



VIETNAM

co-authored:
Hao Duy Phan

BASELINE REPORT: VIETNAM*

SNAPSHOT BOX

Number of Multinational Business Enterprises operating in the country	There is no official information on the number of multinational business enterprises in Vietnam in 2012. In 2009, the number of foreign invested enterprises in Vietnam was 5,625. ¹ As of October 2012, there are 14,198 foreign invested projects. ²
Number of Micro, Small and Medium Business Enterprises operating in the country	More than 500,000 small and medium business enterprises in total. ³
Number of State-owned Enterprises and the industries in which they operate	3,328. ⁴
Flow of Foreign Direct Investment from 2008 to 2012 (or other recent 3 to 5 year range)	<p>2008 – Number of projects: 1,557; total registered capital (Mill. USD): 71,726; total implemented capital (Mill. USD): 11,500.</p> <p>2009 – Number of projects: 1,208; total registered capital (Mill. USD): 23,107; total implemented capital (Mill. USD): 10,000.</p> <p>2010 – Number of projects: 1,237; total registered capital (Mill. USD): 19,886; total implemented capital (Mill. USD): 11,000.</p> <p>2011 – Number of projects: 1,186; total registered capital (Mill. USD): 15,598; total implemented capital (Mill. USD): 11,000.⁵</p>
Main industries in the country	Food processing, garments, mining, coal, steel, cement, oil, chemical fertilizers, shoes, machine-building, glass, tires, oil, mobile phones. ⁶

* The author is a Research Fellow at Centre for International Law, National University of Singapore. The views expressed in this Report do not necessarily reflect those of the Centre for International Law or any of his affiliations.

1 General Statistics Office of Vietnam, *Enterprises in Vietnam during the first Nine Years of the 21st Century*, Statistical Publishing House, 2010, 9, available at www.gso.gov.vn/Modules/Doc_Download.aspx?DocID=11470, (last visited 11 November 2012).

2 See Vietnam Government News, “Doanh nghiệp nhỏ và vừa: bước tiến lớn”, available at <http://fia.mpi.gov.vn/News.aspx?ctl=newsdetail&p=2.44&aID=1276>, (last visited 11 November 2012).

3 Number estimated by the Government in 2011. See Vietnam Government News, “Doanh nghiệp nhỏ và vừa: bước tiến lớn”, available at <http://baodientu.chinhphu.vn/Home/Doanh-nghiep-nho-va-vua-buoc-tien-lon/2011/58354.vgp>, (last visited 11 November 2012).

4 Number estimated in 2009, according to General Statistics Office of Vietnam, *Enterprises in Vietnam during the first Nine Years of the 21st Century*, Statistical Publishing House, 2010, 9, available at www.gso.gov.vn/Modules/Doc_Download.aspx?DocID=11470, (last visited 11 November 2012). In 2000, the number of state-owned enterprises was 5759. The number of private enterprises in 2009 was 196,799.

5 General Statistics Office of Vietnam, *Foreign Direct Investment Projects licensed in Period 1988-2011*, available at http://www.gso.gov.vn/default_en.aspx?tabid=471&idmid=3&ItemID=13121, (last visited 11 November 2012).

6 Central Intelligence Agency, *The World Factbook – Vietnam*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/vm.html>, (last visited 11 November 2012).

<p>Number and type of cases involving business-related human rights violations reported to (i) NHRIs, (ii) other national human rights bodies (e.g. ombudsmen), and/or (iii) international human rights bodies</p>	<p>There is no information on cases involving business-related human rights violations that have been reported to a national human rights institution or any other national and international bodies. In fact, no national human rights institutions or bodies, including ombudsmen, has been established in Vietnam. Vietnam has not accepted individual complaints mechanisms provided for under any international human rights treaties that it has ratified.⁷ The Universal Periodic Review of Vietnam, conducted in 2009 did not reveal human rights violations involving business activities.⁸</p>
<p>Have the Framework and/or the Guiding Principles been translated into the country's languages and published in the country?</p>	<p>Not yet. There is currently no known plan to translate the Framework and the Guiding Principles and publish these documents on official websites in Vietnam.</p>

OVERVIEW OF THE COUNTRY'S BUSINESS AND HUMAN RIGHTS LANDSCAPE

Vietnam is a one-party state ruled by the Communist Party. The Party leadership is mandated by the country's Constitution.⁹ The 1992 Constitution (amended in 2001) provides legal bases for the protection of basic political, civil, economic, cultural and social rights¹⁰ and, at the same time, requires the entire people to participate in defending the socialist motherland¹¹ and safeguard national security and social order.¹² All acts violating the interests of the people shall be severely punished.¹³ The state's goal is to build a rich and strong country in which social justice prevails, and people enjoy freedom, happiness, and all necessary conditions for complete development.¹⁴ In terms of economic policy, the state promotes a multi-component commodity economy functioning in accordance with market mechanisms under the state management and following a socialist orientation.¹⁵

7 For status of ratification of international human rights treaties, see UN Treaty Collection, Status of Treaties, Chapter IV, Human Rights, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, (last visited 11 November 2012).

8 See UN Human Rights Council, National Report Submitted Universal Periodic Review: Vietnam, Document A/HRC/WG.6/5/VNM/1 dated 16 February 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf, (last visited 11 November 2012).

9 The 1992 Constitution of the Socialist Republic of Vietnam as amended in 2001 [hereinafter 1992 Constitution (amended in 2001)], Article 4. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10450, (last visited 11 November 2012).

10 Ibid., Article 50

11 Ibid., Article 44

12 Ibid., Article 3

13 Ibid.

14 Ibid.

15 Ibid., Article 15.

Since the reform policy (known in Vietnamese as *Doi Moi*) launched in 1986, Vietnam has reached a turning point in economic growth. People's living standards have remarkably improved. One of the country's most outstanding achievements is its success in poverty reduction, which is recognized by the World Bank and many other international institutions. In fact, Vietnam has been listed as the eighth most popular destination for transnational corporations' foreign direct investment in 2010-2012.¹⁶ The country, however, has also faced many economic and social problems, notably the rich-poor gap, urban-rural disparity, environmental issues, land rights violations and labour rights problems.¹⁷ One of the biggest challenges facing Vietnam is to strike a balance between increasing economic growth and ensuring sustainable development, social security and the people's full enjoyment of human rights.

As indicated in this Report, the Government of Vietnam has made many efforts to address these challenges. In terms of legal framework, it has promulgated and amended thousands of laws and by-law documents,¹⁸ many of which contain provisions on protecting human rights against possible abuses by business activities. Relevant legal documents which have been adopted in recent years, shortly before and after the Human Rights Council's adoption of the "Protect, Respect and Remedy" Framework in 2008, include the 2012 Labour Code, 2012 Water Resources Law, 2012 Legal Education Law, 2012 Labour Union Law, 2011 Law against Human Trafficking, 2011 Complaint Law, 2011 Denunciation Law, 2010 Law on Persons with Disability, 2010 Customers Protection Law, 2010 Law on Adoption, 2010 Law on Economic and Sufficient Use of Energy, 2010 Law on Food Safety, 2009 Law on Elderly People, 2009 Law on Medical Examination and Treatment, 2009 Law on State Compensation Liability, 2008 Biodiversity Law, 2008 Law on Health Insurance, 2008 Law on Promulgation of Legal Documents, 2006 Gender Equality Law, 2006 Law on Legal Assistance, 2006 Securities Law, 2006 Law on Social Insurance, 2006 HIV-counteracting Law, 2005 Investment Law, 2005 Enterprise Law and 2005 Environment Protection Law (the content of these legal documents shall be addressed later in the Report).¹⁹

¹⁶ Allens, Legal Guide to Investment in Vietnam, 2012, 3, available at <http://www.vietnamlaws.com/pdf/LegalGuidetoInvestmentinVietNam.pdf>, (last visited 11 November 2012)

¹⁷ See Earth Rights International Mekong School, I Want to Eat Fish, I Cannot Eat Electricity: Public Participation in the Mekong Basin River for discussion on the impact of the hydropower projects developed by the government on the indigenous community, the possible erosion of their culture, and problems of relocation and livelihood, available at <https://www.earthrights.org/sites/default/files/publications/I-Want-To-Eat-Fish.pdf>, (last visited 11 November 2012); see Human Rights Watch, The Rehab Archipelago Report 2011 for concerns raised by NGOs over the use of forced labour from detention centres by businesses in the cashew industry. This report gives a good overview of the problems in this area in Vietnam; for concerns expressed by other states on Vietnam human rights records, see UN Human Rights Council, the Report of the Working Group on Universal Periodic Review: Vietnam, Document A/HRC/12/11* dated 5 October 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf?OpenElement>, (last visited 11 November 2012)

¹⁸ According to the Report of the Vietnamese government to the Human Rights Council under the Universal Periodic Review, since 1986, Vietnam has promulgated and amended around 13,000 laws and by-law documents in which rights are protected. These rights are present throughout the chapters and sections of the Constitution and are enumerated in many important legal documents, including the Law on the Organization of the National Assembly, Law on the Election of National Assembly Deputies, Law on the Organization of the Government, Law on the Election of the People's Council Members, the Law on the Organization of the People's Councils and People's Committees, Law on the Organization of the People's Court, Law on the Organization of the People's Procuracy, the Civil Code, Civil Procedures Code, Penal Code, Criminal Procedures Code, the Press Law, Law on Publication, Law on Complaints and Petitions, Law on Amnesty and the Ordinance on Religion and Belief, Law on Protection of the People's Health, Labour Code, Education Law, Land Law, Law on Social Insurance and Law on HIV/AIDS Prevention and Control; see UN Human Rights Council, National Report Submitted Universal Periodic Review: Vietnam, Document A/HRC/WG.6/5/VNM/1 dated 16 February 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf, (last visited 11 November 2012).

¹⁹ For a comprehensive list of Vietnamese legal documents (in Vietnamese, visit: <http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban>, (last visited 11 November 2012).

The 1992 Constitution (amended in 2001) provides that business enterprises belonging to all components of the economy are all equal before the law and must fulfil all their obligations to the state.²⁰ Business enterprises that violate the laws shall bear civil and administrative liability. Individuals who commit crimes shall be held criminally liable. In 2012, the National Assembly adopted the new Labour Code, mentioning for the first time in an important legal document the term “social responsibility of employers.” Article 4(2) of the 2012 Labour Code states that it is the State’s policy to ensure the legitimate rights and benefits of employers, but at the same time also ensure democracy, fair and civilized labour management and employers’ social responsibility.²¹

At the international level, Vietnam is a party to the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; and Convention on the Rights of the Child.²² The country has also ratified 19 conventions of the International Labor Organization, including C006 - Night Work of Young Persons (Industry) Convention, 1919; C014 - Weekly Rest (Industry) Convention, 1921; C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929; C045 - Underground Work (Women) Convention, 1935; C080 - Final Articles Revision Convention, 1946; C116 - Final Articles Revision Convention, 1961; C120 - Hygiene (Commerce and Offices) Convention, 1964; C123 - Minimum Age (Underground Work) Convention, 1965; C124 - Medical Examination of Young Persons (Underground Work) Convention, 1965; and C155 - Occupational Safety and Health Convention, 1981.²³ In addition, Vietnam has signed a Cooperation Framework on Promoting Decent Work with ILO. In 2011, it received three independent experts of the UN Human Rights Council who have mandates related to issues of implication for business activities on human rights: Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of Human Rights, particularly Economic, Social and Cultural Rights,²⁴ Independent Expert on the Question of Human Rights and Extreme Poverty,²⁵ and Independent Expert on Minority Issues.²⁶

In terms of treaty implementation, the 2005 Law on the Conclusion, Accession and Implementation of Treaties reiterates the principle of *pacta sunt servanda*²⁷ and emphasizes that, in cases where a legal document of Vietnam and a treaty to which Vietnam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail.

20 1992 Constitution (amended in 2001), Article 3

21 2012 Labour Code, Article 4(2), available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=163542, (last visited 11 November 2012).

22 For status of ratification of international human rights treaties, see UN Treaty Collection, Status of Treaties, Chapter IV, Human Rights, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, (last visited 11 November 2012).

23 International Labour Organization, Ratifications of ILO Conventions: Vietnam, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:1906111866322950:::P11200_INSTRUMENT_SORT:1, (last visited 11 November 2012).

24 Human Rights Council, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights - Preliminary note on mission to Vietnam, A/HRC/17/37/Add.2, dated 18 May 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/132/44/PDF/G1113244.pdf?OpenElement>, (last visited 11 November 2012).

25 Human Rights Council, Report of the Independent Expert on Question of Human Rights and Extreme Poverty, A/HRC/17/34/Add.1, dated 9 May 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/131/12/PDF/G1113112.pdf?OpenElement>, (last visited 11 November 2012).

26 Human Rights Council, Report of the Independent Expert on Minority Issues, A/HRC/16/45/Add.2, dated 24 January 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/103/82/PDF/G1110382.pdf?OpenElement>, (last visited 11 November 2012).

27 2005 Law on the Conclusion, Accession and Implementation of Treaties, Article 3(6), English translated version is available at http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5509, (last visited 11 November 2012).

The promulgation of legal documents must ensure that they shall not obstruct the implementation of treaties which contain provisions on the same matter and to which the Vietnam is a party.²⁸ The Law also opens up the possibility of direct application of treaties in Vietnam by stipulating that on the basis of the requirements, contents and nature of a treaty, relevant authorities, when deciding to consent to be bound by the treaty, shall also decide on the direct application of the whole or part of the treaty to agencies, organizations and/or individuals in case the provisions of the treaty are explicit and specific enough for implementation.²⁹

Many initiatives and activities on corporate social responsibility are being carried out nationwide by state agencies, international organizations, non-governmental organizations and the business community. Notably, the Office of Business for Sustainable Development under the Vietnam Chamber of Commerce and Industry (VCCI), the Ministry of Labour, Invalids and Social Affairs, the Ministry of Planning and Investment, the Ministry of Industry and Trade, the Ministry of Natural resources and Environment, the Vietnam General Confederation of Labour, the Bureau of Environmental Police, and its international partner organizations have organized the annual national Corporate Social Responsibility Awards. Five Annual Awards have been granted so far with the fifth Awards being presented in August 2012.³⁰ In 2007, the United Nations, in partnership with the Vietnam Chamber of Commerce and Industry (VCCI), launched the Global Compact Network Vietnam (GCNV), aiming to support the business community in implementing effective corporate social responsibility plans, programs and initiatives and to promote responsible business practices in the country. Their four main pillars are defending human rights, improving labour conditions, protecting the environment, and supporting anti-corruption. As part of their job, GCNV has worked to identify, anticipate and diffuse the tensions between business and communities, business and the environment, business and the government, and business and the consumer, contributing to sustainable businesses.³¹

The landscape is, however, far from being perfect. Even recognized by the government, the Vietnamese legal system still contains inconsistencies and overlapping and conflicting laws at several points.³² As demonstrated later in the Report, law enforcement is a big challenge. Abuses of rights still occur. Corruption is still serious. Coordination between the central and the local levels is not always smooth. Awareness of law and treaties to protect human rights are still limited among public servants and the populace.³³ The “Protect, Respect and Remedy” Framework and the Guiding Principles on Business and Human Rights have not been translated into Vietnamese. The government has not made any specific references to the Framework and the Guiding Principles. No national human rights institution has been established. Official capacity still needs to be strengthened. Much needs to be done to realize the state’s goal, mentioned in the 1992 Constitution, to build a rich and strong country in which social justice prevails, and people enjoy freedoms, happiness, and all necessary conditions for complete development.

28 2005 Law on the Conclusion, Accession and Implementation of Treaties, Article 6(1), (2), English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5509, (last visited 11 November 2012).

29 Ibid., Article 6(3).

30 See “Hội thảo công bố tiêu chí và phát động giải thưởng” <http://www.globalcompactvietnam.org/detail.asp?id=140>, (last visited 11 November 2012).

31 For more information about the Global Compact Network Vietnam and the job it has done, visit <http://www.globalcompactvietnam.org>, (last visited 11 November 2012).

32 UN Human Rights Council, National Report Submitted Universal Periodic Review: Vietnam, Document A/HRC/WG.6/5/VNM/1 dated 16 February 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf, (last visited 11 November 2012).

