representatives; relationship between upper level and grassroots union.

The issues in these workshops were put together for consideration in a tripartite technical workshop coordinated by MoLISA and the ILO Project Office and conducted on November 17, 2010. This activity was attended by the Labour Code Drafting Committee and selected experts from institutes, universities and related agencies. This workshop generated more in-depth discussions on the proposed amendments and led to the latest version of the draft Labour Code released by MoLISA in May 2011. It is noted, though, that not all the issues identified have been addressed in the latest draft. This matter is further discussed in Items C.2 and D below.

C.2. Issues and the Revision Process

The ILO technical inputs and the tripartite feedback on these inputs are extremely important in making the Project partners own the Project’s output, especially in the sense of respecting their ability and right to make their own choices and decisions. It also provides a gauge on the relevance of the revisions, at least from the standpoint of Vietnam’s IR players, as well as on the extent to which they are willing to push for reforms.

While Project partners generally concede that more time is needed to formulate the proposed amendments, the deferment appears less of a setback in timelines and more of an acknowledgement of the challenges and difficulties in coming up with common understanding on the scope and objectives of the reform process, and subsequently with a consensus on the substance of revisions.

The points of disagreement (or the matters with “controversial opinions”) need to be consolidated, and the issues arising from each point need to have more focus and to be defined more sharply. It is noted that some of the differences are conceptual in nature (i.e., definition

of terms like “worker”), others are structural (i.e., the VGCL’s unique role in Vietnam’s political structure *vis-à-vis* freedom of association and collective bargaining principles such as voluntariness and autonomy).

Action on the TUL and Labour Code provisions on representation and collective bargaining can indicate how Project partners and the NA will act on succeeding areas for reform. The NA, through SAC, expressed to the evaluation team its impression that the Government has been passive and this might have slowed down Project implementation. Nevertheless, it appreciated the fact that as implementing party of the Project, it was able to participate at the earlier stages of review of the TUL and the Labour Code and in drafting the proposed revisions. This participation led to the resolution of many areas of differences. When the draft is finally submitted to the NA, it is hoped that there will be less major issues needing further deliberation. The SAC, however, stressed that the NA will follow its own internal processes in considering the revisions, and that it will still undertake its own independent study on the draft before the amendments are actually passed. In other words, completion of the draft amendments to the TUL and to the Labour Code may represent a stage of the process, but the content of the amended Labour Code and TUL that will be approved by the NA is not a done deal.

The SAC indicated to the evaluation team that the proposed revisions will be formally placed in the schedule of the NA when it meets in July 2001 to finalize its agenda. A complication that may further impact on Project timetables is the effect of the recent parliamentary elections. The elections changed the mix of members in the NA, particularly those who are involved in pushing for Labour Code reforms. Some new members may be unfamiliar to IR issues. This can affect the pace of parliamentary deliberations and the depth of quality of the reforms.

D. Observations and Some Recommendations on the Initial Outputs and Technical Inputs

Many of the activities, researches and studies as described in Item B relate to the Labour Code revision process. Although containing limited statistical data, these outputs nevertheless demonstrate the Project owners’ appreciation of IR issues and contain a wealth of information and perspectives which will continue to be useful in informing the reform process. It may be noted, though, that these outputs still need to put forward clear options and alternatives on specific issues, particularly those identified during and after the high-level tripartite meeting in November 2010. For this purpose, it may be helpful to have a comprehensive and systematic collation of the issues from all the reports to facilitate the generation of options and alternatives and, subsequently, policy and decision-making.

Relating the output documents made available to the evaluation team with the latest draft of the Labour Code revisions (May 2011 draft released by MoLISA), the following observations and some recommendations moving forward can be made:

- With respect to the activities falling under Intermediate Objective No. 1, the researches and studies came mostly in the form of information notes, reports, surveys, issues papers and position papers and were intended to help the parties get a better understanding of Vietnam's IR situation as well as of the technical aspects of labour law revisions. Some of the output documents were used as technical inputs to the revision process, particularly during the tripartite technical workshop organized by the ILO Project Office and MoLISA and held on November 17, 2010. To this extent, the outputs appear to satisfy the objective of having a reform process that is grounded and informed of the latest developments as well as the technical issues in IR.
- The output documents, particularly the position papers and feedbacks on the ILO's technical inputs to the second draft of the Labour Code, helped sharpen and crystallize the core issues in the revision process. For instance, the positions of the parties on unionism, freedom of association, representation and collective bargaining highlight the difficulty of assimilating the ideas of voluntary and democratic choice into the system, especially at the enterprise level. The Drafting Committee has been sensitive to this issue and has attempted to address it by including detailed procedures for collective bargaining in the May 2011 draft of the Labour Code (for instance, see Chapter V, Articles 65 to 78 of the May 2011 draft). The draft TUL also includes provisions expressly recognizing the right of workers to establish, participate in and operate a union, as well as identifying the executive committee of the primary union, trade association or immediate upper level trade union as the representative of collective workers at the primary level. It also includes a list of forbidden actions against workers in the exercise of their right to self-organization (see Articles 5, par. 1 and 4, par. 7 of the draft TUL; see also Article 10). A practical next step is for the Drafting Committee itself to assess, given the technical inputs already made available to them by ILO experts, whether these new proposals are within the parameters of international labour standards and practices.
- The latest Labour Code Draft has significantly addressed many of the comments arising from the previous draft. Nevertheless, critical issues raised in the output documents remain. One issue is who should be the members of the executive committee that will represent workers at the enterprise level, as well as how they should be selected. The issue arises because managers – who are conventionally classified as sharing the same interests of employers and have conflicting interests with rank and file workers – are oftentimes designated as union officers. This then creates doubt as to their ability to

genuinely represent the interests of rank and file workers. One way to move this issue forward is for the draft revisions to consider including employee classifications with a view of delineating employee roles for purposes of union leadership and collective bargaining representation.