33 Ibid.

TYPES OF BUSINESS ENTERPRISES IN THE COUNTRY

Name of the Type of Business Enterprise <i>E.g. company, partnership, business trust etc.</i>	Description of the Legal structure of the Type of Business Enterprise	Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?	Any legislation specifically applicable to the Type of Business Enterprise <i>(E.g. Corporations Law)</i>	Laws which the Type of Business Enterprise are expressly excluded from
Limited liability companies with two or more members	<ul style="list-style-type: none"> - Members may be organizations and/or individuals. - The total number of members shall not exceed fifty.³⁴ 	<ul style="list-style-type: none"> - 2005 Enterprise Law³⁵ - 2005 Investment Law³⁶ - 2005 Environment Protection Law³⁷ 	2005 Enterprise Law ³⁸	None

³⁴ 2005 Enterprise Law, Article 38.

³⁵ Ibid., Article 3, the incorporation, organization and operation of enterprises of all economic sectors shall comply with the provisions of this Law and other relevant laws; Article 6, enterprises are obliged to respect and create favourable conditions for their labourers to establish and participate in political and socio-political organizations within enterprises shall operate within the framework of the Constitution and laws as well as charters of these organizations which are in accordance with the provisions of law; Article 9, enterprises shall ensure rights and interests of employees in accordance with labour legislation; to implement the regimes of social insurance, medical insurance and other insurance for employees in accordance with the law on insurance.

³⁶ 2005 Investment Law. Article 48, investment dossier and examination of investment projects shall cover land use and environment solution; Article 58, investors shall take responsibility for work quality and environment protection; Article 20, investors are obliged to perform obligations in accordance with the law on insurance and on labour, to respect the honour and dignity of employees and the customs of Vietnam, to respect and create favourable conditions for labourers to establish and participate in political or socio-political organizations and observe environmental protection legal regulations.

³⁷ 2005 Environment Protection Law. Article 24-26, business enterprises have to make written environmental protection commitments (location of execution, type and scale of production, business or service and materials and fuel used, kinds of wastes generated, commitments to apply measures to minimize and treat wastes and strictly comply with the provisions of law on environmental protection) and register the commitments at district-level people's committee before they can commence operation; Article 14, planning for land use, forest protection and development; exploitation and utilization of other natural resources in inter-provincial or inter-regional areas and planning for development of key economic regions are subject to strategic environmental assessment reports; Article 18, owners of the following projects must submit and elaborate environmental impact assessment reports: projects of national importance, projects planned to use part of land of or exerting adverse impacts on, the natural sanctuaries, national parks, historical and cultural relic sites, natural heritages or beautiful landscapes which have been ranked; projects to potentially exert adverse impacts on the river watershed, coastal areas or areas of protected ecosystems; projects to construct infrastructure works in economic zones, industrial parks, hi-tech parks, export-processing zones or craft village areas; projects to construct new urban centres or concentrated residential areas; projects to exploit and use groundwater or natural resources on a large scale; other projects having potential risks or adverse impacts on the environment; Article 21, environmental impact assessment reports shall be appraised by appraisal councils or appraisal service organizations; Article 32, project owners must report on contents of decisions approving environmental impact assessment reports to People's Committees of places where projects are executed; publicly post up at project sites information on kinds of wastes, treatment technologies, standard parameters of wastes and environmental protection solutions for population communities to know, inspect and supervise; properly and fully implement environmental protection contents in environmental impact assessment reports and requirements stated in decisions approving environmental impact assessment reports. English translated version is available at http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5961, (last visited 11 November 2012).

³⁸ 2005 Enterprise Law, Chapter III, Section I.

One-member limited liability companies	<ul style="list-style-type: none"> - Owned by one organization or individual (hereinafter referred to as the company owner). - The company owner is liable for debts and other property liabilities of the company within the charter capital of the company.³⁹ 	<ul style="list-style-type: none"> - 2005 Investment Law - 2005 Environment Protection Law - 2005 Enterprise Law 	2005 Enterprise Law ⁴⁰	None
Joint-stock companies	<ul style="list-style-type: none"> - Charter capital is divided into equal portions known as shares. - Shareholders may be organizations and/or individuals; the minimum number of shareholders shall be three and shall not be restricted to any particular maximum number. - Shareholders shall be liable for debts and other property liabilities of such enterprise within the limit of the value of their capital contribution to the enterprise. - Shareholders shall be entitled to freely transfer their shares.⁴¹ 	<ul style="list-style-type: none"> - 2005 Investment Law - 2005 Environment Protection Law - 2005 Enterprise Law 	2005 Enterprise Law ⁴²	None
Partnerships	<ul style="list-style-type: none"> - There are at least two partners who are co-owners of the company, jointly conduct business under one common name. - In addition to general partners, there may also be limited partners. - General partners to a partnership must be individuals who are liable for all obligations of the partnership with his/her own entire property. - Limited partners shall be liable for debts of the partnership only to the extent of their capital contribution to the partnership.⁴³ 	<ul style="list-style-type: none"> - 2005 Investment Law - 2005 Environment Protection Law - 2005 Enterprise Law 	2005 Enterprise Law ⁴⁴	None

³⁹ Ibid., Article 63.

⁴⁰ Ibid., Chapter III, Section II.

⁴¹ 2005 Enterprise Law, Article 78.

⁴² Ibid., Chapter IV.

⁴³ 2005 Enterprise Law, Article 130.

⁴⁴ Ibid., Chapter V.

Private enterprises	<ul style="list-style-type: none"> - Owned by an individual. - Owner is liable for all of its operations with his/her entire property.⁴⁵ 	<ul style="list-style-type: none"> - 2005 Investment Law - 2005 Environment Protection Law - 2005 Enterprise Law 	2005 Enterprise Law ⁴⁶	None
Group of companies	<ul style="list-style-type: none"> - Combination of companies which have long-term interrelations in terms of economic benefits, technology, market and other business services. - Groups of companies include: <ul style="list-style-type: none"> + Parent company - subsidiary company; + Economic conglomerate; + Other forms.⁴⁷ 	<ul style="list-style-type: none"> - 2005 Investment Law - 2005 Environment Protection Law - 2005 Enterprise Law 	2005 Enterprise Law ⁴⁸	None

⁴⁵ Ibid., Article 141.

⁴⁶ Ibid., Chapter VI.

⁴⁷ Ibid., Article 146.

⁴⁸ Ibid., Chapter VII

I. How has the State reacted to the UN “Protect, Respect and Remedy” Framework (“Framework”)?

The government of Vietnam has not made any specific reference to the “Protect, Respect and Remedy” Framework and the Guiding Principles on Business and Human Rights. No declarations have been issued by either the National Assembly (legislative branch) or the Courts (judicial branch) on the Framework and the Guiding Principles. There is no information available on statements delivered by Vietnam at the adoption of the Framework and the endorsement of the Guiding Principles at the Human Rights Council in 2011.

Some representatives in academia, however, have had their own reactions to the Framework and the Guiding Principles. In April and May 2012 in Ha Noi and Ho Chi Minh City respectively, the Vietnam Academy of Social Sciences (VASS), a research institution under the government of Vietnam, organized two seminars on corporate social responsibility. Participants at the two seminars, including researchers and lecturers from different research institutes and universities nation-wide, discussed a broad range of issues regarding the social responsibility of business enterprises, including the content and significance of the Framework and the Guiding Principles and called for awareness-raising and implementation of the Framework and the Guiding Principles in Vietnam.⁴⁹

II. Is the State duty to protect against human rights abuses by third parties, including businesses (“State Duty to Protect”), recognized in the country’s domestic legal system?

⁴⁹ See Vietnam Academy of Social Sciences, “Tọa đàm khoa học: Những vấn đề lý luận và lịch sử về trách nhiệm của doanh nghiệp đối với quyền con người,” available at: <http://gass.edu.vn/vi/news/Nghien-cuu-cua-giang-vien/Toa-dam-khoa-hoc-Nhung-van-de-ly-luan-va-lich-su-ve-trach-nhiem-cua-doanh-nghiep-doi-voi-quyen-con-nguoi-218>, (last visited 11 November 2012).

1. Do any of the State’s domestic laws, including the Constitution/basic law of the State, provide a basis for a State Duty to Protect?

Vietnam has a civil law system in which the major source of law is written legislation, commonly referred to in the country as legal documents. As provided by the 2008 Law on Promulgation of Legal Documents, legal documents in Vietnam include the Constitution; laws and resolutions of the National Assembly; ordinances and resolutions of the Standing Committee of the National Assembly; orders and decisions of the President; decrees of the Government; decisions of the Prime Minister; resolutions of the Justices Council of the Supreme People’s Court and circulars of the Chief Justice of the Supreme People’s Court; circulars of the President of the Supreme People’s Procuracy; circulars of Ministers or Heads of Ministry-equivalent Agencies; decisions of the State Auditor General; joint resolutions of the Standing Committee of the National Assembly or the Government and the central offices of socio-political organizations; joint circulars of the Chief Justice of the Supreme People’s Court and the President of the Supreme People’s Procuracy; those of Ministers or Heads of Ministry-equivalent Agencies and the Chief Justice of the Supreme People’s Court, the President of the Supreme People’s Procuracy; those of Ministers or Heads of Ministry-equivalent Agencies and legal documents of Peoples Councils and Peoples Committees.⁵⁰

The body of national law is currently made up of more than 13,000 legal documents,⁵¹ including those that provide a basis for the State Duty to Protect.

⁵⁰ 2008 Law on Promulgation of Legal Documents, Article 2. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10500, (last visited 11 November 2012).

⁵¹ See UN Human Rights Council, National Report Submitted Universal Periodic Review: Vietnam, Document A/HRC/WG.6/5/VNM/1 dated 16 February 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf, (last visited 11 November 2012).

Under the 1992 Constitution (amended in 2001), the State ensures and constantly promotes people's rights in all spheres.⁵² The State protects the citizen's right of lawful ownership and right of inheritance.⁵³ The Government has the duty to take measures to protect the legitimate rights and interests of citizens and create conditions for them to exercise their rights and fulfil their obligations, take measures to protect property and the interests of the State and society, and to protect the environment.⁵⁴

The State prohibits all acts of discrimination⁵⁵ and acts that cause damage to the environment. State organs, economic and social bodies and all individuals must abide by State regulations on the rational use of natural wealth and on environmental protection.⁵⁶ If people feel that their rights are violated, they have the right to lodge complaints and denunciations with the competent state authorities against the illegal doings of state organs, social or economic organizations, or individuals.⁵⁷

All acts violating the interests of the State, the rights and legitimate interests of citizens shall be dealt with severely in time.⁵⁸ The person who has suffered loss and injury shall be entitled to damages for any material harm suffered and his reputation rehabilitated.⁵⁹ The 1992 Constitution, in short, guarantees people's rights. It should also be noted that the Constitution also requires the entire people to participate in defending the socialist motherland⁶⁰ and safeguarding national security and social order.⁶¹

Criminal law and civil law are considered by the State as sharp and effective legal instruments to protect rights. The 2005 Civil Code provides the framework for legal status, legal standards for the conduct of

individuals and legal persons, and the rights and obligations of subjects regarding personal identities and property in civil, marriage, family, business, and trade and labour relations.⁶² The 1999 Criminal Code (amended in 2009), on the other hand, defines crimes and penalties for offenders committing crimes in and outside Vietnam (Vietnamese citizens who commit offenses outside the territory of Vietnam may be examined for criminal liability in Vietnam according to the Criminal Code; foreigners who commit offenses outside the territory of Vietnam may also be examined for criminal liability in circumstances provided for in the international treaties to which Vietnam is a party).⁶³ Both Codes are tasked with protecting legitimate rights and interests of individuals and organizations, the state interests and public interests; ensuring legal equality and safety, contributing to the creation of conditions for meeting the material and spiritual demands of people, and to the promotion of socio-economic development while at the same time educating people in the sense of law observance and the struggle to prevent and combat violation of laws.⁶⁴

In 2012, the Vietnamese National Assembly adopted the new Labour Code, maintaining that it is the State policy to ensure the legitimate rights and benefits of employees.⁶⁵

Every person has the right to work, to choose freely the type of work or occupation, to receive a salary on the basis of an agreement reached with the employer, to be entitled to labour protection, safe

52 1992 Constitution (amended in 2001), Article 3.

53 Ibid., Article 58.

54 Ibid., Article 112.

55 Ibid., Article 5.

56 Ibid., Article 29.

57 Ibid., Article 74.

58 Ibid.

59 Ibid.

60 Ibid., Article 44.

61 Ibid., Article 3.

62 2005 Civil Code, Article 1. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6595, (last visited 11 November 2012).

63 1999 Criminal Code (amended in 2009), Article 6. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6595, (last visited 11 November 2012).

64 Ibid., Article 1.

65 2012 Labour Code, Article 4, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=163542, (last visited 11 November 2012).

and hygienic working conditions and collective welfare, among others.⁶⁶ The State shall ensure women's rights to work on a basis of equality with men in every aspect.⁶⁷ The State shall establish policies to encourage employers to create conditions for women to work on a regular basis and apply widely the policy of flexible working time, part-time and casual employment and working from home.⁶⁸ Employers are prohibited from the following acts: discriminating based on gender, race, colour, social class, marital status, belief, religion, participation in trade unions, HIV – AIDS infection, or disability; maltreating employees; sexual harassment; forced labour; making use of apprenticeship or on-the-job training for the purpose of getting benefits for oneself and exploiting employees, or enticing or compelling an apprentice or on-the-job trainee to carry out illegal activities; making enticement, false promises, or false advertising to deceive employees or making use employment service or the export of labour to foreign countries to do illegal acts; employing illegally child labour; obstructing the establishment or joining of trade unions and participation in union activities.⁶⁹ Employees shall have the right to strike and to form or join in union activities, and to participate in dialogue with employers or management. These rights are, however, subject to other relevant laws and regulations.⁷⁰ Under the 2012 Law on Trade Union, for example, all unions belong to the Vietnam General Confederation of Labour, which is placed under the leadership of the Communist Party.⁷¹

The Government also issued Decree 122/2007/CP-ND dated 27 July 2007 (amended in 2011) providing a list of enterprises which may not go on strike (those producing and providing public-utility

products and services and enterprises playing an essential role in the national economy)⁷² and Decree 12/2008/ND-CP dated 30 January 2008 stating that a strike shall be postponed or suspended when it poses risks of causing serious damage to the national economy and/or public interests.⁷³

Other examples of legal provisions on the State duty to protect include, among others, the 2010 Law on Customer Protection, in which the State is stated as having the duty to protect the rights of customers.⁷⁴ The 2010 Law on Persons with Disability provides that state agencies and organizations, within the scope of their respective tasks and powers, have the duty to care for and protect the legitimate rights and interests of persons with disabilities.⁷⁵ According to the 2007 Law on Countering Domestic Violence, all acts of domestic violence must be promptly detected, stopped and handled in accordance with the laws. Acts of forcing, inciting, instigating and assisting other people to commit acts of domestic violence and hindering the detection, reporting and handling of acts of domestic violence are also prohibited.⁷⁶ Those who commit acts in violation

72 Decree 122/2007/CP-ND dated 27 July 2007 provides the list of enterprises which may not go on strike and the settlement of requests of labour collectives in those enterprises. English translated version is available at http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3448, (last visited 11 November 2012).

73 Decree 12/2008/CP-ND dated 30 January 2008 detailing and guiding the implementation of article 176 of the Labour Code on postponement or suspension of strikes and settlement of labour collective interests. English translated version is available at http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=2970, (last visited 11 November 2012).

74 2010 Law on Customer Protection, Article 7 available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=98755, (last visited 11 November 2012).

75 2010 Law on Persons with Disability. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10482, (last visited 11 November 2012).

76 2007 Law on Countering Domestic Violence, Article 8. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3030, (last visited 11 November 2012).

66 Ibid., Article 5.

67 Ibid., Article 152.

68 2012 Labour Code.

69 Ibid., Article 8.

70 Ibid., Article 5.

71 2012 Law on Trade Union, Article 7 and Article 1, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=163545, (last visited 11 November 2012).

of the law on domestic violence prevention and control shall, depending on the nature and severity of their violations, be administratively sanctioned, disciplined or examined for criminal liability. If causing damage, they shall pay compensation as required by law.⁷⁷ In accordance with the 2005 Investment Law, the State shall recognize and protect the right to ownership of assets, investment capital and incomes as well as other legitimate rights and interests of investors, and shall recognize the long-term existence and development of investment activities.⁷⁸ Under the 2004 Law on Child Protection, Care and Education, the family, the State and society have the responsibility to protect children's lives, bodies, dignity and honour, and to take measures to prevent accidents harming children. All acts of infringing upon children's lives, bodies, dignity and honour shall be handled in time and strictly according to the law.⁷⁹ In short, it is safe to say that, there are Vietnamese domestic laws including the Constitution that provide a basis for the State Duty to Protect. How that is translated into reality, however, is a different question.