- Another issue is the incidence of wildcat strikes, particularly the “strike first, negotiate later” phenomenon. The evaluation team gathered from key informants that wildcat strikes occur in enterprises whether or not with unions or CBAs. Many of these are grounded on the employer’s perceived failure to comply with minimum labour standards, particularly wages. For enterprises without unions or CBAs, workers resort to wildcat strikes because of the difficulties in forming a union and obtaining legal personality. Key informants have also identified what appears to be a perverse incentive, i. e., a wildcat strike is an expedient and preferred option because it brings workers quicker and more beneficial results than formal processes of collective bargaining. There are provisions in the TUL Draft relating to representation of non-unionized workers. For instance, Article 19 of the draft gives the immediate upper level trade union the right and responsibility to represent and protect the rights and legitimate interests of workers in non-unionized agencies, organizations, units and enterprises in accordance with regulations. This is complemented by Article 69 of the Labour Code Draft, which try to link in operational terms the non-unionized workers in the enterprise and the immediate upper level union through a process of collecting the inputs of workers preparatory to the formulation of collective bargaining proposals. An indication of whether this approach can work should be derived from the experiences and lessons from Pilot Project 2. In this context, three substantive questions frame the phenomenon of wildcat strikes, particularly in non-unionized enterprises. First, at what point and on what grounds may workers exercise their right to strike? Second, may workers resort to negotiation or other dispute settlement mechanisms to resolve the issues in a wildcat strike even if no union has been formed in the enterprise? And third, what is the appropriate mode or mechanism of dispute settlement if negotiation is not effective in resolving a wildcat strike? Given that solving this problem is one of the specific objectives of the Project, tripartite discussions should continue to build on the latest draft TUL and Labour Code revisions and try to address these issues in a decisive manner.
- The output documents also include issues raised by Project partners individually but which have not been fully addressed in the latest draft of the Labour Code. These include definitional and conceptual issues like the meaning of the terms “worker”, “sub-leasing” and dispatch workers (this can impact on the scope of bargaining

representation), employment relationship especially as it applies to cooperatives, “multi-employer bargaining”, “industry bargaining”, and selection of employer representatives, among others. There are also fundamental policy issues which need to be further discussed. For instance, no policy decisions or recommendations have been formulated on VCCI’s proposal to exempt small and medium enterprises from certain provisions of the labour laws, or whether to provide for specific procedures for multi-employer or industry bargaining. Further, there are divergent views on dispute settlement any of which could impact on the respective roles that the State and the social partners will play in the provision of efficient and effective IR services. MoLISA prefers conciliation and mediation. At least one VGCL provincial chapter prefers inspection. VCCI prefers the rationalization and strengthening of arbitration as a complement to collective bargaining. It proposes to have a government arbitration structure established at the provincial level with power to pass upon the legality of strikes. The current proposal on dispute resolution is to vest jurisdiction to resolve the validity of a collective agreement on the State authority governing labour or on a People’s Court (Article 76, Labour Code draft). If the State authority referred to is MoLISA or DoLISA or the People’s Court as already constituted, the proposal can be improved if there is more specificity as to the procedure by which the jurisdiction of these authorities may be invoked. The proposal on dispute resolution also apparently does not include legality of strikes, which is ironically is the most important concern. Disputes over trade union rights, on the other hand, are left to further legislation (see Article 31, TUL Draft). Also raised by at least one social partner is the uniqueness of SOE workers as compared with private sector workers, and whether there would be a valid basis for differential treatment between these two classes of workers for purposes of applying the labour laws.

E. Pilot Projects

The Project has three pilot projects as approved and adopted by the VGCL Working Party. Pilot Project 1 is concerned with strengthening representational capacity of the trade union through innovative ways on union organizing and on establishing workers’ representative organizations. Pilot Project 2 is concerned with improving the linkage between upper level trade unions and enterprise level or “grassroots” unions and workers. Pilot Project 3 involves the conduct of a preliminary study on the feasibility of and conditions necessary for multi-employer bargaining.

These pilot projects are meant to be mutually reinforcing and are implemented at the provincial/industry and local levels. They are actual experiments on practical and demonstrable ways to attain Intermediate Objective 2, which is to build representational capacity among

workers and employers so that collective bargaining becomes a widely known practice in enterprises in Vietnam by the end of the Project. These projects are being undertaken in five areas outside Hanoi, ensuring that the Project has a wider and deeper spatial dimension that extends to the grassroots level. The pilot projects, implemented by provincial or industry or zone level functionaries themselves, are covered by specific TORs whose level of detail, as noted above, is such that the TORs themselves are tool kits to help the project owners implementing their respective tasks. As gathered by the evaluation team, the choice of pilot areas was strategic. Key considerations were the level of manufacturing or industrial activity of an area, density of companies, unions and workers, and incidence of labour issues like wildcat strikes. The evaluation team was able to interact directly with two project owners which are implementing all three pilot projects.

E.1. Pilot Project 1: Innovative Ways to Organize

In Vietnam's law and practice, the employer has a prominent role of the employer in the establishment of a union at the enterprise level. The current Labour Code makes it a responsibility of the employer to create conditions that are conducive to the establishment of a union. The practice is that an upper level union initiates the establishment of a union at the enterprise level. However, it has to ask the permission of the employer first before it can do so. If the employer allows the organizer to come in, a union will thus be formed and a set of union officers, sometimes called the interim executive committee, will be constituted. The union officers are not elected by the members. They are designated by the upper level union with the consent of the employer. Very often, the union officers so designated are officers of the enterprise performing managerial functions (usually the personnel or human resources manager or director). They will be the ones to sign the collective bargaining agreement with the employer. The effect of this practice is to put control over the organizing and bargaining process on the employer. The enterprise union, thus, has little or no opportunity to develop or demonstrate genuine independence and autonomy. Consequently, the workers themselves have little or no participation or influence in crafting the union's own by-laws, in electing the union's officers from their own ranks, and in negotiating a collective bargaining agreement. A collateral issue that has emerged is that union officers – being employees of the enterprise and more often than not also managers thereof – are required to continue working and will not have time to devote to organizing and collective bargaining activities. The fact that they are also being paid by the employer has also raised issues as to their loyalty, i.e., their ability to serve the interest of the workers when they are in fact working for and being paid by the employer.

Accordingly, Pilot Project 1 is aimed at the specific outcome of preventing and reducing the control or influence of the employer in trade union activities, particularly at the organizing stage, while at the same time promoting real and effective participation of workers in the

process. This project is being piloted in three provinces with VGCL's provincial or industry federations as project owners. Specifically, these are being run by VGCL District 12 Trade Union – Ho Chi Minh City; Binh Duong IZ Union – Binh Duong Federation of Labour; and Hai Phong EZ Union – Hai Phong Federation of Labour.

The evaluation team visited the Binh Duong IZ Union pilot project and had an interaction with the representatives of the project owner, the Binh Duong Federation of Labour, as key informants. It was gathered that the strengths of the project derive from the high level of enthusiasm of the project owners themselves, their access to shared experiences from the ILO, and the financial support they are being provided with. It is noted that project implementers are given allowances from the Project funds to carry out their activities.

The key informants noted significant practical challenges and constraints in the project. The existing organizing model is premised on employer's consent before union organizing activities in the enterprise can begin. These activities will then be carried out within the enterprise. The main innovation in the pilot project is to use a new model whereby the upper level union initiates organizing activities without having to secure the permission of the employer. Organizing activities are then carried out outside the enterprise. In the use of this new model, the project owners have no experience to learn from, much less success stories they can use to encourage workers to join. Practical concerns have also emerged. It is difficult to organize workers as they live in different areas, cannot find extra time to attend organizing meetings, fear joining a union because of possible employer reprisal and traditional employer resistance particularly in small enterprises, or work for short periods only. Conduct of elections of officers, particularly with the view of introducing the concept of majority representation, is difficult because of the large size of enterprises. Further, the time for organizers to engage in actual organizing activity is sometimes diluted as they spend much of their time attending to disputes and wildcat strikes.

One interesting decision point, especially from the project owners and VGCL leadership, is this: Does the new organizing model mean doing away with the old model? From the point of view of international labour standards, the old and the new organizing models appear incompatible. Nevertheless, the key informants acknowledged that project owners are still using both models simultaneously. This means that in areas not covered by the pilot project, the main organizing model is still to go through the employer. The project owner emphasized that while the objective of the pilot project is clear, it still has to attain its targets of increasing the number of enterprises and workers organized as prescribed by VGCL. It was pointed out that the new model makes it very difficult to organize new enterprise level unions. Using the old model will enable the project owners to at least comply with the prescribed organizing targets. At some point in the future, union organizers will have to make a choice which model

to use. What is more doable in the short to the medium term is to have more pilot projects using the new model, a direction to which VGCL informants expressed their support. In the meantime, while the old and the new models are still being used, outcome and impact indicators distinct from the old model should be developed for the new model.

E.2. Pilot Project 2: Strengthening the Linkage Between Upper and Enterprise Level Unions

The objective of Pilot Project 2 is to improve the ability of the trade union to represent workers. The strategy is to improve the linkage between upper level trade unions and grassroots unions and workers and thereby lessen the representational gap between the trade union structure and the workers. The desired outcomes of this project are: strengthening the direct and pro-active support of upper level trade unions for enterprise level unions, mainly in the areas of organizing, consultation, collective bargaining, grievance and disputes settlement; and improving real and effective participation of enterprise level unions and workers in activities of the upper level trade union, including participation in executive committee and decision-making processes. This project is being implemented in five areas – Ho Chi Minh FOL (District 12 FOL); Binh Duong FOL through its organizing departments; Dong Nai FOL (Dong Nai IZ Union, Danang FOL, and Hai Phong FOL. Under Pilot Project 2, the evaluation team had the opportunity to interact with two of the project owners, the Binh Duong PFOL and the Danang PFOL. Both unions became participants to the Project upon decision and instruction of VGCL, which had previously issued policy directions and actions in terms of setting organizing targets, issuing of a resolution urging upper level unions to represent grassroots unions, and organizing workshops on the Project.

Pilot Projects 1 and 2 are complementary. The first seeks to clarify and rationalize the relationship between the enterprise and the collective workers in the enterprise as distinct and independent organizational entities. The second seeks to clarify and rationalize an intra-organizational relationship, i.e., that between two levels of unions, the upper level and the enterprise level. While both the Labour Code and TUL drafts allow for participation of workers in enterprise level collective bargaining (i.e., primarily through their inputs preparatory to bargaining), the direction of the current proposals is that a large degree of responsibility will be placed on the immediate upper level union in developing union membership and establishing the organization. This is evident from Article 18 of the TUL Draft, under which the upper level trade union is entitled to dispatch its union officers to units and enterprises for dissemination and advocacy on workers' participation in the establishment and operation of a trade union. The upper level trade union is also proposed to be vested with the right and responsibility to select trade union officers at agencies, organizations, units and enterprises, or to dispatch its union officers to agencies, organizations, units and enterprises after exchanging ideas with the employers. The direction of the proposals may be described as layered decentralization with a

strong element of centralized coordination (VGCL describes this as “democratic centralism”). It does not envision full autonomy of the enterprise union in a manner where the enterprise union is the principal, and the upper level union is the agent, for purposes of union governance and collective bargaining representation.