At the international level, Vietnam is a party to the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; and Convention on the Rights of the Child.⁸⁰ The country has also ratified 19 conventions of the International Labor Organization, including C006 - Night Work of Young Persons (Industry) Convention, 1919; C014

- Weekly Rest (Industry) Convention, 1921; C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929; C045 - Underground Work (Women) Convention, 1935; C080 - Final Articles Revision Convention, 1946; C116 - Final Articles Revision Convention, 1961; C120 - Hygiene (Commerce and Offices) Convention, 1964; C123 - Minimum Age (Underground Work) Convention, 1965; C124 - Medical Examination of Young Persons (Underground Work) Convention, 1965; C155 - Occupational Safety; and Health Convention, 1981.⁸¹ As a party to these treaties, Vietnam is legally bound by various obligations provided thereof, including the obligations to protect human rights.⁸² In cases where a legal document of Vietnam and a human rights treaty to which Vietnam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail. If the provisions of a human rights treaty are explicit and specific enough for direct implementation, relevant authorities, when deciding to consent to be bound by the treaty, shall also decide on the direct application of the treaty.⁸³

2. Has the State Duty to Protect been recognized by the State's courts?

The Vietnam judicial system is composed of the Supreme People's Court, the local People's Courts, the Military Tribunals and the other tribunals established by law.⁸⁴ The local People's Courts consist of the People's Courts of the provinces and centrally run cities and the People's Courts of the rural districts, urban districts, provincial capitals

77 Ibid., Article 42(1).

78 2005 Investment Law, Article 4. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5946, (last visited 11 November 2012).

79 2004 Law on Child Protection, Care and Education, Article 26. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7824, (last visited 11 November 2012).

80 For status of ratification of international human rights treaties, see UN Treaty Collection, Status of Treaties, Chapter IV, Human Rights, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, (last visited 11 November 2012).

81 International Labour Organization, Ratifications of ILO Conventions: Vietnam, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:1906111866322950:::P11200_INSTRUMENT_SORT:1, (last visited 11 November 2012).

82 2005 Law on the Conclusion, Accession and Implementation of Treaties, Article 3(6). English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5509, (last visited 11 November 2012).

83 Ibid., Article 6(3).

84 1992 Constitution (amended in 2001), Article 127.

and provincial cities.⁸⁵ The courts adjudicate criminal, civil, family, labour, and economic and administrative cases and settle other matters as prescribed by law. According to the Supreme People's Court, in 2011, the People's Courts in Vietnam handled 60,925 criminal cases, 81,438 civil cases, 115,331 family cases, 8,418 economic cases, 2,043 labour cases and 1,236 administrative cases.⁸⁶

Under the 1992 Constitution, the People's Courts, within their functions, have the duty to safeguard socialist legality, the socialist regime and the people's mastery, the property of the State and the collectives, the lives, property, freedom, honour and dignity of the citizen.⁸⁷ Judges are aware of the legal provisions on the State Duty to Protect. There are papers written by judges available on the website of the Supreme People's Court that examine the State Duty to Protect.⁸⁸ Unfortunately, as the People's Courts do not make publicly available a record of their judgments, it is difficult to find court judgments to see whether and to what extent the State Duty to Protect has been recognized in judicial decisions.

The Vietnam Chamber of Commerce and Industry has a website that gives business enterprises access to some draft legal documents and court judgments and decisions.⁸⁹ The number of judgments/decisions posted on the website, however, is very limited – 324 judgments/decisions as of 11 November 2012. Most of them are related to economic disputes between business enterprises. Reference to the State Duty to Protect has not been found in these judgments.

85 2002 Law on the Organization of the People's Court, Article 2. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10450, (last visited 11 November 2012).

86 First-instance judgments. These numbers are available at <http://www.toaan.gov.vn/portal/page/portal/tandtc/5901712>, (last visited 11 November 2012).

87 1992 Constitution (amended in 2001), Article 126.

88 See, for example, Judge Pham Minh Tuyen, Paper "*Bảo vệ quyền của người dân tộc thiểu số và người tàn tật theo quy định của pháp luật tổ tụng hình sự, thực tiễn áp dụng và những vấn đề vướng mắc.*" available at http://www.toaan.gov.vn/portal/page/portal/tandtc/Baiviet?p_cateid=1751909&item_id=5423761&article_details=1, (last visited 11 November 2012).

89 See VIBonline at <http://www.vibonline.com.vn/Banan/default.aspx>, (last visited 11 November 2012).

III. Is the State taking steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication?

1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punish and redress business-related human rights abuses? If so, how have they done so?

Vietnam does not have a national human rights institution or other human rights bodies, e.g. ombudsmen. There are no government bodies or State agencies that are specifically tasked with the responsibility to prevent, investigate, punish and redress business-related human rights abuses in Vietnam. However, there are different state agencies that, within their bounds of functions, are responsible for different issues which could be associated with business-related human rights abuses such as labour rights (Ministry of Labour, Invalids and Social Affairs), environmental rights (Ministry of Natural Resources and Environment), land rights (Ministry of Natural Resources and Environment), ethnic minority rights (Committee for Ethnic Affairs), anti-corruption (Anti-corruption Steering Committee, Government Inspectorate,

Ministry of Justice, Ministry of Public Security), health rights (Ministry of Health), education rights (Ministry of Education and Training), and legal awareness (Ministry of Justice).

These government agencies do their job by drafting, submitting to the government for approval, and then implementing strategies, plans, programs, projects, proposals, and specialized management standards relating to rights issues under their management scopes. They also draft and submit legal documents, organize the instruction, guidance, and implementation and monitor the enforcement of these legal documents. The provincial and district People's Committees and their departments also participate in implementing and monitoring the

observance of these documents.⁹⁰

In ensuring the respect of laws and policies in their respective areas or localities, these agencies or authorities may conduct inspections as to whether rights violations are committed and, if violations are detected, may impose administrative sanctions against violators (specific forms of sanctions are identified in answer to Question 2.2). In cases of violations of the Criminal Code, it is the investigating bodies of the People's Police that handles the investigation.⁹¹ Prosecution of crimes rests with the People's Procuracy (public prosecutor). Adjudication responsibility belongs to the People's Courts.

Labour rights

The Ministry of Labour, Invalids and Social Affairs is the "head agency" for handling issues related to labour rights. Its responsibilities include, among others, exercising state management over labour issues, building mechanisms to promote labour rights and inspections, and handling complaints, denunciations or cases of labour rights violations.⁹² Other ministries and ministerial agencies are responsible for collaborating with the Ministry of Labour,

Invalids and Social Affairs. The People's Committee at each level exercises state management over labour in its locality.⁹³

A labour inspectorate system from central to district levels has been established under the Ministry of Labour, Invalids and Social Affairs. They are responsible for inspecting compliance with regulations on employment, labour, vocational training, labour safety and hygiene; social insurance; investigating work accidents and violations of standards for labour hygiene; joining in guiding application of standards and norms of working conditions, labour safety and hygiene; addressing labour appeals and complaints in accordance

90 1992 Constitution (amended in 2001), Article 23.

91 2003 Criminal Procedure Code, Article 110.

92 2012 Labour Code, Article 235.

93 Ibid., Article 236.

with laws; remedying under competence and petitioning competent authorities to remedy labour law violations.⁹⁴ If violations of labour rights are committed, but do not yet constitute crimes under the Criminal Code, labour inspectorates and chairpersons of the People's Committees at the local levels may impose administrative sanctions (see Answer to Question 2.1. below).⁹⁵

Environment

The Ministry of Natural Resources and Environment is the lead agency when it comes to environmental issues. Other ministries and ministerial agencies are responsible for collaborating with the Ministry of Natural Resources and Environment. The People's Committees at all levels exercise state management over the environment in their localities.

The environmental protection inspectorates under the Ministry of Natural Resources and Environment supervise and inspect the environmental protection performed by business enterprises,

based on the laws and the environmental impact assessment reports that they have approved.⁹⁶ Provincial-level environmental protection inspectorates supervise and inspect the environmental protection performed by economic organizations and non-business units regarding projects with environmental impact assessment reports approved by provincial-level People's Committees. District-level People's Committees supervise and inspect the environmental protection performed by administrative agencies and non-business units and by small-sized production, business and service establishments at their localities. Commune-level People's Committees supervise the environmental protection performed

94 2012 Labour Code.

95 Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative sanctions imposed upon Violations of the Labour Code, Chapter III. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10629 (last visited 11 November 2012).

96 2005 Environment Protection Law, Article 126.

by households and individuals.⁹⁷

In case of necessity, environmental protection inspectorates at all levels and district-level People's Committees have to assist and coordinate with commune-level People's Committees in supervising and inspecting the environmental protection performed by organizations or individuals that show signs of serious violation of the environmental protection law.⁹⁸ State management agencies at all levels and concerned professional agencies, upon request, have to assist and coordinate with environmental protection inspectorates in inspecting and supervising the environmental protection.⁹⁹

If violations are found, but do not yet constitute crimes under the Criminal Code, environmental protection inspectorates and chairpersons of the People's Committees at the local levels may impose administrative sanctions (see answer to Question 2.2. below).

Land rights

The Ministry of Natural Resources and Environment is accountable to the government for state management over land issues. The People's Committees at all levels perform the state management function over land in their respective localities.¹⁰⁰

At the central level, land inspection is undertaken by the Ministry of Natural Resources and Environment whereas at the local levels, the task is given to local management agencies. The land inspectorates have the responsibility to detect, check and handle violations of land legislation according to competence or propose competent State agencies to handle violations of land legislation.¹⁰¹ Land inspection shall cover inspection of the state

97 2005 Environment Protection Law, Article 126. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5961, (last visited 11 November 2012).

98 Ibid.

99 Ibid.

100 2003 Land Law, Article 7.

101 Ibid.

management over land by the People's Committees at all levels and inspection of the observance of land legislation by land users, including organizations and individuals.¹⁰²

Education rights

At the Sixth Congress of the Communist Party in December 1986, Vietnam launched a series of free-market reforms to transition its planned economy to a market economy. For the first time, the government opened up education to non-public sectors. Private schools and international schools since then have flourished and are now available for all levels of education. The privatization of education (referred to in Vietnam as "socialization of education") and activities of private educational institutions are subject to the relevant rights protection regimes provided in different human rights treaties to which Vietnam is a party and must conform to minimum standards as laid down by Vietnam's legal documents, in particular the 2005 Education Law.

According to the 2005 Education Law, the Ministry of Education and Training is accountable to the government for performing the State management of education. Other ministries and ministerial-level agencies coordinate with the Ministry of Education and Training in performing the State management of education according to their competence. The People's Committees at all levels are tasked to perform the State management of education and have to assure that conditions on teachers, finance, material foundations and teaching equipment of public schools under their management meet the requirements of expanding and raising the educational quality and efficiency in their localities.¹⁰³

Educational inspection agencies comprise the educational inspectorate of the Ministry of Education and Training and the educational inspectorates of

102 Ibid., Article 132.

103 2005 Education Law, Article 100. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6906 (last visited 11 November 2012).

the provincial/municipal Education and Training Services.¹⁰⁴ Educational inspectorates shall have the following tasks: inspecting the implementation of policies and law on education; settling complaints and denunciations in education according to the provisions of law on complaints and denunciations; handling of administrative violations in education in accordance with the provisions of law on administrative violation handling; performing tasks of preventing and fighting corruption in education in accordance with the provisions of anti-corruption law and proposing measures to ensure the enforcement of education law as well as amendments and supplements to the State's policies and regulations on education.¹⁰⁵

Anti-corruption

The Central Steering Committee for Corruption Prevention and Combat has the responsibility to direct, coordinate and inspect anti-corruption activities nationwide.¹⁰⁶ The Committee is assisted by a standing division operating on a full-time basis.¹⁰⁷ People's Councils at all levels, within the ambit of their respective tasks and powers have the responsibility to supervise anti-corruption work in their respective localities.¹⁰⁸

The Government Inspectorate is responsible to organize, direct and guide the inspection of the observance of anti-corruption legal provisions and, in case of detection of corrupt acts, to request competent agencies or organizations to handle them and to build up systems of general data on

104 Ibid., Article 113.

105 Ibid., Article 111.

106 The Central Steering Committee used to be chaired by the Prime Minister. Under an amendment to the Anti-corruption Law in 2012, the Prime Minister does have the Chairmanship role of the Committee. The Chairmanship is expected to be undertaken by the Secretary-General of the Vietnamese Communist Party.

107 2005 Anti-Corruption Law, Article 73. English translated version is available at <http://www.oecd.org/site/anti-corruptioninitiative/46817414.pdf>, (last visited 11 November 2012).

108 Ibid., Article 74.

anti-corruption.¹⁰⁹

The State Audit, within the ambit of its tasks and powers, has the responsibility to organize audit activities to prevent and detect corruption. In case of detecting corrupt acts, it shall request competent agencies or organisations to handle them.¹¹⁰

Heads of inspectorates, the State Audit, investigating bodies, procuracies, and courts must enhance the management of their officials and employees and direct the internal inspection and examination in order to prevent acts of law violation in anti-corruption activities. Officials and public employees of inspectorates, the state audit, investigating bodies, procuracies, court who violate the law on anti-corruption activities shall, depending on the nature and seriousness of their violations, be disciplined for criminal liability.¹¹¹

2. Are there laws and/or regulations that hold business enterprises and individuals accountable for business-related human rights abuses, and are they being enforced?

2.1. To what extent do business enterprises and company organs face liability for breaches of laws by business enterprises?

2.1.1. Can business enterprises be held legally accountable as legal persons?

In Vietnam, business enterprises of all types have the legal capacity to exercise certain rights and assume certain obligations separate to the rights and duties of their owners or other individuals. They may be held legally accountable as legal persons. Their liability may be civil or administrative, but not criminal.

109 Ibid., Article 76.

110 Ibid., Article 77.

111 2005 Anti-Corruption Law, Article 83.

Civil liability

As provided in the 2005 Civil Code, an organization shall be recognized as a legal person when it is established lawfully, has an organized structure,

possesses property independent from that of individuals and other organizations, bears its own liability with such property, and independently enters into legal relations in its own name.¹¹² State enterprises, cooperatives, limited liability companies, joint-stock companies, foreign-invested enterprises and other economic organizations that meet these requirements are considered legal persons.¹¹³

The civil legal capacity of a legal person arises from the time it is established and terminates when it ceases to be a legal person.¹¹⁴ The representative at law or the authorized representative of a legal person shall act in the name of the legal person in civil relations.¹¹⁵ A legal person (obligor) that fails to perform or performs improperly its obligation must bear civil liability to the obligee.¹¹⁶ A legal person shall bear civil liability with its own property and shall not bear civil liability for its members with respect to civil obligations established and performed by such members not in the name of the legal person.¹¹⁷ Members of a corporate legal person shall not bear civil liability for the legal person with respect to civil obligations established and performed by the legal person.¹¹⁸ The liability to compensate for damage includes the liability to compensate for material damage and the liability to compensate for mental damage.¹¹⁹

112 2005 Civil Code, Article 84. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6595, (last visited 11 November 2012).

113 Ibid., Article 103.

114 Ibid., Article 86.

115 Ibid.

116 Ibid., Article 302.

117 Ibid., Article 93.

118 Ibid.

119 Ibid., Article 307.

Administrative liability

According to the 2002 Ordinance on Sanctioning Administrative Violations, individuals and organizations, whether domestic or foreign, intentionally or unintentionally committing violations prescribed by law, which do not constitute crimes defined under the Criminal Code, must be held accountable and face administrative sanctions.¹²⁰ All consequences caused by acts of administrative violation must be remedied by violators.¹²¹ The violating individuals or organizations shall be subject to either warnings or fines.¹²² In addition,

depending on the nature and seriousness of their violations, individuals or organizations that commit violations may be stripped of the right to use permits, professional practice certificates or may suffer confiscation of material or means used to commit the violations.¹²³ The violating individuals and organizations may also be subject to the application of one or many of the following consequence-overcoming measures: (i) restoration of the initial state altered due to the administrative violations or forcible dismantling of illegally constructed works; (ii) application of measures to redress the environmental pollution or epidemics caused by the administrative violations; (iii) destruction of articles which cause harm to human health, domestic animals and cultivated plants, and harmful cultural products; and other measures prescribed by the Government (see answers to Question 2.2. and Question 2.3. below for examples of specific administrative sanctions imposed in cases of violations).¹²⁴

120 2002 Ordinance on Sanctioning Administrative Violations, Article 2. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10046, (last visited 11 November 2012).