E.2.1. Binh Duong PFOL Project

With respect to the Binh Duong PFOL project, five enterprises were targeted. The under the criteria for selection of enterprises formulated in consultation with VGCL, the targeted enterprises included enterprises without CBAs and with less than 600 workers, or those areas with less than 200 workers. Of the five eventually selected:

- All had existing unions, three were directly organized by Binh Duong PFOL, and two were organized by a district level union getting directions from Binh Duong PFOL
- Two companies had CBAs signed prior to implementation of the pilot projects. Both had been involved in labor disputes
- All except one had more than 600 workers
- All expressed willingness to join the project
- All have leaders elected by workers in a Congress, with the employers’ consent
- One has a full-time union staff paid by the company
- Four have union leaders who are personnel managers

Apparently, the criteria for selection of pilot enterprises were not strictly followed at the implementation level. Among the five projects, none satisfied the criteria of less than 200 workers per area and only one enterprise had less than 600 workers. The ILO Project Office clarified that the criteria were not meant to be exclusionary, but more to serve as guidelines for the project owners in selecting pilot enterprises. For their part, the project owners pointed out that it was VGCL which prescribed the criteria. The project owners clarified that they choose the bigger companies to maximize impact and to help achieve membership targets which VGCL set. Some flexibility during project implementation may be desirable as this can encourage or even empower project owners to make ground level decisions. But in this project, the purpose of the criteria is to help organize smaller rather than bigger enterprises as a way of promoting multi-employer or industry bargaining. Modifying the criteria at implementation stage may have diluted the objective of the project. As already suggested under Section E.1 above, one approach to this issue is for the implementing parties and project owners to develop a set of key result areas or criteria for evaluating the success of the pilot project that is separate from the key results areas of VGCL as an entire organization.

Pilot project 2 was also supported by other activities, like a survey on benefits, wages, bonus and working time, and two training courses to disseminate regulations on CBAs. Some initial results of the Project were shared with the evaluation team:

- There was a process of consultation within the target enterprises to draft a CBA, with guidance and coordination from PFOL. The consultation process used questionnaires the format of which was suggested by the ILO Project Team through the TOR for the project. Distribution was limited to 200 workers as not all workers are literate.
- Among the five enterprises, no genuine grassroots leaders have emerged. Workers participated in Congresses to elect their leaders but the extent of participation was limited. Employers' consent was still part of the final selection process of union officers.
- A problem specifically mentioned, similar to that raised at the national level, is that grassroots leaders are ineffective because they are "seconded workers," i.e., they are trade union leaders and workers at the same time.

E.2.2. Danang PFOL Project

With respect to the Danang project, three companies were targeted, all with existing enterprise level unions affiliated with Danang PFOL. Majority of workers in the three target companies are women. Majority of identified grassroots leaders are also women (though two out of three chairpersons are men). The activities so far undertaken are the following:

- 30 key union members participated in capacity building training workshops on CBA negotiations. This is claimed to have resulted in:
 - Company-specific identification of issues
 - Increased number of grassroots members
 - Election of leaders by the workers (no longer designated with employer's consent)
 - Signing of "better" CBAs in two companies, while in the 3rd company a similar CBA is being negotiated. Better CBA means one that is not prepared by the Company, clarifies application of legal provisions and provides benefits in addition to legal provisions
- Conduct of surveys
 - No specific set of questions used though some questions suggested in the Project documents were asked
 - Documentation consists of compilation of issues and report to VGCL
 - Survey results for use of PFOL and VGCL, no plan to share with grassroots unions

The causal connection between capacity building activities and specific results as claimed by the project owners is indeed encouraging. More validation and continuous progress monitoring of the results is needed for the activity to become a case study that can illustrate a desired outcome and impact of the Project, particularly in the election of union leaders and negotiation of CBAs with terms and conditions of employment higher than those prescribed by law. With respect to the survey results, sharing and explaining these results with the workers at the enterprise level in addition to simply submitting these to VGCL will maximize the impact of the intervention as these will enhance the workers' understanding of the collective bargaining process.

According to the project owners, this project also underscored the need for a process of dispute resolution under which the enterprise level union first brings disputed matters directly to the employer for a negotiated solution. The dispute resolution process may or may not be a part of the CBA. If it is outside the CBA, this may be embodied in "coordination regulations" agreed upon by the employer and the union. What is important is to recognize the principle that parties should directly resolve their differences. In this regard, the project owners also provided the insight that they prefer inspection rather than conciliation, mediation or arbitration as a mode of dispute settlement as this is perceived to be more efficient and advantageous to workers than other modes.

The project owners acknowledged benefits from the Project. They also identified areas for further support, including capacity building for more grassroots members to improve representational capacity, and for leaders to sign CBAs; establishing information sharing and social dialogue mechanism with employers; and supporting trade unions in establishing mechanisms to deal with disputes. Asked about the sustainability of the activities in the event Project funds are no longer available, the project owners did not express any fallback plan for alternative sources of funding once donor support is exhausted.

E.3. Pilot Project 3: Feasibility Study on Multi-Employer Bargaining

Pilot Project 3 is a preliminary trade union study on the feasibility of and conditions for multi-employer bargaining. The project owner is Binh Duong IZ Union, which is directly working on the project with the ILO. Based on interviews conducted by the evaluation team in Binh Duong, the project owners clearly understand the practical importance and potential advantages of multi-employer bargaining. Multi-employer bargaining supplements and does not replace enterprise level bargaining and can be pursued where companies are located near each other such that developments in one company may affect nearby companies. Further,

multi-employer bargaining can also be a good venue where employers can get together and resolve common issues within their ranks.

Pilot Project 3 targetted companies in the garments and textile industries, consisting of 13 companies with about 36,000 of the 72,000 workers within the IZ, and where most of the disputes and wildcat strikes are. The project covers six of these 13 companies accounting for 25,000 workers. All six companies have CBAs. Survey activities are currently being completed. No preliminary results, however, were provided the evaluation team during the field mission. Although not specified in the Working Plan and Activity Timetable, the project owners plan to share the survey results with all garments and textile enterprises within the IZ by organizing a sharing workshop. The need to prevent or settle wildcat strikes and to propose the strategic groundwork for multi-employer bargaining will also be discussed in this workshop.

This early, the project owners have recognized two practical constraints in promoting multi-employer bargaining.

The first is representation. For the State, MoLISA and its district level counterpart (DoLISA) have virtually no presence at the IZ level. The Provincial Board of Management of Industrial Zones is the active government agency. Down the road, it may be constituted or authorized as the State functionary at the IZ level, although at this point it is not one of the Project's implementing parties and it is not yet clear whether it will be willing or prepared to be directly involved. The same problem is true for employers. VCCI does not have an organizational network at the IZ level. VCA has a wide network at the local levels, but these are mostly small enterprises. An alternative that can be explored, in consultation with both VCCI and VCA, is to invite business associations within the IZ to represent employers.

The second constraint to multi-employer bargaining is employer wariness. The project owners expressed concerns that employers may be reluctant to participate if they know that the objective is to formulate a multi-employer CBA. Thus, they are looking for a creative way to present this initiative in order to encourage employers to participate. From the evaluation team, one possible option is to couch the agreement as a social accord which sets guidelines on specific terms and conditions of employment that employers and workers will respect.

PART IV

CONSTRAINTS AND CHALLENGES

The Project has an encompassing and ambitious scope, aiming to deliver specific results within a very short period of time. It continues to build on previous IR projects to optimize use of resources, results and impact. The implementing agencies and project owners are highly enthusiastic and have high expectations from the Project. But there are also constraints and challenges ahead, some of which go beyond the sphere of the IR system.

A. Constraints

Constraints are pre-existing conditions and circumstances that hinder or tend to hinder the reform process. Constraints inevitably influence the pace and depth of reforms.

One key constraint acknowledged by MoLISA, CIRD and VCCI representatives are mindsets and old habits. As recognized in the Project Document, in Vietnam there is a duality of IR practices, a gap between law and practice. A particular issue which underscores the need for IR restructuring and modernization, and is also symptomatic of the inadequacy of the system, is the co-existence of a formal and informal IR systems under which unions have limited representational capacity and collective bargaining power. This is a system which IR players have tolerated and have grown accustomed to. With market forces at work and democratic impulses on the rise, tensions from this duality have surfaced. Overtly, this is manifested in the increasing incidence of wildcat strikes as the country experiences rapid growth in its industrial and manufacturing sector. Covertly, it can be seen in terms of unequal protection among workers within the formal sector (particularly the non-unionized and women). It is important for the Project to recognize this constraint as it is the first step in bringing about a meaningful equalization of workers' protection, which should be a major strategic outcome of IR reforms.

A second constraint is that Vietnam's existing IR system has really very little to start with when it comes to having a market-oriented IR system. The Deputy Minister of MoLISA who oversees the Project pointed out that Vietnam started from a low level of IR sophistication while undergoing the transition from a non-market to an emerging market economy. He also emphasized that Vietnam's system has unique and special features. Therefore, approaches and models that might have worked in other systems may not be automatically applicable to Vietnam. While he remained optimistic in attaining Project objectives, it should not be surprising if the pace of reforms will be slower than envisioned.

A third constraint is Vietnam's bureaucracy. The bureaucracy, including the labour dispute resolution machinery, is structured and organized to serve the current system. Even now, the

gaps in the system have become apparent. The bureaucracy's limited capacity to implement, coordinate, enforce laws, and administer the entire IR system is increasingly evident, again, in the high incidence of wildcat strikes.

A fourth constraint is Vietnam's trade union structure, which follows a unitarist trade union model that is coordinated by and governed from the top through VGCL in what a representative described as "democratic centralism." The VGCL has a unique place in the State apparatus. By Constitutional and legal mandate, it is the equivalent of a ministry, a socio-political organization whose role goes beyond the conventional role of unions as interest organizations, i. e., as representatives of their members. The concept of unionism as a socio-political organization is not the same as the concept of unionism as generally understood from the standpoint of international standards. Thus, facilitating the assimilation of IR reforms into the one-party political system and the unitarist trade union model will be particularly tricky. Strengthening workers representation by introducing the practices of effective grassroots participation, choice, contestation and decision-making at decentralized levels is a not a natural attribute of the current system.

Finally, efforts to strengthen trade unionism and collective bargaining will have to take into account the current state of unionism in Vietnam. According to one of the activities conducted under the Project, VGCL's survey on the establishment of local trade unions, VGCL has 6.619 million members, of whom 3.792 million are in SOEs and 2.826 million are in non-State enterprises, including foreign-invested companies. The members are distributed in 99,577 local trade unions, 74,149 unions of which are in the state sector (administrative and public agencies, state-owned enterprises) and 25,428 are in private and foreign-invested enterprises. From these numbers, it is obvious that the focus should be on non-State enterprises. As mentioned in Part III. D, there is the issue of whether labour laws should allow differential treatment between SOE workers and workers in non-State enterprises. This issue seems to assume significance in light of the fact that in recent years, wildcat strikes have occurred almost exclusively in foreign-invested enterprises and private domestic enterprises with very limited union penetration and CBA coverage, while in SOEs where union penetration and CBA coverage is much higher, it has been a virtually strike-free situation.

B. Challenges

Building on its achievements so far, the Project is faced with several critical challenges moving forward.

One, the sheer scope and breadth of the revisions demand a complex process of policy harmonisation. This harmonisation should take place simultaneously in at least four levels. The first level is internal coherence and consistency of various proposed revisions, i. e.,

harmonisation of all proposed revisions with each other, specifically the revisions on trade union laws and those pertaining to representation and collective bargaining. The second level is harmonisation of the revisions with international labour standards, which is obligatory with respect to ILO Conventions ratified by Vietnam. The third level is harmonisation of proposed revisions on unionism, representation and collective bargaining with Vietnam's current trade union structure. And the fourth level is harmonisation of labour laws with economic objectives to achieve a balance between workers' protection and market institutions. The tripartite technical workshops, and to a lesser extent the pilot projects, are venues for this policy harmonisation to take place.