121 Ibid., Article 4.

122 Ibid., Article 12.

123 Ibid.

124 Ibid.

Criminal liability

Under current Vietnamese laws, legal persons such as business enterprises do not bear criminal liability. Article 2 of the 1999 Criminal Code (amended in 2009) clearly states that only individuals who commit crimes defined by the Criminal Code shall bear criminal liability.¹²⁵ Article 8 of the Code further clarifies that a crime is an act dangerous to the society prescribed in the Code, committed intentionally or unintentionally by a person having the penal liability capacity, infringing upon the independence, sovereignty, unity and territorial integrity of the Fatherland, infringing upon the political regime, the economic regime, culture, defense, security, social order and safety, the legitimate rights and interests of organizations, infringing upon the life, health, honor, dignity, freedom, property, as well as other legitimate rights and interests of citizens or infringing upon other socialist legislation.¹²⁶

It should be noted, however, that a comprehensive review and amendments to the Criminal Code have been scheduled in the law-making program of the National Assembly in its 2011-2016 tenure, among which the enactment of criminal liability measures for legal persons is a priority to be considered.¹²⁷

In addition to adopting domestic legislation, Vietnam has also ratified various treaties that contain provisions on the liability of legal persons. Article 26 of the United Nations Convention against Corruption, for example, states that each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons (civil, administrative or criminal) for participation in the offences established in accordance with the Convention. Each State Party shall, in particular, ensure that legal persons

¹²⁵ 1999 Criminal Code (amended in 2009), Article 1.

¹²⁶ Ibid., Article 8.

¹²⁷ Conference of the State Parties to the United Nations Convention against Corruption, Implementation Review Group: Viet Nam, CAC/COSP/IRG/I/2/1/Add.4 dated 21 August 2012, 4, available at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1255476e.pdf>, (last visited 11 November 2012).

held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.¹²⁸ The United Nations Convention against Transnational Organized Crimes also has a very similar provision regarding legal persons' liability.¹²⁹ It is worth noting, however, that when ratifying these treaties, Vietnam has always made a declaration that, consistent with its legal principles, it does not consider itself bound by the provisions with regard to the criminal liability of legal persons.¹³⁰

2.1.2 Do organs of a business enterprise (e.g. owners - shareholders, partners, and proprietors) face liability when their businesses breach laws?

Whether, which and to what extent an organ of a business enterprise shall face liability when the enterprise breaches law depends on the type of the enterprise and the circumstance and nature of the breach of law.

For a private enterprise, its owner is liable for all of its operations with his/her entire property.¹³¹

For a one-member limited liability company, its owner is liable for all debts and other property liabilities of the company within the charter capital of the company.¹³²

¹²⁸ UN Convention against Corruption, Article 26, available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, (last visited 11 November 2012).

¹²⁹ UN Convention against Transnational Organized Crime, Article 41(1), available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, (last visited 11 November 2012).

¹³⁰ United Nations Treaty Collection, Status of the United Nations Convention against Transnational Organized Crimes, available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en#EndDec and Status of the United Nations Convention against Corruption, available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en, (last visited 11 November 2012).

¹³¹ 2005 Enterprise Law, Article 141.

¹³² 2005 Enterprise Law, Article 63.

For a limited liability company with two or more members, its members are liable for debts and other property liabilities of the enterprise within the amount of capital that they have committed to contribute to the enterprise.¹³³ They are liable individually when acting in the name of company if they breach the laws, conduct business or other transactions not in the interest of the company but causing damage to other persons, or pay off undue debts when there is a financial danger facing the company.¹³⁴

For a joint-stock company, shareholders shall be liable for debts and other property liabilities of such enterprise within the limit of the value of their capital contribution to the company.¹³⁵ Ordinary shareholders are liable individually when, acting in the name of the company, they breach the laws, conduct business or other transactions for self-seeking purposes or interests of other organizations or individuals, or pay undue debts when the company is facing possible financial risks.¹³⁶

For a partnership, general partners are liable for all obligations of the partnership with his/her own entire property, while limited partners are liable for debts of the partnership only to the extent of their capital contribution to the partnership.¹³⁷

For a group of companies, in case the parent company interferes beyond its competence or forces the subsidiary companies to carry out business activities that run counter to normal business practices, or conducts unprofitable activities without proper compensation in the fiscal year, causing losses to the subsidiary companies, the parent company must be liable for such losses. Managers of the parent company who interfere in, or force the subsidiary companies to conduct business activities shall be jointly liable with the parent company for such losses. If these business activities are conducted by subsidiary companies and yield profits for other subsidiary companies of the same

133 Ibid., Article 38.

134 Ibid., Article 42.

135 Ibid., Article 77.

136 Ibid., Article 80.

137 Ibid., Article 130.

parent company, such subsidiary companies shall be jointly responsible with the parent company for returning such profits to the subsidiary companies suffering from losses.¹³⁸

2.2. Do laws and/or regulations: (a) require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services, and (b) require individuals to ensure their business enterprises do so?

Although the term “human rights” per se is not frequently used in laws and regulations in Vietnam, there are quite a number of Vietnamese legal documents that require business enterprises (generally referred to in many legal documents as “organizations”) and individuals to take action to avoid causing or contributing to adverse impact on the rights of people through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products and services.

Impact on labours rights: safety and health of labours

According to the 1996 Mineral Law (amended in 2005), organizations and individuals permitted to mine minerals must comply with the provisions of the law in relation to occupational safety and labour hygiene and with regulations, standards, criteria on occupational safety and labour hygiene.¹³⁹ In the case of a threat relating to occupational safety, the organizations or individuals managing mining activities shall immediately apply necessary measures to eliminate the possible causes of such

138 Ibid., Article 147.

139 1996 Mineral Law (amended in 2005), Article 33. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=2164, (last visited 11 November 2012).

an adverse event.¹⁴⁰ They must render first aid and evacuate people from the dangerous area; promptly report the event to the competent State authority; protect the assets and keep intact the site in accordance with the law. The organizations or individuals licensed to mine minerals also have to comply with the regulations on periodical and irregular reporting with regard to labour safety and hygiene in accordance with law.¹⁴¹ They are under the obligation to pay compensation for any damage caused by their activities.¹⁴²

Under the 2005 Labour Code, employers (including enterprises, agencies, organizations, cooperatives, households, individuals with full civil act capacity)¹⁴³ are obliged to ensure that the enterprise's work place satisfies the requirements of space, ventilation, dust, steam, gas, radiation, magnetism, heat, noise, vibration and other harmful elements prescribed in the relevant regulations. They must also ensure that labour safety conditions and machinery, equipment, workshops and warehouse hygiene conditions meet the requirements of national technical regulations on labour safety and hygiene. They are responsible for evaluating the dangerous and toxic elements at the workplace, for working out prevention measures for potential risks and dangers, and improving working conditions and providing health care for the employees. They must prepare a feasibility study outlining all measures to ensure labour safety and hygiene at the work environment. They have to provide instruction boards for labour safety on machinery and equipment, as well as labour hygiene. These safety boards must be put in a place where they can be seen easily and read clearly. They must also consult their employees when building a plan and implementing activities ensuring labour safety and hygiene.¹⁴⁴

Employers shall also be responsible for organizing annual health checks for their employees. For

employees working in heavy and harmful conditions and for employees who are disabled, adolescent or elderly, the health check must be done at least every six months.¹⁴⁵ Employees working in conditions with a high risk of work-related diseases must receive health checks in accordance with regulations stipulated by the Ministry of Health.¹⁴⁶ Any employee who is injured in a work-related accident or has a work-related disease must have a medical examination to determine the level of injury and the reduction in working capacity and receive treatment, nursing and rehabilitation of working capacity in accordance with the law.¹⁴⁷ If that employee continues working after being injured or having work-related disease, he or she will be assigned to an occupation suitable for his/her health in accordance with the conclusion of the Council for occupational health examination. Employers must ensure that employees working at places exposed to risks of exposure to toxic substances or infection shall, after work-hours, be provided with detoxification or disinfection measures and other personal hygiene measures.¹⁴⁸

If these provisions are violated, Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative Sanctioning of Violations of the Labour Code provides different levels of sanctions against employers.¹⁴⁹ A fine of between VND 1,000,000 and VND 5,000,000,¹⁵⁰ for example, shall be imposed on employers that fail to fully provide employees with labour protection devices. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed on employers that fail to install equipment to ensure labour safety, fail

145 2012 Labour Code, Article 152.

146 Ibid.

147 Ibid.

148 Ibid.

149 Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative sanctions imposed upon Violations of the Labour Code. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10629, (last visited 11 November 2012).

150 Exchange Rate as of 11 November 2012 is USD 1 = VND 20,825. See Vietcombank, Exchange of Currency, <http://www.vietcombank.com.vn/en/exchange%20rate.asp>, (last visited 11 November 2012).

140 Ibid.

141 Ibid., Article 35.

142 Ibid., Article 33.

143 2012 Labour Code, Article 2.

144 Ibid., Article 138.

to meet work place standards, or violate labour safety standards.¹⁵¹ Fines shall also be imposed on employers that fail to implement the regime of compensation in kind for performers of jobs involving dangerous or hazardous elements; fail to provide examination of occupational diseases for employees or provide periodical medical check-ups for insufficient number of employees; fail to compile separate health records for employees suffering from occupational diseases;¹⁵² fail to check machines, equipment, supplies and substances subject to strict requirements on labour safety and hygiene; fail to institute remedies or stop operation of workplaces, machines or equipment which likely cause labour accidents or occupational diseases;¹⁵³ fail to pay medical expenses for first-aid, emergency and treatment for employees who suffer labour accidents or occupational diseases; or fail to pay allowances and compensations to employees who suffer labour accidents or occupational diseases.

Impact on labour rights: rights of women and children

A minor labourer is one under 18 years of age (employment of children below 15 years of age is strictly prohibited, except in exceptional cases provided by the Ministry of Labour, Invalids and Social Affairs).¹⁵⁴ Where the employment of minors occurs, there must be a separate record of each minor's full name, date of birth, current jobs, the result of each periodical health check, which must be provided on request by the labour inspector.¹⁵⁵ Employers are allowed to employ minors only for jobs suited to a minor's health in order to protect their physical and intellectual development as well as their personality. Employers have the responsibility to take care of minor employees in terms of labour, wages, health and education during employment. It is forbidden to employ minors in heavy and

dangerous jobs or jobs allowing exposure to noxious substances prescribed in the list published by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.¹⁵⁶ The work hours of a minor employee may not exceed seven hours per day or 42 hours per week. The employer may assign minor employees to overtime work or night time work only in a number of occupations and jobs listed by the Ministry of Labour, Invalids and Social Affairs.¹⁵⁷

For enterprises that employ a large female labour force, the persons responsible at the managerial board must assign an individual to monitor female labour affairs. Before taking any decisions related to the rights and interests of female employees and their children, consultation must be made with representatives of female employees. There must be an appropriate number of women among labour inspectors.¹⁵⁸

Employers are not allowed to employ a female employee from her seventh month of pregnancy or sixth month of pregnancy in remote areas, border areas, and island areas or who is nursing a child under 12 months of age to work at night or in distant places.¹⁵⁹ A female employee doing heavy, toxic or dangerous works, on reaching her seventh month of pregnancy, shall be transferred to lighter work until their child reaches 12 months, or have her daily working time reduced by one hour but shall still receive her full salary.¹⁶⁰ Employers are prohibited from laying off or unilaterally terminating the labour contract with a female employee for reasons of her marriage, pregnancy, maternity leave, or that she is nursing a child under 12 months of age, except when the enterprise ceases its activities.¹⁶¹ During the time of pregnancy, maternity leave, or nursing a child under 12 months of age, the female employee shall not be subject to any labour disciplinary

151 Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative sanctions imposed upon Violations of the Labour Code, Article 18 & Article 19.

152 Ibid., Article 19.

153 Ibid., Article 20.

154 2012 Labour Code, Article 119 and Article 120.

155 Ibid.

156 Ibid., Article 121.

157 Ibid., Article 122.

158 Ibid., Article 118.

159 Ibid., Article 155.

160 Ibid.

161 Ibid.

measures against her.¹⁶²

Female employees are entitled to maternal leaves over a period of six months.¹⁶³ In case the employee gives birth to more than one child at one time, she shall be entitled to one additional month of leave for each child counted from the second one. During maternity leave, female employees shall enjoy maternity benefits in accordance with legal regulations on social insurance. After the statutory maternity leave, if so required, a female employee may take additional leave without pay under the terms agreed upon with the employer.¹⁶⁴ A female employee may return to work before the expiration of her statutory maternity leave provided that she has taken at least four months of postnatal leave and has a health centre's certificate confirming that early resumption of work does not affect her health. In that case, in addition to the wages for working days, the female employee shall continue to enjoy maternity benefits in accordance with regulations on social insurance.¹⁶⁵

A fine between VND 300,000 and VND 10,000,000 shall be imposed on employers that discriminate against female employees; fail to consult representatives of female employees when deciding on matters related to the rights and interests of women and children in enterprises; employ female employees who are seven or more months pregnant or who are nursing their children under 12 months of age for overtime work, night-time work or working trips; fail to transfer female employees doing heavy jobs to lighter ones or to reduce their working time by one hour while paying them full salaries; fail to give female employees 30 minutes off each day during their menstrual period or 60 minutes off each day when they are nursing their children under 12 months; employ female, elderly or disabled employees for heavy and or hazardous jobs or jobs requiring exposure to toxic substances on the lists promulgated by the Ministry of Labour, Invalids and Social Affairs and the Ministry of

Health; employ female employees for jobs requiring exposure to toxic substances that adversely affect reproductive and child nursing function or for frequent work in mines or under water; fail to open books to monitor employees' health and give them periodical medical check-ups; employ minor or disabled employees to work for more than seven hours a day or 42 hours a week; sack or unilaterally terminate labour contracts with female employees due to their marriage, pregnancy, maternity leave, nursing of under 12-month-old children unless enterprises terminate their operation; employ minor employees for heavy or dangerous jobs or jobs in contact with toxic substances, or for jobs or at workplaces adversely affecting their personality, which are on the lists promulgated by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.¹⁶⁶

In addition, a fine of between VND 500,000 and VND 3,000,000 shall be imposed on employers that fail to hand-sign labour contracts with employees.¹⁶⁷ A fine of between VND 2,000,000 and VND 5,000,000 shall be imposed on employers that refuse to negotiate for conclusion or amendment and supplementation of collective labour accords when receiving a request for such negotiation.¹⁶⁸ A fine of between VND 2,000,000 and VND 10,000,000 shall be imposed on employers that fail to pay salaries fully and on time to employees or pay salaries late without making compensation.¹⁶⁹ A fine of between VND 1,000,000 and VND 10,000,000 shall be imposed on employers that fail to ensure necessary working means for trade unions, discriminate against employees who set up and join trade unions or participate in trade union activities or obstruct the establishment of trade union organizations at enterprises or obstructing activities of trade union organizations.¹⁷⁰

166 Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative sanctions imposed upon Violations of the Labour Code, Article 13.

167 Ibid., Article 7.

168 Ibid., Article 9.

169 Ibid., Article 10.

170 Ibid., Article 16.

162 Ibid.

163 Ibid., Article 157.

164 2012 Labour Code, Article 157.

165 Ibid.

Impact on the environment

The 1996 Mineral Law (amended in 2005) provides that organizations and individuals permitted to mine or process minerals shall be responsible for protecting mineral resources in the areas that they are operating.¹⁷¹ They must comply with requirements to protect and rehabilitate the environment, ecology and land in accordance with approved feasibility studies.¹⁷² They must deposit a fund at a Vietnamese bank or a foreign bank licensed to operate in Vietnam as security for the rehabilitation of the environment, ecology and land. They must use technology, equipment and materials and comply with other provisions of the Environment Protection Law in order to minimize any adverse impact on the environment and rehabilitate the environment, ecology and the land after the termination of each phase or the entirety of mineral activity.

They must also bear all expenses related to the protection and rehabilitation of the environment, ecology and land, which are determined in environmental impact assessment reports, mineral mining or processing feasibility studies or mineral exploration proposals.¹⁷³

To avoid potentially adverse impacts on the environment caused by business and investment activities, the 2005 Environment Protection Law specifically requires business enterprises to make and register with the local people's committees written environmental protection commitments specifying location of operation, type and scale of production, business or service and materials and fuel used, kinds of wastes generated and commitments to apply measures to minimize and treat wastes and strictly comply with the provisions

171 1996 Mineral Law (amended in 2005), Article 9(4). English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=2164, (last visited 11 November 2012).

172 Ibid., Article 7(2).

173 Ibid., Article 16.

of law on environmental protection before they can commence operation.¹⁷⁴ The Law also requires owners of the many types of projects to submit an elaborate strategic environmental assessment report or environmental impact assessment report.¹⁷⁵ Environmental impact assessment reports must include detailed description of the project's construction components, construction area, time and workload; operational technology for each component and the entire project; overall assessment of the environmental status at the project site and neighbouring areas; the sensitivity and load capacity of the environment; detailed assessment of possible environmental impacts when the project is executed and environmental components and socio-economic elements to be impacted by the project; prediction of environmental incidents possibly caused by the project; specific measures to minimize bad environmental impacts, prevent and respond to environmental incidents; commitments to take environmental protection measures during project construction and operation; lists of project items; cost estimates for building environmental protection works within the total cost estimate of the project; opinions of the local People's Committees and representatives of population communities where the project is located; opinions against the project location or against environmental protection solutions and citation of sources of figures, data,

174 2005 Environment Protection Law, Articles 24, 25 & 26. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5961, (last visited 11 November 2012).

175 Projects of national importance; projects planned to use part of land of or exerting adverse impacts on, the natural sanctuaries, national parks, historical and cultural relic sites, natural heritages or beautiful landscapes which have been ranked; projects to potentially exert adverse impacts on the river watershed, coastal areas or areas of protected ecosystems; projects to construct infrastructure works in economic zones, industrial parks, hi-tech parks, export-processing zones or craft village areas; projects to construct new urban centres or concentrated residential areas; projects to exploit and use groundwater or natural resources on a large scale; other projects having potential risks or adverse impacts on the environment.

and assessment methods.¹⁷⁶

Environmental impact assessment reports shall be appraised by appraisal councils or appraisal service organizations.¹⁷⁷ Project owners must: report on the content of decisions approving environmental impact assessment reports to People's Committees of places where projects are executed; publicly post at project sites information on the kinds of wastes, treatment technologies, standard parameters of wastes and environmental protection solutions for population communities to know, inspect and supervise; properly and fully implement environmental protection contents in environmental impact assessment reports and requirements stated in decisions approving environmental impact assessment reports.¹⁷⁸

The 2005 Enterprise Law and the 2005 Investment Law also obliges investors (individuals or organizations) of all kinds to comply with environmental protection legal regulations.¹⁷⁹ Investment dossiers submitted to relevant authorities for consideration must include possible impact assessments on the environment and propose environmental solutions. Examination of investment projects shall cover land use and environmental solution.¹⁸⁰

In case environment protection obligations are violated, legal documents such as Decree 117/2009/ND-CP of the Government dated 31 December 2009 of Handling Violations in Environment Protection.¹⁸¹ Decree 159/2007/ND-CP of the Government dated 30 October 2007 on Administrative Sanctions Imposed upon Violations in the Domain of Forest¹⁷⁶ 2005 Environment Protection Law, Article 14 and 18. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5961, (last visited 11 November 2012).

177 Ibid., Article 21.

178 Ibid., Article 32.

179 2005 Enterprise Law, Article 9; 2005 Investment Law, Article 20.

180 2005 Investment Law, Article 48.

181 Decree 117/2009/ND-CP of the Government dated 31 December 2009 of Handling Violations in Environment Protection, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=92587, (last visited 2 November 2012).

Management, Forest Protection and Forest Product Management and Decree 105/2009/ND-CP of the Government dated 11 November 2009 on Administrative Sanctions imposed upon Violations in the Land Domain provide different levels of sanctions against violators. A fine between VND 1,000/m² and 10,000/m², for example, shall be imposed on individuals or organizations that cut down forest trees, intentionally burn forest trees, excavate, level, explode mines, dig and build tidal water banks, discharge toxics and engage in other acts that cause damage to forests for whatever purposes without permission of competent state agencies or not in accordance with granted permits.¹⁸² A fine between VND 500,000/m² and 3,500,000/m² shall be imposed for individuals' and organizations' acts of collecting forest products in forests without permission of competent state agencies (if such exploitation is subjected by law to licensing) or not in accordance with granted license.¹⁸³ A fine of between one time and six times the value of material evidences shall be imposed for acts of hunting, shooting, catching, raising, and slaughtering forest animals not of endangered, precious or rare species without permission of competent state agencies or not in accordance with the provisions of granted permits.¹⁸⁴

Impact on land rights

As a matter of principle, business enterprises and individuals, when using land, must comply with the 2003 Land Law and other relevant laws. Their use of land must be environmentally protective and not harmful to the legitimate rights and interests of other land users.¹⁸⁵ Acts of encroaching upon land, using land not for the right purposes, violating

182 Decree 159/2007/ND-CP of the Government dated 30 October 2007 on Administrative Sanctions imposed upon Violations in the Field of Forest Management, Forest Protection and Forest Product Management, Article 18. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3219, (last visited 11 November 2012).

183 Ibid., Article 19.

184 Ibid., Article 20.

185 2003 Land Law, Article 107. English translated version is available at http://moj.gov.vn/vbpq/en/_layouts/printeng.aspx?id=8269, (last visited 11 November 2012).

land-use plans, destroying land, failing to strictly comply with law provisions when applying land users' rights, and failing to perform or performing inadequately the obligations and responsibilities of land users are strictly prohibited.¹⁸⁶

Organizations or individuals who use land for construction of industrial zones must comply with detailed land use planning and detailed industrial-zone construction planning that have been already approved by competent State agencies. The elaboration of detailed industrial-zone construction planning must ensure their synchronization with planning on dwelling houses and public works in service of the daily life of labours working in the industrial zones.¹⁸⁷

Organizations or individuals who use land as ground for construction of production or business establishments must comply with the detailed land use planning, detailed land use plans, urban construction planning or rural population quarter construction planning, which have been already approved, and comply with regulations on environment protection.¹⁸⁸

Organizations or individuals who use lands for mineral activities must apply measures for environment protection, waste treatment and other measures so as not to cause damage to land users in the areas and nearby regions; and use land in accordance with the tempo of mineral exploration or exploitation. Upon the completion of mineral exploration or exploitation,

they have the responsibility to return the land strictly in the state prescribed in the land lease contracts.¹⁸⁹

Those who commit violations of the land legislation, shall, depending on the nature and seriousness of their violations, be administratively handled or examined for penal liability according to law

¹⁸⁶ Ibid., Article 15.

¹⁸⁷ Ibid., Article 90.

¹⁸⁸ Ibid., Article 93.

¹⁸⁹ Ibid., Article 94.

provisions.¹⁹⁰ Those who commit acts of violations that cause damage to the State or other persons must also compensate according to the extents of actual damage to the State or the persons suffering from the damage.¹⁹¹ Acts of degrading land quality, polluting land or causing land utility decline or loss are subject to a fine of between VND 500,000 and VND 500,000,000.¹⁹² Acts of encroaching upon or appropriating land within the safety protection corridors of works, land within urban areas, land with historical-cultural vestiges, scenic places protected by provincial People's Committees are subject to a fine of between VND 2,000,000 and VND 500,000,000.¹⁹³

2.3. To what extent, how, and by whom have the laws and/or regulations identified in Question 2.2 above been enforced by the State?

The above examination of Vietnamese legal documents shows that Vietnam does not lack a legal framework to protect certain human rights from being violated by business enterprises, at least when it comes to the issues of land, environment and labour rights. What remains to be seen is the enforcement of these legal documents. This section aims to briefly examine how the State or state agencies have enforced these laws, with a focus on labour rights, environment rights and land rights. Statistical data or some cases of violations are used in this section or elsewhere in the Report to indicate the extent of law implementation and enforcement by state agencies. The section, in other words, does not seek to provide a detailed analysis on how business enterprises have violated Vietnamese laws and regulations because that is beyond the scope of this report.

¹⁹⁰ Ibid., Article 140.

¹⁹¹ Ibid., Article 142.

¹⁹² Decree 105/2009/ND-CP of the Government dated 11 November 2009 on Administrative sanctions imposed upon Violations in the Land Domain, Article 9. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10701, (last visited 11 November 2012).

¹⁹³ Ibid.

As indicated in the answer to Question 1, different state agencies are responsible for the implementation of different laws and regulations concerning protecting people's rights from abuses by business enterprises. The Ministry of Labour, Invalids and Social Affairs is accountable to the government for exercising state management and implementing laws and policies on labour issues. The Ministry of Natural Resources and Environment serves as the lead agency for environmental and land rights. They are entrusted with the tasks of: drafting and submitting strategies, plans, programs, projects, proposals, and specialized management standards relating to issues of preventing business-related human rights abuses under their management scopes; drafting and submitting legal documents, and organizing the instruction, guidance, implementation and monitoring of the enforcement of these legal documents. These agencies certainly do not act alone. Other ministries and ministerial agencies have the obligation to collaborate with these focal points in enforcing relevant laws and regulations.¹⁹⁴ The People's Committees at all levels also participate in implementing and monitoring the observance of the laws and regulations in their localities.¹⁹⁵ In managing and ensuring the respect of laws and policies in their respective areas or localities, these agencies or authorities may conduct inspections as to whether violations are committed and, if committed violations are found, may impose administrative sanctions against violators. Again, prosecution of crimes rests with the People's Procuracy.

Labour rights

On the implementation of the 2012 Labour Code, on 29 October 2012, the Ministry of Labour, Invalids and Social Affairs issued a Plan of the Code Implementation.¹⁹⁶ According to the Plan,

¹⁹⁴ 2012 Labour Code, Article 236.

¹⁹⁵ 1992 Constitution (amended in 2001), Article 23.

¹⁹⁶ Decision 1511/QD-LDTBXH dated 29 October 2012 on Approving the Implementation Plan of the 2012 Labour Code, available in Vietnamese at <http://www.molisa.gov.vn/docs/VBPL/detailVBPL/tabid/213/DocID/10290/TabModuleSettingsId/450/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

three groups of activities will be conducted, namely (i) raising awareness about the 2012 Labour Code and important labour rights provided therein (e.g., seminars and workshops are being organized,¹⁹⁷ the Labour Code is being translated into English)¹⁹⁸; (ii) drafting, submitting and adopting documents to guide the implementation of the Code and amending existing documents that have conflicting provisions with the Code; and (iii) monitoring, inspecting and reviewing the implementation of the Code (a national review conference on the subject will be held in 2017).¹⁹⁹

The 2012 Labour Code, however, will only enter into force on 1 May 2013. Until then, the Labour Code that was adopted in 1994 and amended in 2002, 2006 and 2007 is still in force (see answer to Question 3 for a brief introduction of major changes made in the 2012 Labour Code). To implement the 1994 Labour Code, the Ministry of Labour, Invalids and Social Affairs has drafted, and submitted to the Government for adoption, various guiding documents, including: Decree 12/2008/ND-CP dated 30 January 2008 guiding the implementation of Article 176 of the Labour Code on postponement or suspension of strikes;²⁰⁰ Decree 133/2007/ND-CP dated 8 August 2007 detailing and guiding the implementation of the Law amending and

¹⁹⁷ See, for instance, the Seminar on Implementation of the 2012 Labour Code held on 19 October 2012 by the Ministry of Labour, Invalids and Social Affairs, <http://www.molisa.gov.vn/news/detail/tabid/75/newsid/55919/language/vi-VN/Default.aspx?seo=Thu-truong-Pham-Minh-Huan-chu-tri-Hoi-thao-Trien-khai-huong-dan-quy-dinh-cua-Bo-luat-Lao-dong-nam-2012-ve-lao-dong-giup-viec-gia-dinh>, (last visited 11 November 2012).

¹⁹⁸ See the plan to translate the 2012 Labour Code into English, <http://www.molisa.gov.vn/news/detail/tabid/75/newsid/55814/seo/Nhung-noi-dung-moi-va-cac-hoat-dong-trien-khai-thuc-hien-Bo-Luat-lao-dong-nam-2012/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

¹⁹⁹ Decision 1511/QD-LDTBXH dated 29 October 2012 on Approving the Implementation Plan of the 2012 Labour Code.

²⁰⁰ Decree 12/2008/ND-CP dated 30 January 2008 guiding the implementation of Article 176 of the Labour Code on Postponement or Suspension of Strikes and Settlement of Labour Collective Interests. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=2970, (last visited 11 November 2012).

supplementing a number of articles of the Labour Code regarding settlement of labour disputes;²⁰¹ Decision 233/2006/QĐ-TTg dated 18 October 2006 by the Prime Minister on Improvement of the National Program on Labour Protection, Safety and Hygiene to 2010 (the total amount of state budget allocated for this Program was VND 242 billion); and Decree 145/2004/NĐ-CP dated 14 July 2004 detailing the implementation of the Labour Code regarding the Vietnam Labour Confederation's and employer representatives' opinions contributed to State agencies on policies, laws and matters related to labour relationships.²⁰²

Awareness-raising activities on the Labour Code and relevant legal documents, including holding seminars, organizing training courses, publishing booklets, and producing TV, radio and online programs, have been carried out by the Ministry of Labour, Invalids and Social Affairs and the Vietnam General Confederation of Labours. A system of labour inspectorates from the local level to the central level has been established with a total number of more than 300 inspectorates.²⁰³

Localities with vigorous business and investment activities have been provided with more labour inspectorates (e.g., the number of labour inspectorates in Ho Chi Minh City has increased

201 Decree 133/2007/NĐ-CP dated 8 August 2007 detailing and guiding the implementation of a number of articles of the law amending and supplementing a number of articles of the Labour Code regarding settlement of labour disputes. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3396, (last visited 11 November 2012).

202 Decree 145/2004/NĐ-CP dated 14 July 2004 detailing the implementation of the Labour Code regarding Vietnam Labour Confederation's and employer representatives' opinions contributed to State agencies on policies, laws and matters related to labour relationships. English translated version (summary) is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7808, (last visited 11 November 2012).

203 The Ministry of Labour, Invalids and Social Affairs, Report on 15 years of implementing the Labour Code (2011), 34. Available in Vietnamese at http://duthaoonline.quochoi.vn/DuThao/Lists/DT_TAILIEU_COBAN/Attachments/117/BC_15_nam_thi_hanh_LLD.pdf, (last visited 11 November 2012).

from 18 to 30, in Dong Nai from 9 to 17, and in Binh Duong from 6 to 10).²⁰⁴ A total of 2,394,000 cases of violations have been handled and violators fined with the amount of VND 18,000 billion.²⁰⁵

It should be noted that 2,394,000 is the number of cases of violations that have been addressed so far. There are possibly many cases of violation that are not detected or, even if detected, not efficiently or promptly addressed. The entire country has only 300 labour inspectorates but, according to the International Labor Organization, it needs at least 800 to 1,000 labour inspectorates.²⁰⁶ As inspectorates are mainly located at the central and provincial levels, the number of inspectorates at district level or inside industrial zones is even more limited.²⁰⁷ As a result, labour inspectorates can inspect merely 3.4% of the total number of enterprises at their localities.²⁰⁸

The limited number of labour inspectorates, not to mention the quality of inspectorates, is among the major problems that Vietnam is facing in enforcing labour rights law. Implementation of labour rights law needs to be monitored and ensured by inspection activities. The lack of monitoring and inspection may contribute to the lack of action from employers to protect labour rights and ensure workplace hygiene and labour safety. Hygiene and safety standards are reportedly out of date.²⁰⁹ There is currently no clear division of work between different local departments (health, labour, industrial zone management body, etc.) in terms of management over workplace hygiene and labour safety.²¹⁰ According to government, the number of labour accident is still high.²¹¹ There are also reports

204 Ibid.

205 Ibid.

206 Ibid.

207 Ibid.

208 Ibid.

209 Ibid., 22.

210 Ibid., 34.

211 Le Thanh Ha, "Những bức xúc của công nhân lao động hiện nay và biện pháp giải quyết", <http://www.molisa.gov.vn/news/detail/tabid/75/newsid/55192/seo/Nhung-buc-xuc-cua-cong-nhan-lao-dong-hien-nay-va-bien-phap-giai-quyet/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

of many children working in exploitative labour conditions, for instance in gold mines despite the prohibition in the laws.²¹² 80% of private enterprises and 60% foreign-invested enterprises do not have labour unions.²¹³ There were 1,712 labour strikes from 2009 to 2011, of which 76.5% happened in foreign invested enterprises.²¹⁴

Many labourers, especially those in service-sector enterprises and medium and small enterprises are not aware of their rights.²¹⁵ Awareness-raising activities are organized only at certain times, i.e. when legal documents have just been adopted. Funding for these kind of activities is limited.²¹⁶ Not all labour rights lecturers and reporters have the required knowledge to do their job.²¹⁷

Environment

To implement environmental laws, the Ministry of Natural Resources and Environment has drafted and submitted to the Government for adoption many guiding documents,

including Decree 29/2011/ND-CP dated 18 April 2011 providing strategic environmental assessment, environmental impact assessment and environmental protection commitment;²¹⁸ Decree 117/2009/ND-CP dated 31 December 2009 on the handling of violations against environment

212 CRS Report for Congress, Vietnam's Labour Rights Regime: An Assessment (2001), 21, available at <http://www.policyarchive.org/handle/10207/bitstreams/1173.pdf>, (last visited 11 November 2012).