To support this process, there is a need to foster a greater common understanding of the directions, implications and objectives of reforms. Understanding of the objectives of reforms is high among implementing parties and project owners at the national level. But it is much lower at the provincial, district and grassroots level, where the project owners have limited initial capacity to perform their roles, tend to be dependent on instructions from higher levels, and sometimes focus only on what the tasks are but not necessarily why these are being done. At both national and lower levels, the implementing parties and project owners have a learning curve. The tripartite consultative meetings and workshops under the Project have given the parties a forum in which they can share experiences, work together, thresh out differences, and arrive at consensus. Sustained conduct, participation and engagement in similar activities can promote more mature understanding of the policy objectives behind the reforms.

Another challenge is how to improve and transform the capacity of existing structures and institutions to adapt to and manage changes. In this regard, upgrading of labour administration and enforcement mechanisms should run parallel with on-going activities and revision of laws.

Further, attaining at least some of the Project objectives within the Project duration is important. The reforms envisioned are undoubtedly profound and far-reaching and time is essential to thoroughly study all aspects of the reforms. Yet, many expectations have been raised by the Project. Inability of the social partners and implementing parties to meet their timelines may weaken their legitimacy and credibility, and can negate the momentum for reform that the initial activities under the Project have generated.

Finally, the reforms should be sustainable. There is a need to broaden the base of participation and engagement. So far, support for the reform process is strong at the national level. But the evaluation team found no basis to conclude that this kind of support has trickled down to a wider base, except through the pilot projects which localize certain activities by involving lower level unions. While VGCL has expressed the view that there should be more pilot projects, even in the areas where the pilot projects are being implemented progress has been slow. It is also worth mentioning that the evaluation team also found no basis to conclude

that the grassroots or enterprise levels are manifesting a demand for the kind of change that the higher levels of the social partnership envision. Sustainability also means dealing with the practical problem of resources. In what is described as “in-kind contributions”, the implementing parties and project owners have committed their human resources to the Project, dedicating a significant number of key staff to implement activities, undertake researches and studies, and provide inputs to labour law revisions. It is noted, however, that all the activities and outputs of the implementing parties are dependent on the Project budget. There is a need to explore ways to source the budget for activities that are needed once the Project is terminated. On the other hand, one must be cautious about State subsidies in sustaining the participation of the social partners as this does not promote autonomy and independence of parties.

PART V

LESSONS LEARNED, CONCLUSIONS AND RECOMMENDATIONS

A. Lessons Learned

At this stage of implementation, the Project offers a number of experiences and lessons to learn from. In addition to what can be inferred from the earlier parts of this Report, the following can be emphasized.

First, the Project partners’ effective involvement and participation in the full Project cycle from conceptualization to implementation have created among themselves a sense of common ownership, goodwill and confidence. This has helped the Project gain legitimacy and momentum, and has placed it in a considerably more favorable position to attain its objectives.

Second, capacity building at individual and institutional levels, whether through information sharing, trainings, seminars, workshops or actual participation in consultative processes, is indispensable in getting Project partners to engage meaningfully in the process of reforms. A continuing program to build capacity at national and provincial, industry, zone and enterprise levels can lead to a greater understanding of the reforms and can facilitate their implementation.

Third, social dialogue and tripartism remain to be effective mechanisms to mediate differences and to open avenues for consensus. In the Project, the incentive for Project partners to participate in social dialogue and tripartism appears to have been the opportunity to present their positions and have these considered as critical inputs to the reform process.

Fourth, no change process starts from a blank table. Particularly in Vietnam, pre-existing conditions internal and external to the IR system will affect the pace, quality and depth of reforms. In this regard, Project partners must remain both patient and realistic in their efforts to attain defined goals and objectives. Change agents should also remain sensitive to the nuances of Vietnam's history and culture in order to win and sustain political support.

Fifth, efficient management, planning, organization and coordination are indispensable in bringing about outputs and results. The Project embarked to complete many activities within a very short period of time. But dispersing and decentralizing the accountability for certain activities and outputs enabled the Project to maximize outputs and to optimize the contributions of internal experts.

B. Conclusions

In light of the discussions above, the following conclusions can be drawn:

- The Project logic is well-conceptualized, is sensitive to the needs, problems and requirements of the the social partners, and is relevant and necessary in modernizing Vietnam's IR system. The Project also supports the country's broader development goals. It is consistent with the UNDAF Framework and reinforces the previous and ongoing interventions of the ILO in Vietnam. Special mention should be made of the fact that the Project, from conceptualization to implementation, seeks to operationalize the ILO core principles of democratic participation, inclusiveness of representation, social dialogue, tripartism and consensus-building.
- The Project has a broad, comprehensive and ambitious scope that is fully supported and owned by Vietnam's social partners and other IR stakeholders. Commitment of Project partners is high as evidenced by their level of participation in all of the Project's activities.
- The Project is capable of measurement, monitoring and evaluation. It is systematically designed and organized in a way that seeks to optimize the use and deployment of resources, prevent duplication of outputs, and contain costs. Under its Working Plan and Activity Timetable, the Project has clear objectives and outputs to be attained within specified timelines. It also identifies the parties responsible for particular results.
- Management arrangements for and Donor support to the Project, in terms of financial resources and provision of expert technical advice and other forms of assistance, are deemed adequate.
- Management capacity of the implementing parties and project owners, the national level counterparts and focal persons is also deemed adequate. The implementing

parties and project owners are represented by the highest-ranking or most technically-equipped officers and staff of their respective organizations. Their capacity to manage was evident in the level of coordination they undertook within their respective agencies and sectors as well as in the delivery of outputs. With respect to provincial, district and zone level project owners, there was some level of guidance and handholding that was necessary (mostly embedded in the applicable TORs). But apart from this, their capacity to manage the projects assigned to them, given their initial inexperience, was more than acceptable. What might be useful for all implementing parties and project owners is to continue building their management capacities to apply policies, integrate issues and solve specific problems.

- The ILO Project Office ensured open and effective communication and immediate feedback between and among the ILO and the implementing parties and project owners who expressed satisfaction on the conceptualization and conduct of the Project as a whole. Technical inputs were made available when needed, and project funds were delivered in a timely and accountable manner, strictly in accordance with the schedule of funding embodied in the applicable TORs.
- Based on the Working Plan and Activity Timetable, the project owners have generally completed the primary and second level outputs within the timelines and within approved budgets, and in accordance with the parameters of the individual TORs for specific activities. A major output that has not been completed, though, is the final draft of the proposed amendments to the provisions of the Labour Code on representation, collective bargaining and dispute settlement. As a result, the realization of the desired outcome to have, by the end of the Project, a revised TUL and Labour Code approved by the NA that is compatible with international labour standards and to have modernized IR services have been set back.
- Based on completed outputs, the performance of the Project is mixed. Primary or first level outputs, and some second level outputs, were completed on time. Major final outputs, particularly the final draft of the proposed revisions to the Labour Code, are behind schedule. It is highly unlikely that the Project will fully attain all its major final outputs, and consequently its three intermediate objectives, within the duration of the Project. In view of this, for its objectives to be pursued, the Project Document will have to be recognized as a rolling plan for IR reforms to be carried over beyond the Project's actual duration.
- One of the objectives of the Project – to strengthen representational capacity at the grassroots and make effective collective bargaining widespread – will not be achieved within the duration of the Project. Realistically, this will be dependent on the outcome

of the labour law revisions whose effect and impact will require a longer gestation period.

- Factors intrinsic to the Project contributed to the setting back of timelines, such as the sheer breadth, magnitude and complexity of the Project and the limited technical and absorptive capacity of the implementing parties and project owners especially at Project inception, and the uniqueness of Vietnam's trade union structure. External factors that posed challenges to the attainment of Project objectives include pre-existing conditions at the macro level, such as the composition and literacy levels of the labour market, the spatial distribution of industries, priorities of the Government in equally important areas, and possibly the political changes brought about by the parliamentary elections in May.
- The conduct of the researches, surveys and studies are absolutely necessary to ensure that the Project's major final outputs are technically supported. Under the Project, these activities were treated as special projects, for which service contracts were entered into between the ILO Project Office and the respective project owners. Budget requirements for the various outputs were also provided by the Project. Looking forward, the social partners, and more particularly MoLISA as the national authority in charge of labour, will have to make these activities as part of its regular activities under labour administration. To sustain this, it must anticipate provision of the appropriate budget from national sources, and at the same time start planning on how to adapt its structure to equip it with the capacity for increasingly expanded and more complex tasks of labour administration. Upgrading organizational and human resource capacity, in particular through technical training, setting up of a labor market information system that includes key IR indicators, strengthening of labour administration particularly the labour dispute settlement machinery and labour standards enforcement, will be critical moving forward.
- While the Project has clear output indicators, specific outcome indicators apart from the Project's three intermediate objectives are still lacking and need to be developed. The same holds true for impact indicators. In formulating these indicators, emphasis will have to be made on measuring the inclusiveness of the reforms on the labour force as a whole, and in particular on the impact of interventions on women.
- The process observed in formulating the Project Document and in crafting the implementation mechanics of the Project through the Working Plan and Activity Timetable can be documented as a good practice. There are activities which have the potentials of becoming good practices as well, such as the three pilot projects, but more concrete outcomes are needed before these can be considered as such.

- An element of uncertainty still exists with respect to the outcome of the revisions of the TUL and the Labour Code. On the other hand, there is also uncertainty on the sustainability of the reform process beyond the duration of the Project.

C. Recommendations

Based on the key findings, lessons learned and conclusions, Project objectives remain valid and attainable. Toward this end, the following are recommended:

- Continue to support and enhance the labour law revision process, particularly in terms of technical assistance especially on identified contentious issues. Ensure harmonization of all completed proposals for labour law amendments.
- Continue support to and extend the base of capacity building activities to complement the reforms.
- Review and where necessary, recalibrate the Working Plan and Activity Timetable to improve Project focus. Determine which activities need to be continued, discontinued or started.
- Institutionalize a tripartite performance monitoring for the Project. Shift measurement of progress from output-based to outcome-based system. Finetune output indicators and devise outcome and impact indicators through a tripartite process.
- Through a tripartite process, devise a post-Project long-term Master Plan to sustain the reforms.

These recommendations, the details of which are discussed below, are addressed to all the main clients of the evaluation especially the Donor, the ILO, the Project partners and the implementing parties and project owners.

C.1. Continue to Support and Enhance the Labour Law Revisions

The output documents are in the nature of position, information or issues papers covering a wide spectrum of issues and reflecting the positions and priorities of the social partners and project owners. These represent a rich trove of insights and inputs which are useful in informing decisions and policy choices. There are issues and positions common to the project owners, but there are also those that are separate or conflicting and therefore need to be consolidated, integrated and harmonized. Further, options, alternatives and joint recommendations need to be generated to address unresolved or conflicting issues or positions. Toward this end, and to enhance the process and substance of labour law revisions, additional activities and outputs may be considered, as follows:

- Organize a review meeting of the Labour Code Drafting Committee, with assistance from ILO experts, to ensure consistency between the latest drafts of the TUL and the Labour Code with relevant international labour standards.
- Organize a high-level tripartite workshop to generate options, alternatives and policy recommendations on unresolved or contentious issues to be submitted to the Drafting Committee for inclusion in the draft Labour Code, particularly in the following areas:
 - Consider employee classifications between managers and rank and file workers for purposes of collective bargaining representation. This will resolve the issue of eligibility or propriety of having managers designated as union officers.
 - Consider prescribing strike procedures on how strikes may be resolved. To address the problem of “strike first, negotiate later” which has led to the high incidence of wildcat strikes, a policy design of making negotiation more convenient and efficient than going on strike is recommended.
 - Clarify conceptual and definitional issues on basic terms like “worker”, “sub-leasing” (based on the translated draft, sub-leasing appears to be more of a recruitment service rather than a trilateral employment relationship) and dispatch workers (this can impact on the scope of bargaining representation), employment relationship especially as it applies to cooperatives, “multi-employer bargaining”, “industry bargaining”, and selection of employer representatives, among many others.
 - Resolve issues that have policy implications like exemption of small and medium enterprises from certain provisions of the labour laws, whether there would be a valid basis for differential treatment between SOE and FDI workers for purposes of applying the labour laws, and provision of specific procedures for multi-employer or industry representation and bargaining.
- Consider expanding the scope of first priority amendments to include Intermediate Objective No. 3, which is to strengthen the provision of IR services in case negotiations fail and thereby result in a strike.
 - Reconcile the social partners’ divergent views on inspection, conciliation, mediation and arbitration as modes of dispute settlement.
 - To complement the study on strikes, consider a pilot project on dispute settlement involving the dispatch of appropriately-trained quick action teams to resolve wildcat strikes in selected industries or enterprises.
- Organize a policy harmonization Summit to involve the social partners and the NA to consider the proposed revisions as well as the options, alternatives and

recommendations on unresolved or conflicting issues or positions prepared by the Drafting Committee.

- Devise a module and tool kit on the objective, substance and content of reforms for dissemination to stakeholders.
- Conduct a study on the policy, functional and administrative coordination and interface between and among State agencies at the national, provincial, district, zone and local levels with a view toward delineating their respective responsibilities, authority and jurisdiction. In the process, affirm the role of MoLISA as the overall national authority in charge of labour administration to ensure consistent implementation of IR policies and labour laws.

C.2. Continue with Capacity Building to Support Reforms

To support the reforms, capacity building should continue. So far, the Project has targeted key players from among the social partners with competency enhancement interventions. This has enabled participants to acquire greater understanding and higher level of sophistication on IR matters. But further actions on capacity building are recommended:

- Cascade capacity building interventions to the provincial, district, zone and grassroots levels. Through the social partners:
 - Develop appropriate labor and employer education program for the grassroots.
 - Develop trainers' training modules, supported by simplified information and education materials.
 - Disseminate the revisions to stakeholders after laws shall have been revised.
- Widen the scope of capacity building interventions from enhancing individual skills, knowledge and competencies to institutional capacity building.
 - Develop a capacity assessment tool which MoLISA and the other social partners may use, to self-diagnose their institutional needs, especially in the context of an amended TUL and Labour Code.
 - Continue to provide MoLISA and DoLISA staff with opportunities for retooling to anticipate expanded roles and responsibilities under a revised TUL and Labour Code.
 - Formulate and implement an organizational development intervention to anticipate adjustments in the labour administration structure. Continue to support MoLISA in terms of developing policies, systems and procedures to beef up its labour administration capacity.

- Through a tripartite process, develop a publicly-shared IR database linked with the larger database on labour market indicators to promote fact-based and statistics-based decision and policy making.

C.3. Review Targets, Institutionalize Performance Measures

At this stage of the Project, it is highly recommended for the ILO Project Team and the social partners to revisit the approved Working Plan and Activity Timetable. The recommended further actions are:

- Review and where appropriate revise the Working Plan and Activity Timetable
 - Determine if there are activities and expected outputs that need to be continued, integrated, collapsed or stopped in order to promote efficiency and cost-effectiveness.
 - Validate priorities and determine the need for adjustments or realignments of timelines.
 - Identify the potential risks if the Project’s major final outputs are not delivered on time, and come up with a plan to mitigate and manage these risks.
- Institutionalize a tripartite performance monitoring system for the Project and beyond
 - Shift measurement of progress from output-based to outcome-based approach. Finetune output indicators and devise outcome and impact indicators.
 - Consider standardized measures of IR outcomes and impacts (i.e., ease in organizing (reduction of time needed to organize a union); number of unions and union members and percentage membership/increase in percentages over time; number of CBAs and percentage coverage to total organizable labour force/increase in percentages of coverage over time/increase in number of “better” CBAs over time; number of strikes or disputes and percentages resolved through established IR procedures or mechanisms/accessibility of workers and employers to dispute settlement mechanisms/reduction in the incidence of strikes/reduction in the number of workers involved in strikes/reduction in human hours lost/reduction in period to resolve strikes, among others).
 - Consider devising objective quality measures to complement the output indicators which are mainly timeliness (i.e., the output was delivered on or before the specified time) and efficiency (i.e., the output was delivered within budget). For the Labour Code revisions, this could include extent of actual implementation of the law (measured in terms of compliance or non-compliance) and consistency with

international labour standards (i.e., no observations of non-confirmity from international supervisory bodies).

C.4. Adopt a Long-Term Master Plan to Sustain Reforms

As it winds down, the Project needs to build upon the reforms previously introduced or implemented. Interventions to fully attain the intermediate and long-term objectives of the Project must continue. Accordingly, there is a need to formulate a post-Project long-term Master Plan, ideally covering a five-year period, to continue and sustain the reforms. Building on all the recommendations, the Master Plan should:

- Adopt a reasonable time-bound strategy with identified milestones to attain intermediate and long-term objectives, taking into account the demonstrated absorptive capacity of the social partners to implement reforms.
- Consider restructuring of the labour administration machinery to cope with expanded role and responsibility as a result of labour law revision. Labour dispute settlement structure should be a key component of the restructuring.
- Adopt continuous and responsive capacity building program, including labour and employer education interventions. Develop appropriate education, information and communication materials and tool kits for this purpose.
- Strengthen the provision of support services, particularly in research and information system on key labour market and IR indicators and statistics. Institutionalize reporting system for the social partners and develop survey instruments to ensure gathering of reliable data and information.
- Source, allocate and mobilize resources for the Master Plan, progressively tapping internal resources and reducing dependence on Donor resources.
- Communicate effectively the reforms and IR services to concerned constituents. Document success stories, best practices and projects with clear demonstration effects. Account for the progress and accomplishments of the reform process through the release of regular status reports.

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LIST OF KEY INFORMANTS

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