213 The Ministry of Labour, Invalids and Social Affairs, Report on 15 years of implementing the Labour Code (2011), 29.

214 Le Thanh Ha, "Những bức xúc của công nhân lao động hiện nay và biện pháp giải quyết", <http://www.molisa.gov.vn/news/detail/tabid/75/newsid/55192/seo/Nhung-buc-xuc-cua-cong-nhan-lao-dong-hien-nay-va-bien-phap-giai-quyet/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

215 The Ministry of Labour, Invalids and Social Affairs, Report on 15 years of implementing the Labour Code (2011), 34.

216 Ibid.

217 Ibid.

218 Decree 29/2011/ND-CP dated 18 April 2011 providing strategic environmental assessment, environmental impact assessment and environmental protection commitment. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10586, (last visited 11 November 2012).

protection law;²¹⁹ Decree 25/2009/ND-CP dated 6 March 2009 on integrated management of natural resources and environmental protection of the sea and islands;²²⁰ Decree 04/2009/ND-CP dated 14 January 2009 providing for incentives and supports for environmental protection activities;²²¹ Decree 112/2008/ND-CP dated 20 October 2008 on management, protection and integrated exploitation of resources and environment of hydropower and irrigation reservoirs;²²² Decree 174/2007/ND-CP dated 29 November 2007 on environmental protection charges for solid wastes;²²³ and Decree 140/2006/ND-CP dated 22 November 2006 providing for the environmental protection at stages of elaboration, evaluation, approval and implementation of development strategies, plans, programs and projects.²²⁴ In September 2012, the Government adopted the National Strategy on Environment Protection to 2020, with a Vision to 2030.²²⁵ The National Plan on Environment Protection to 2020 is expected to be completed by the end of 2012.²²⁶

219 Decree 117/2009/ND-CP dated 31 December 2009 on the handling of law violations in the domain of environmental protection. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10706, (last visited 11 November 2012).

220 Decree 25/2009/ND-CP dated 6 March 2009 on integrated management of natural resources and environmental protection of the sea and islands.

221 Decree 04/2009/ND-CP dated 14 January 2009 providing for incentives and supports for environmental protection activities.

222 Decree 112/2008/ND-CP dated 20 October 2008 on management, protection and integrated exploitation of resources and environment of hydropower and irrigation reservoirs.

223 Decree 174/2007/ND-CP dated 29 November 2007 on environmental protection charges for solid wastes.

224 Decree 140/2006/ND-CP dated 22 November 2006 providing for the environmental protection at stages of elaboration, evaluation, approval and implementation of development strategies, plans, programs and projects.

225 National Strategy on Environment Protection to 2020, with a Vision to 2030, available in Vietnamese http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=163495, (last visited 11 November 2012).

226 See "Góp ý dự thảo Kế hoạch bảo vệ môi trường quốc gia", <http://www.monre.gov.vn/v35/default.aspx?tabid=428&Ca teID=24&ID=120187&Code=DKRY120187>, (last visited 11 November 2012).

In terms of institution building, the Government has established the Vietnam Agenda 21 Office, which is responsible to draft and submit action plans to implement the Vietnam Agenda 21 on sustainable development. The duties of this office require it to, organize and manage the implementation of the Vietnam Agenda 21, coordinate the development of sustainable development programmes; supervise, monitor, and evaluate the results of those programs and projects in the country.²²⁷ The Prime Minister also established the National Council of Sustainable Development that includes a Deputy Prime Minister, Minister of Planning and Investment as the standing member, representatives from the Ministry of Natural Resources and Environment, Ministry of Science and Technology, and 40 other members from Party agencies, the National Assembly, other ministries, local enterprises and social agencies.²²⁸ The role of this body is to advise the Prime Minister and: to organize, instruct and steer the implementation of the Strategic Orientation for Sustainable Development, Natural Resources and Environment; to direct education and awareness raising for all sectors, levels and people about sustainable development; to build and operate information systems on sustainable development issues; to propose new initiatives and search for resources to advance sustainable development. Under the Ministry of Natural Resources and Environment, there is also a Committee established to assist the Minister of Natural Resources and Environment in implementing the Environment Protection Law, relevant legal documents, and the Strategic Orientation for Sustainable Development, Natural Resources and Environment.²²⁹

In terms of monitoring compliance of business enterprises with the environmental protection law, from 2009 to 2011, inspectorates of the Ministry

227 See Vietnam Agenda 21 Office, <http://www.agenda21.monre.gov.vn/default.aspx?tabid=231>, (last visited 11 November 2012).

228 Decision No. 1032/QĐ-TTg of the Prime Minister.

229 See “*Nâng cao ý thức bảo vệ môi trường qua hoạt động thanh tra*,” <http://www.agenda21.monre.gov.vn/Default.aspx?tabid=394&ItemID=2693>, (last visited 11 November 2012).

of Natural Resources and Environment conducted inspections in 1,703 enterprises and industrial zones, detecting violations and imposing a total amount of administrative fines at VND 59.837 billion against violators.²³⁰ Inspectorates of the General Department of Environment Protection conducted a series of inspection missions in 2011 across 32 provinces and 375 industrial zones, among which 154 were concluded as violating legal documents on environment protection.²³¹ In the province of Binh Duong alone, 30 enterprises were fined with the amount of more than VND 1.7 billion for violating the environmental protection law.²³² In addition, inspections were also conducted and violations handled at companies like Hyundai Vinashin and Tan Phat Tai.²³³

Inspection results, however, suggest that in some cases both the state authorities and business enterprises have failed to fully implement the laws on environmental protection. Some local authorities, for instance, did not assess potential environmental impacts when examining investment dossiers, which they considered as a measure to attract investment.²³⁴ Some other local authorities have either failed to adopt, or adopted at a very slow pace, local regulations on environmental protection at their localities to the extent that the Ministry of Natural Resources and Environment had to issue a Circular in 2007 directing local authorities to promptly adopt local regulations on environmental

230 Ministry of Natural Resources and Environment, Answer to the National Assembly, www.na.gov.vn/OpenAttach.asp?idfile=1757, (last visited 11 November 2012).

231 See Committee on Sustainable Development <http://www.agenda21.monre.gov.vn>, (last visited 11 November 2012).

232 See “*Nâng cao ý thức bảo vệ môi trường qua hoạt động thanh tra*,” <http://www.agenda21.monre.gov.vn/Default.aspx?tabid=394&ItemID=2693>, (last visited 11 November 2012).

233 Ibid.

234 See “*Tăng cường thực hiện luật bảo vệ môi trường*,” <http://www.baomoi.com/Tang-cuong-thuc-hien-Luat-Bao-ve-moi-truong/45/4058140.epi>, (last visited 11 November 2012).

protection.²³⁵ Some did not even bother to take notice of serious damage to the environment caused by business activities in the areas under their management.

In one of the most visible cases of an environmental law violation by a business enterprise in Vietnam, the Taiwanese food manufacturer Vedan Co., Ltd was able to illegally dump waste into the Thi Vai River from its Monosodium Glutamate for more than 10 years and the violation was only officially detected in 2008. At first, the company declined to bear responsibility. In the end, it was required to pay a fine of VND 267 million and another VND 127 billion as an environmental protection fee.²³⁶ The company was also forced to shut down some factories and reduce its operations to 67% of its capacity.²³⁷ With the support of the Ministry of Natural Resources and Environment and the Vietnam Environment Fund, many farmers in the three affected areas, namely Ba Ria – Vung Tau province, Cu Chi District of Ho Chi Minh City and Dong Nam province, decided to sue the company.²³⁸ After many rounds of negotiation and under a lot of pressure, the company agreed to pay VND 53 billion to affected people in Ba Ria – Vung Tau province, VND 45 billion to affected people in Ho Chi Minh City and VND 120 billion to affected people in Dong Nai province.²³⁹ The case clearly illustrates the problem of enforcement of environmental law in Vietnam that needs to be addressed. It results from a combination of the weakness of state management

235 Circular 02/CT-BTNMR dated 19 November 2007 on the implementation of land law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=15&mode=detail&document_id=51995, (last visited 11 November 2012).

236 See “Tăng cường thực hiện luật bảo vệ môi trường”, <http://www.baomoi.com/Tang-cuong-thuc-hien-Luat-Bao-ve-moi-truong/45/4058140.epi>, (last visited 11 November 2012).

237 Ibid.

238 Ibid.

239 See “Nông dân được tạm ứng 2,6 tỷ đồng để kiện Vedan,” at <http://vnexpress.net/gl/xa-hoi/2010/08/3ba1ede7> and “Bộ Tài nguyên và Môi trường: Kiện Vedan là chắc thắng,” at <http://vnexpress.net/gl/xa-hoi/2010/07/3ba1e930/>, (last visited 11 November 2012).

at local level, lack of capacity, shortcomings of inspection activities, defects in environmental impact assessments, lack of awareness, and a loose coordination mechanism between the central and local agencies.

Lands

To implement the 2003 Land Law, the Government has issued 22 guiding documents,²⁴⁰ including: Decree 105/2009/ND-CP dated 11 November 2009 on the sanctioning of administrative violations in the land domain;²⁴¹ Decree 88/2009/ND-CP dated 19 October 2009 on grant of certificates of land use rights and house and land-attached asset ownership;²⁴² Decree 69/2009/ND-CP dated 13 August 2009 on land use planning, land prices, land recovery, compensation, support and resettlement;²⁴³ Circular 02/CT-BTNMT dated 19 November 2007 on the implementation of land law;²⁴⁴ and Decree 181/2004/ND-CP dated 29 October 2004 on the

240 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

241 Decree 105/2009/ND-CP dated 11 November 2009 on the sanctioning of administrative violations in the land domain. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10701, (last visited 11 November 2012).

242 Decree 88/2009/ND-CP dated 19 October 2009 on grant of certificates of land use rights and house and land-attached asset ownership. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10697, (last visited 11 November 2012).

243 Decree 69/2009/ND-CP dated 13 August 2009 on land use planning, land prices, land recovery, compensation, support and resettlement. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10688, (last visited 11 November 2012).

244 Circular 02/CT-BTNMR dated 19 November 2007 on the implementation of land law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=15&mode=detail&document_id=51995, (last visited 11 November 2012).

implementation of land law,²⁴⁵ among others. A lot of education and awareness raising activities have been carried out, including holding training courses, publishing the law and relevant materials, producing radio and TV programs, organizing a national competition about the Land Law, issuing CDs and CD-ROMs, and even holding online chat sessions.²⁴⁶

From 2005 to 2010, the Ministry of Natural Resources and Environment sent many working missions to 64 provinces, 160 districts, 159 communes, 500 enterprises and met more than 20,000 people to monitor the implementation of the Land Law.²⁴⁷ In 2008 and 2010, monitoring work focused on the use of land for golf projects and found 27 cases of violations.²⁴⁸ From 2009 to late 2011, nearly 2,000 complaints and denunciations, the majority of which involves land clearance and land return, piled up waiting for the Government Inspectorate to resolve. On orders from the Prime Minister, in May 2012, the Government Inspectorate selected 528 of the most complicated cases for review by the end of the year. By October 2012, the Government Inspectorate had reviewed 486 out of 528 complicated cases, in which 282 cases has already been settled by central agencies, 131 cases sent back to local authorities for settlement, 41 cases

245 Decree 181/2004/ND-CP dated 29 October 2004 on the implementation of land law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=18&mode=detail&document_id=13310, (last visited 11 November 2012).

246 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

247 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

248 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

awaiting decisions from the Prime Minister, and 32 are pending for decisions by ministries and sectors at the central level.²⁴⁹

The large number of complaints and denunciations about violations of land rights reveals many problems in land law and land law enforcement in Vietnam. Given the competition among different localities to attract investment, some local authorities accept compensation rates that are favourable to investors' interest in order to attract more investment to their localities. Many local authorities also fail to arrange properly resettlement areas for people whose land is subject to confiscation and are not concerned with the issue of job creation for affected people.²⁵⁰ Inspections at the local level are not conducted on a regular basis and do not meet the demands of practice. Coordination mechanisms between central agencies and local authorities do not run smoothly. Many detected violations are not handled in a timely and efficient manner²⁵¹ and even sanctions usually are not strong enough to prevent and deter violations. Not all awareness raising activities are effective and, as a result, many people, especially those in the remote areas, are not well aware of their rights under the Land Law.²⁵²

As observed by the World Bank in its 2012 Policy Note "Revising the Land Law to Enable Sustainable Development in Vietnam,"²⁵³ although the 2003 Land Law states that the State's land prices would be in line with market prices and the Government

249 Tuoitre News, "Government resolves land-rights complaints," available at <http://www.tuoitrenews.vn/cmmlink/tuoitrenews/society/government-resolves-land-rights-complaints-1.89439>, (last visited 11 November 2012).

250 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

251 Ibid.

252 Ibid.

253 The World Bank, Policy Note "Revising the Land Law to Enable Sustainable Development in Vietnam," (2012), http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/10/29/000386194_20121029021618/Rendered/PDF/707260Revised00d0Policy0Notes.Final.pdf, (visited 5 November 2012).

Decreets 17/2006/ND-CP, 123/2007/ND-CP and 69/2009/ND-CP require that the land compensation price reflect market prices, in practice, there is no concrete guidance on how to implement this policy and each province therefore currently follows different price schemes. Ho Chi Minh City is one of the exceptional cases where the authorities hire an independent land appraiser for each investment project and compensation rates are closer to market rates. In many other localities, land compensation prices are much lower than prevailing market prices, leading to dissatisfaction of land users and long lasting complaints. This situation negatively affects both economic development and social stability, as well as reducing the attractiveness of Vietnam's investment environment.²⁵⁴

Another major problem identified by the World Bank is the compulsory land acquisition scheme according to which land is being taken in a mandatory manner not only for the purposes of national defence, security, and national and public interests, but also for some economic development purposes such as projects to construct infrastructure for economic areas, hi-tech parks, industrial zones, service zones, urban and rural residential areas, projects with 100% foreign investment (including ODA and FDI), and projects with a high level of investment funds.²⁵⁵ This, as observed by the World Bank, often causes unfairness in benefit sharing between land users, investors and the State, inefficient land use, corruption, and prolonged complaints of the land users.²⁵⁶ The World Bank therefore makes the following proposals:²⁵⁷ enhancing effectiveness of land use, creating transparent and equitable land acquisition by limiting the use of compulsory land acquisition only to cases for the public's benefit, relying predominantly on voluntary land conversions, changing the focus of land compensation pricing, strengthening the land use rights of vulnerable groups, such as women, the poor and ethnic minority communities and

making the governance system more effective and accountable.²⁵⁸

As for cooperation with other countries in terms of preventing and combating crimes or law violations, in addition to signing and ratifying multilateral treaties such as the United Nations Convention against Corruption or the United Nations Convention on Transnational Organized Crimes, Vietnam has also concluded many bilateral agreements on crime prevention, mutual legal assistance and extradition. Examples of recent bilateral agreements include the 2007 Vietnam - India Agreement on Mutual Legal Assistance in Criminal Matters; the 2009 Vietnam - United Kingdom Agreement on Mutual Legal Assistance in Criminal Matters; the 2010 Vietnam - Thailand Agreement on Transfer of Sentenced Persons and Cooperation in Execution of Criminal Sentences; the 2010 Vietnam - Algeria Agreement on Mutual Legal Assistance in Criminal Matters; the 2010 Vietnam - Algeria Agreement on Extradition and the 2011 Vietnam - Kazakhstan Agreement on Mutual Legal Assistance Civil Matters.²⁵⁹ Vietnam is also a party to the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The Law on Mutual Legal Assistance has been in force for 5 years.²⁶⁰ The Government also issued the Decree No. 92/2008/ND-CP dated 22 August 2008 guiding the Implementation of the Law.²⁶¹

²⁵⁸ Ibid.

²⁵⁹ Full list is available at Ministry of Foreign Affairs, Consular Department, <http://lanhsuvietnam.gov.vn/Lists/BaiViet/Bai%20viet/DispForm.aspx?List=dc7c7d75%2D6a32%2D4215%2Dafeb%2D47d4bee70eee&ID=414>, (last visited 5 November 2012).

²⁶⁰ 2007 Law on Mutual Legal Assistance, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=50875, (last visited 5 November 2012).

²⁶¹ Decree No. 92/2008/ND-CP dated 22 August 2008 guiding the Implementation of the 2007 Law on Mutual Legal Assistance, available in Vietnamese at <http://thuvienphapluat.vn/archive/Nghi-dinh/Nghi-dinh-92-2008-ND-CP-huong-dan-Luat-Tuong-tro-tu-phap-vb69747t11.aspx>, (last visited 5 November 2012).

²⁵⁴ Ibid., 6.

²⁵⁵ Ibid., 5.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?

According to the 2008 Law on Promulgation of Legal Documents, legal documents shall be periodically reviewed and assessed. Legal document contents that are proven wrong or no longer appropriate shall be amended, revised, replaced or abolished.²⁶² State agencies, within the limits of their responsibilities and powers, shall be responsible for regularly reviewing legal documents. Upon detecting any legal documents that are contradictory, overlapping or no longer appropriate or suitable with the development of the country, they shall by themselves, or request competent State authorities, to revise, amend, replace, abolish and suspend the implementation of such legal documents. Agencies, organizations and citizens shall have the right to petition the State to consider revising, amending, replacing, abolishing and suspending the implementation of legal documents.²⁶³

Labour Code

The Labour Code was adopted by the National Assembly on 23 June 1994 and entered into force on 1 January 1995.²⁶⁴ In 2000, the Government organized nationwide activities to assess the Code and review its five years of implementation. Many proposals for amendments were made afterwards. On 2 April 2002, the National Assembly adopted the Law on Amending and Supplementing a number of Articles of the Labour Code.²⁶⁵ In 2005, the Code's ten years of implementation was reviewed, the result of which was the adoption of the second Amendment Law on

26 November 2006.²⁶⁶ On 2 April 2007, in response to many calls from the society to increase the number of public holidays, the National Assembly again amended the Code with the third Law on Amending and Supplementing a number of Articles of the Labour Code.²⁶⁷

Most recently, nationwide activities to assess the Labour Code (last amended in 2007) were again conducted in 2010, 15 years after the Labour Code came into effect. This time the Government decided to recommend a new Labour Code instead of submitting another draft law to amend the current one. On 18 June 2012, the National Assembly adopted the new Labour Code after working on it for two years.²⁶⁸ The new Code will enter into force on 1 May 2013.

The adoption of the new Labour Code marks a move of the State in the right direction to provide workers and employees with greater protection. The 2012 Labour Code contains 242 articles with many new sections on invalid labour contracts, training and improving professional skills, collective bargaining, and industrial collective labour agreements. Changes in employees' working conditions include: among other, an increased minimum salary during the probation period (from 70 per cent to 85 per cent of the salary of the relevant job);²⁶⁹ more specified regulations on the probation period (the probationary period does not exceed 60 days for employment with a job position requiring

262 2008 Law on Promulgation of Legal Documents, Article 87. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10500, (last visited 11 November 2012).

263 Ibid.

264 See 1994 Labour Code.

265 For changes made to the Labour Code, see 2002 Law on Amending and Supplementing a number of Articles of the Labour Code. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10196, (last visited 11 November 2012).

266 For changes made to the Labour Code, see 2006 Law on Amending and Supplementing a number of Articles of the Labour Code. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3782, (last visited 11 November 2012).

267 For changes made to the Labour Code, see 2007 Law on Amending and Supplementing a number of Articles of the Labour Code, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=4&mode=detail&document_id=80046, (last visited 11 November 2012).

268 2012 Labour Code, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=163542, (last visited 11 November 2012).

269 Ibid., Article 28.

college-level qualifications or above; 30 days for employment with a job position requiring vocational intermediate and professional intermediate level qualifications, technical workers and professional staff; and 6 days for other cases);²⁷⁰ increased salary rates for overtime during night shifts (an additional 20 per cent);²⁷¹ increased official holiday leave (from 4 days to 5 days);²⁷² and extended maternity leave (from 4 months to 6 months).²⁷³

Environment Protection Law

The first Environmental Protection Law of Vietnam was adopted by the National Assembly on 27 December 1993 and entered into force on 10 January 1994.²⁷⁴ In 1999 and 2004 respectively, after holding a national review of the Law after five years and ten years of implementation, the Government decided that a new law on Environmental Protection was needed. On 29 November 2005, the National Assembly adopted the new Law on Environmental Protection.²⁷⁵

The 2005 Environmental Protection Law contains 136 articles, including, among others, new provisions on required strategic environmental impact assessments, environmental impact assessments (EIA) and a commitment to environmental protection.²⁷⁶ The Law also adds provisions on the duty of organizations, business enterprises and individuals: to provide environmental information relevant to their activities to specialized environmental protection

agencies; to publicly post at project sites information on the kinds of wastes, treatment technologies, standard parameters of wastes and environmental protection solutions for population communities to know, inspect and supervise; and to properly and fully implement environmental protection contents in environmental impact assessment reports and requirements stated in decisions approving environmental impact assessment reports.²⁷⁷

Activities to assess the 2005 Environmental Protection Law and review its five years of implementation are now being carried out.

The National Assembly has already placed the Law on its agenda for consideration and discussion of amendments in 2013.

Land Law

On 29 December 1987, one year after the launch of *Doi Moi*, Vietnam adopted its first Land Law. The Law came into effect on 8 January 1988.²⁷⁸ On 15 October 1993, a new Land Law entered into force.²⁷⁹ Ten years later, the National Assembly passed yet another new Land Law (2003 Land Law).²⁸⁰ In 2009, the 2003 Land Law was amended by the Law Amending and Supplementing Article 126 of the House Law and Article 121 of the Land Law, according to which some overseas Vietnamese are

²⁷⁰ Ibid., Article 27.

²⁷¹ Ibid., Article 87.

²⁷² Ibid., Article 28.

²⁷³ Ibid., Article 157.

²⁷⁴ See 1993 Environment Protection Law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=48&mode=detail&document_id=2035, (last visited 11 November 2012).

²⁷⁵ For changes made to the Labour Code, see 2007 Law on Amending and Supplementing a number of Articles of the Labour Code.

²⁷⁶ 2005 Environment Protection Law, Article 14 and 18. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5961, (last visited 11 November 2012).

²⁷⁷ Ibid., Article 32.

²⁷⁸ 1988 Land Law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=19&mode=detail&document_id=218, (last visited 11 November 2012).

²⁷⁹ 1993 Land Law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=18&mode=detail&document_id=1832, (last visited 11 November 2012).

²⁸⁰ 2003 Land Law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=18&mode=detail&document_id=32479, (last visited 11 November 2012).

eligible to own house in Vietnam.²⁸¹ In 2010, the Prime Minister issued a Directive on Assessing the 2003 Land Law and Reviewing its Implementation. The Report on 10 years implementation of the 2003 Land Law were submitted to the National Assembly, in which various shortcomings were identified (see answer to Question 2.3).²⁸² The National Assembly is expected to consider amending the 2003 Land Law in the near future.

4. Is the State using corporate governance measures to require or encourage respect for human rights?

4.1. Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?

4.1.1. What are the general legal due diligence obligations that directors have to comply with?

As provided by the 2005 Enterprise Law, company's directors or general directors are responsible for their company's day-to-day business operations.²⁸³ They have the right and duty to, among other things, implement the business plans and investment plans of the company and conclude contracts on behalf of the company and recruit labourers.²⁸⁴ They have the obligation to perform assigned rights and duties in

281 Law Amending and Supplementing Article 126 of the House Law and Article 121 of the Land Law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=10&mode=detail&document_id=91022, (last visited 11 November 2012).

282 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

283 2005 Enterprise Law, Article 55, Article 70 and Article 116. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5953, (last visited 11 November 2012).

284 Ibid.

an honest, careful and optimal manner in order to ensure maximum lawful benefits for the company and its owner. They are not permitted to use information, know-how and business opportunities of the company and abuse their status, position and property of the company for self-seeking purposes or for the benefit of other organizations or individuals. They must promptly, fully and accurately notify their company of other enterprises in which they or their related persons are owners or have dominant shares or capital shares. They are also required to perform other obligations as provided for by law and the company's charter.²⁸⁵

Under the 2010 Credit Institutions Law,²⁸⁶ directors of credit institutions have the obligation to perform the rights and obligations in accordance with provisions of applicable laws, the Charter of the credit institution, and resolutions and decisions of the Shareholders' General Assembly or the owner or capital contributing members of the credit institution in an honest, cautious manner for the benefit of the credit institution, its shareholders, capital contributing members and owner. They are not allowed to use information, know-how, and business opportunities of the credit institution and abuse the position, title and assets of the credit institution for personal benefit or for the sake of another organization or individual that causes damage to the benefit of the credit institution, its shareholders, capital contributing members and owner. They must ensure that records of the credit institution are kept to supply data to serve management and control over all activities of the credit institution, and the inspection, supervision, and examination by the State Bank. They are required to be knowledgeable about various types of risks in the activities of the credit institution. They also have the duty to timely, fully and accurately notify the credit institutions of their rights and interests at other organizations, their transactions with other organizations or individuals which may

285 Ibid., Article 56, Article 72 and Article 119.

286 2010 Credit Institutions Law, Article 38. English translated version is available at <http://www.sbv.gov.vn/wps>, (last visited 11 November 2012).

conflict with the interests of the credit institution. They are only authorized to participate in such transactions when they are approved by the Board of Directors or Board of Members.

They cannot facilitate themselves or their related persons to borrow capital, use other banking services of the credit institution with more preferential conditions than general regulations of the credit institution, and they are not entitled to salary, remuneration increase or bonus payments in the event where the credit institution faces losses.²⁸⁷

4.1.2. Do directors have specific legal obligations to consider their business enterprises' human rights impacts in carrying out their duties?

It is not evident from the law that directors have specific legal obligations to consider their business enterprises' human rights impact in carrying out their duties. However, there are a number of laws that provide rights-related obligations for enterprise directors.

First, according to the 2005 Enterprise Law and the 2010 Credit Institutions Law, directors are not permitted to abuse their status, position or the property of the enterprises that they are working for to violate the interests of other organizations and individuals.²⁸⁸ Violations of the 2005 Enterprise Law and the 2010 Credit Institutions Law – if they do not yet constitute a crime under the Criminal Code – are subject to civil or administrative sanctions (see answer to Question 2.2.).

Second, in mining activities, if there is a risk of an adverse event relating to occupational safety, the managing director must immediately apply necessary measures to eliminate the possible causes

of such an event. Upon the occurrence of any adverse event relating to occupational safety, the managing director must apply emergency measures in order to eliminate the causes of such event, render first aid and evacuate people from the dangerous area, promptly report the event to the competent State authority, protect the assets and keep intact the site in accordance with the law.²⁸⁹ Violations of the 2005 Mineral Law, do not yet constitute a crime under the Criminal Code, but are subject to civil or administrative sanctions (see answer to Questions 2.2 and 2.2).

Third, directors, like other individuals, may be subject to criminal liability if they commit crimes defined under the Criminal Code. Any violation of the rights of others which constitute a crime is handled in accordance with the 1999 Criminal Code (amended in 2009). Article 128 of the Criminal Code, for example, stipulates that, those who, for their own benefit or other personal motivation illegally force labourers or public employees to leave their jobs, causing serious consequences, shall be subject to warning, non-custodial reform for up to one year, or a prison term of between three months and one year. Those who: discharge into the air different kinds of smoke, dust, toxic matters or other harmful elements; emit radiation and/or radioactive elements in excess of the permitted criteria; or have already been administratively sanctioned but still deliberately refuse to apply remedial measures as mandated by the decisions of the competent agencies, thus causing serious consequences, shall be subject to a fine of between ten million VND and one hundred million VND, non-custodial reform for up to three years, or a prison term of between six months and three years.²⁹⁰

²⁸⁷ Ibid.

²⁸⁸ 2005 Enterprise Law, Article 56, Article 72 and Article 119, English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5953, (last visited 11 November 2012); 2010 Law on Credit Institutions, Article 38, English translated version is available at <http://www.sbv.gov.vn/wps>

²⁸⁹ 2005 Mineral Law, Article 35.

²⁹⁰ 1999 Criminal Code (amended in 2009), Article 182.

4.1.3. Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

It is not evident from law that directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad.

4.1.4. Have any of the directors' duties identified above been enforced by the State in relation to business-related human rights abuses?

There is no information available on how the State or state agencies have specifically enforced the director's obligations to consider their business enterprises' human rights impacts in carrying out their duties (see answer to Question 2.3 for steps that have been taken to enforce relevant business-related human rights protection legislation).

There have been lawsuits, however, brought by labourers against directors of companies who violated their rights or contracts signed between them and the directors. In June 2009, Mr. Nguyen Van Binh was fired by the Director of Ham Thuan Bac post office (a state enterprise) for collecting an extra amount of VND 30,000 from a phone customer. Having worked for the post office for 30 years and never been disciplined, Mr. Binh found his labour rights violated by the Director and decided to sue him. In April 2010, the Phan Thiet City People's Court issued a judgment revoking the firing decision and requiring the Director to pay Mr. Binh nine months of salary during the time of termination of his employment as well as mental

damages equal to two month's salary²⁹¹ (it is not yet possible to obtain statistics on the total number of cases like this from the People's Court or other institutions).

4.1.5. Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

There is no information available on any non-binding guidelines published by state agencies to encourage *directors* to take into account their businesses' human rights impacts in carrying out their duties, and the human rights impacts of subsidiaries, suppliers and other business partners. The State, however, has issued non-binding guidelines and initiatives to encourage *business enterprises* to respect human rights throughout their operations (see answers to Question 5.1. and Question 5.2. for further information).

4.2. Does the State require or encourage business enterprises to communicate their human rights impacts, as well as any action taken to address those impacts?

Under the 2005 Environmental Protection Law, business enterprises are required to make public all environmental information relating to their activities.²⁹² Environment-related project owners are required to publicly post at their project sites information on kinds of wastes,

²⁹¹ Phap Luat Online, "Một nhân viên bưu điện thăng kiện giám đốc," available at <http://phapluattp.vn/20100414121258701p1063c1016/mot-nhan-vien-buu-dien-thang-kien-giam-doc.htm>, (last visited 11 November 2012).

²⁹² 2005 Environment Protection Law, Article 103.

treatment technologies, standard parameters of wastes and environmental protection solutions for population communities to know, inspect and supervise.²⁹³ Their impact assessment reports shall be appraised by appraisal councils or appraisal service organizations.²⁹⁴

As provided in the 2012 Labour Code, employers must communicate sufficient information related to the current status of work accidents, occupational diseases, dangerous and harmful factors, all measures taken to ensure occupational safety and hygiene at the workplace to their employees.²⁹⁵ They must put information and instructions on labour safety and labour hygiene at public places where they can be easily seen and clearly read. They must consult their employees when formulating plans and implementing activities that may affect labour safety and hygiene.²⁹⁶ When making a decision which might affect the rights and interests of women or children in the enterprises, they must ensure communication and consultation with representatives of female employees.²⁹⁷ Every two months, they have to submit an updated report on labour recruitment to relevant agencies.²⁹⁸ If they fail to implement this reporting obligation, depending on the nature and severity of their violations, business enterprises may be administratively sanctioned or disciplined in accordance with Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative Sanctioning of Violations of the Labour Code.

The 2005 Enterprise Law also requires business enterprises to publish basic information about their companies, within 30 days from the date of receiving the business registration certificate, on the registration office website, newspaper or electronic newspaper. The required information under the 2005 Enterprise Law, however, does not include

293 Ibid., Article 23.

294 Ibid., Article 24.

295 2012 Labour Code, Article 151.

296 Ibid., Article 138.

297 Ibid., Article 154.

298 Decree No. 39/2003/ND-CP dated 18 April 2003 detailing and guiding the implementation of a number of articles of the labour code regarding employment, Article 10.

human rights impacts.²⁹⁹ The obligation does not extend to human rights impacts abroad and to the impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad.

4.3. Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?

There are no regulations specifically requiring business enterprises listed on the stock exchange to respect human rights. Examining public information from the Hanoi Stock Exchange³⁰⁰ and the Ho Chi Minh Stock Exchange³⁰¹ turns up no guidelines, policies or incentives to encourage enterprises listed on the exchanges to respect human rights. Business enterprises listed on the stock exchange, however, are still subject to relevant requirements of the 2012 Labour Code, 2005 Environment Protection Law, 2005 Enterprises Law, 2005 Investment Law, and 2003 Land Law while doing their businesses.

5. Has the State adopted other non-binding measures to foster corporate cultures respectful of human rights?

5.1. Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?

Labour rights

A check on the website of the Ministry of Labour, Invalids and Social Affairs reveals that the Ministry has indeed published many articles, papers and comments to raise awareness and encourage business

299 2005 Enterprise Law, Article 28.

300 Hanoi Stock Exchange, <http://www.hnx.vn/en>, (last visited 11 November 2012).

301 Ho Chi Minh Stock Exchange, http://www.hsx.vn/hsx_en/default.aspx, (last visited 11 November 2012).

enterprises to assume their social responsibilities.³⁰² This kind of activity is expected to be carried out further once the 2012 Labour Code comes into force (the Code has a provision on the State's policy to promote employers' social responsibility).³⁰³

To encourage business enterprises to respect labour rights, the Ministry of Labour, Invalids and Social Affairs has also collaborated with other agencies and institutions in organizing and offering awards to business enterprises with outstanding records in implementing the Labour Code. Starting from 2005, in collaboration with the Vietnam Chamber of Commerce and Industry, the Ministry introduced the Annual Award "Corporate Social Responsibility in the Footwear and Textiles Industry."³⁰⁴ In 2011, it cooperated with the Ministry of Planning and Investment and the Korean Ministry of Knowledge Economy to hold a ceremony honouring six Korean investors in Vietnam with Corporate Social Responsibility Awards.³⁰⁵ Most notably, it has worked with the Office of Business for Sustainable Development under the Vietnam Chamber of Commerce and Industry (VCCI), the Ministry of Planning and Investment, the Ministry of Industry and Trade, the Ministry of Natural resources and Environment, the Vietnam General Confederation of Labour, the Bureau of Environmental Police, and its international partner organizations to organize the annual national Corporate Social Responsibility Awards to honour enterprises with greatest contributions in the two areas of environment and

302 Visit the website of the Ministry of Labour, Invalids and Social Affairs at <http://www.molisa.gov.vn> and search "trách nhiệm xã hội" ("social responsibility"), (last visited 11 November 2012).

303 2012 Labour Code, Article 4(2).

304 See "Phát động Giải thưởng trách nhiệm xã hội doanh nghiệp ngành giày da và dệt may 2006," <http://www.molisa.gov.vn/others/faq/faqdetail/tabid/211/newsid/49546/language/vi-VN/Default.aspx?seo=Phat-dong-Giai-thuong-%E2%80%9CTrach-nhiem-xa-hoi-cua-Doanh-nghiep-2006-%E2%80%93Nganh-da-giay-va-det-may-Viet-Nam%E2%80%9D>, (last visited 11 November 2012).

305 See "Trao giải thưởng thực hiện tốt trách nhiệm xã hội doanh nghiệp cho các doanh nghiệp Hàn Quốc tại Việt Nam," <http://www.molisa.gov.vn/news/detail/tabid/75/newsid/53705/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

labour. Five Annual Awards have been granted so far with the fifth Awards being presented in August 2012.³⁰⁶

Environment protection

There are a variety of initiatives that have been implemented to encourage business responsibility to protect the environment.

First, the Environmental Protection Awards are biennially presented to individuals and organizations with outstanding records in environmental protection.³⁰⁷ The Awards are co-organized by the Ministry of Natural Resources and Environment, the Ministry of Science and Technology, the Vietnam Chamber of Commerce and Industry and Vietnam Television. Expenses for selecting award winners and organizing awarding ceremonies are covered by the non-business environmental funding source, the Environmental Protection Fund of Vietnam, and financial contributions from other organizations and individuals.³⁰⁸

Second, enterprises and cooperatives conducting environmental protection activities such as manufacturing environmentally friendly products, manufacturing environmental protection equipment, applying new environmentally friendly technologies, applying biotechnology to environmental protection, conducting research and development of techniques for treating and recycling wastes and transferring waste treatment technologies, etc. are eligible for enterprise income tax incentives under the law on enterprise income

306 See "Hội thảo công bố tiêu chí và phát động giải thưởng" <http://www.globalcompactvietnam.org/detail.asp?id=140>, (last visited 11 November 2012).

307 See <http://vea.gov.vn/vn/truyenthong/giaithuong/Pages/trangchu.aspx>, for more information about the Awards (last visited 11 November 2012).

308 Decree 04/2009/ND-CP dated 14 January 2009 providing for incentives and supports for environmental protection activities, Article 20. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10652, (last visited 11 November 2012).

tax.³⁰⁹

Third, support is provided for investment projects in building technical infrastructure works and work items (roads, electricity transmission lines, water supply and drainage works) outside project areas and connected with common regional technical infrastructure systems.³¹⁰

Fourth, the State encourages individuals and enterprises to advertise environment-friendly products, make scientific films on environmental protection to raise public awareness about environmental protection and use of environmentally friendly products, and supply free of charge tools for people to sort daily-life garbage at source. Expenses for these activities shall be accounted for as production costs of organizations, individuals, enterprises and cooperatives.³¹¹

Global Compact Network in Vietnam

In 2007, the Vietnam Chamber of Commerce and Industry (VCCI), in partnership with the United Nations, launched the Global Compact Network Vietnam (GCNV) to support the business community in implementing effective corporate social responsibility plans, programs and initiatives and to promote responsible business practices in the country. The GCNV has four main pillars: defending human rights, improving labour conditions,

protecting the environment and supporting anti-corruption. It works to identify, anticipate and diffuse the tensions between business and communities, business and the environment, business and the government, and business and the consumer, leading to sustainable businesses.³¹²

309 Decree 04/2009/ND-CP dated 14 January 2009 providing for incentives and supports for environmental protection activities, Article 13. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10652, (last visited 11 November 2012).

310 Ibid., Article 8.

311 Ibid.

312 For more information about the Global Compact Network Vietnam and the job it has done, visit <http://www.globalcompactvietnam.org>, (last visited 11 November 2012).

The VCCI is also working with the UN Industrial Development Organization (UNIDO) to implement the project “Helping Vietnamese SMEs Adapt and Adopt Corporate Social Responsibility for Improved Linkages with Global Supply Chain in Sustainable Production.” The aim of the project is to raise awareness and entrench Corporate Social Responsibility standards in small and medium enterprises.³¹³

It is not clear, however, to what extent state agencies, including the Ministry of Labour, Invalids and Social Affairs and the Ministry of Natural Resources and Environment have engaged in these projects. The Vietnam Chamber of Commerce and Industry, albeit being established by the government and tasked with assisting the government in many areas, is not a state agency.³¹⁴

5.2. Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

Labour rights

As provided in response to Question 2.3, the Government has issued many legal documents to guide the implementation of the Labour Code, including Decree 133/2007/ND-CP dated 8 August 2007 guiding the implementation of the Law amending and supplementing a number of articles of the Labour Code regarding settlement of labour disputes,³¹⁵ Decision 233/2006/QD-TTg dated 18 October 2006 by the Prime Minister on

313 Brigitte Hamm, Corporate Social Responsibility in Vietnam: Integration or Mere Adaptation, Pacific News Number 38, (July/August 2012), 6.

314 According to the Decision of the Prime Minister to establish the Vietnam Chamber of Commerce and Industry, the Chamber is referred to as a non-governmental organization.

315 Decree 133/2007/ND-CP dated 8 August 2007 detailing and guiding the implementation of a number of articles of the law amending and supplementing a number of articles of the Labour Code regarding settlement of labour disputes. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3396, (last visited 11 November 2012).

Improvement of the National Program on Labour Protection, Safety and Hygiene to 2010 (the total amount of state budget allocated for this Program was VND 242 billion); and Decree 145/2004/ND-CP dated 14 July 2004 detailing the implementation of the Labour Code regarding the Vietnam Labour Confederation's and employer representatives' opinions contributed to State agencies on policies, laws and matters related to labour relationships.³¹⁶

The Ministry of Labour, Invalids and Social Affairs has also published many separate guidance documents for employers on how to protect the rights of their employees such as the Notes on Giving Allowance to Employees or the Notes on Benefit Schemes for Labourers on Leave of Absence.³¹⁷ The website of the Ministry of Labour, Invalids and Social Affairs has a "Q&A Section" where employers and employees can ask questions about how labour rights are protected.³¹⁸ A recent report of the government states that brochures, handbooks and information tools on how to implement the Labour Code and respect labour rights have been disseminated but does not specify these brochures and handbooks.³¹⁹

316 Decree 145/2004/ND-CP dated 14 July 2004 detailing the implementation of the Labour Code regarding Vietnam Labour Confederation's and employer representatives' opinions contributed to State agencies on policies, laws and matters related to labour relationships. English translated version (summary) is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7808, (last visited 11 November 2012).

317 See list of documents on the Ministry of Labour, Invalids and Social Affairs' website, <http://www.molisa.gov.vn/Default.aspx?tabid=192&temidclicked=675>, (last visited 11 November 2012).

318 See Ministry of Labour, Invalids and Social Affairs, <http://www.molisa.gov.vn/Default.aspx?tabid=70&temidclicked=84>, <http://www.molisa.gov.vn/others/faq/faqdetail/tabid/211/newsid/49699/seo/Quyen-loi-khi-tham-gia-bao-hiem-that-nghiep/language/vi-VN/Default.aspx>, or <http://www.molisa.gov.vn/others/faq/faqdetail/tabid/211/newsid/55582/seo/Quyen-co-ban-cua-nguoi-su-dung-lao-dong-trong-linh-vuc-viec-lam/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

319 The Ministry of Labour, Invalids and Social Affairs, Report on 15 years of implementing the Labour Code (2011), 34.

Environment

Guiding documents have been issued in the form of legal and non-legal documents. Examples of legal documents include Decree 29/2011/ND-CP dated 18 April 2011 providing strategic environmental assessment, environmental impact assessment and environmental protection commitment;³²⁰ Decree 25/2009/ND-CP dated 6 March 2009 on integrated management of natural resources and environmental protection of the sea and islands;³²¹ Decree 112/2008/ND-CP dated 20 October 2008 on management, protection and integrated exploitation of resources and environment of hydropower and irrigation reservoirs;³²² Decree 174/2007/ND-CP dated 29 November 2007 on environmental protection charges for solid wastes;³²³ and Decree 140/2006/ND-CP dated 22 November 2006 providing for the environmental protection at stages of elaboration, evaluation, approval and implementation of development strategies, plans, programs and projects.³²⁴ Examples of non-legal documents

320 Decree 29/2011/ND-CP dated 18 April 2011 providing strategic environmental assessment, environmental impact assessment and environmental protection commitment. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10586, (last visited 11 November 2012).

321 Decree 25/2009/ND-CP dated 6 March 2009 on integrated management of natural resources and environmental protection of the sea and islands. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10663, (last visited 11 November 2012).

322 Decree 112/2008/ND-CP dated 20 October 2008 on management, protection and integrated exploitation of resources and environment of hydropower and irrigation reservoirs. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10768

323 Decree 174/2007/ND-CP dated 29 November 2007 on environmental protection charges for solid wastes. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3113, (last visited 11 November 2012).

324 Decree 140/2006/ND-CP dated 22 November 2006 providing for the environmental protection at stages of elaboration, evaluation, approval and implementation of development strategies, plans, programs and projects. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4626, (last visited 11 November 2012).

include, among others, Guiding Document on Nature and Environment Protection,³²⁵ Guidance on Water Resource Protection,³²⁶ Handbook on Environmental Communication,³²⁷ and Guiding Document on Cleaner Production in the Textile Industry.³²⁸

In terms of non-legal guidelines and activities, there is an online chat session held monthly at the Ministry of Natural Resources and Environment's website where leaders of the Ministry answer questions that business enterprises and people may have on a wide range of issues regarding environmental protection.³²⁹ There is also a Q&A section on the website and a telephone hotline where people and enterprises may contact the Ministry to report on cases of violations or ask questions on how to protect rights related to natural resources and environment.³³⁰

Lands

The Government has issued 22 legal documents guiding the implementation of the 2003 Land Law,³³¹ including Decree 105/2009/ND-CP dated 11 November 2009 on the sanctioning of

325 See information about the publication of this Guiding Document at <http://www.monre.gov.vn/v35/default.aspx?tabid=428&cateID=24&id=73238&code=VDRMP73238>, (last visited 11 November 2012).

326 See information about the drafting of this document at <http://www.monre.gov.vn/v35/default.aspx?tabid=428&cateID=5&id=75741&code=WTRXE75741>, (last visited 11 November 2012).

327 See information about the publication of this Handbook at <http://www.monre.gov.vn/v35/default.aspx?tabid=428&cateID=24&ID=110810&Code=YPOJ110810>, (last visited 11 November 2012).

328 See the Guiding Document at <http://vncpc.vn/upload/publication/VNs/Tai%20lieu%20huong%20dan%20SXSH%20nganh%20det%20nhuom.pdf>, (last visited 11 November 2012).

329 The latest chat was held on 28 October 2008. For more information, see www.monre.gov.vn, (last visited 11 November 2012).

330 For more information, see www.monre.gov.vn, (last visited 11 November 2012).

331 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

administrative violations in the land domain;³³² Decree 88/2009/ND-CP dated 19 October 2009 on grant of certificates of land use rights and house and land-attached asset ownership;³³³ Decree 69/2009/ND-CP dated 13 August 2009 on land use planning, land prices, land recovery, compensation, support and resettlement;³³⁴ Circular 02/CT-BTNMT dated 19 November 2007 on the implementation of land law;³³⁵ and Decree 181/2004/ND-CP dated 29 October 2004 on the implementation of land law,³³⁶ among others.

A lot of educational and awareness raising activities have been carried out, including organizing training courses, publishing the law and relevant materials, producing radio and TV information shows and holding online chat sessions.³³⁷ A report of the government states that brochures, CDs and CD-ROMs have been disseminated although it does not

332 Decree 105/2009/ND-CP dated 11 November 2009 on the sanctioning of administrative violations in the land domain. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10701, (last visited 11 November 2012).

333 Decree 88/2009/ND-CP dated 19 October 2009 On grant of certificates of land use rights and house and land-attached asset ownership. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10697, (last visited 11 November 2012).

334 Decree 69/2009/ND-CP dated 13 August 2009 on land use planning, land prices, land recovery, compensation, support and resettlement. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10688, (last visited 11 November 2012).

335 Circular 02/CT-BTNMR dated 19 November 2007 on the implementation of land law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=15&mode=detail&document_id=51995, (last visited 11 November 2012).

336 Decree 181/2004/ND-CP dated 29 October 2004 on the implementation of land law, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=18&mode=detail&document_id=13310, (last visited 11 November 2012).

337 Ministry of Natural Resources and Environment, Report on the Implementation of the 2003 Land Law, available in Vietnamese at http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=781, (last visited 11 November 2012).

specify these brochures, CDs and CD-ROMs.³³⁸

6. Is the State taking steps to require or encourage business respect for human rights in its own relationships and dealings with businesses?

6.1. Does the State require or encourage State-owned or controlled business enterprises to respect human rights?

On 26 November 2003 the National Assembly adopted the Law on State-owned enterprises, providing legal bases for the establishment, reorganization, dissolution, ownership conversion, organization of management and operation of state-owned enterprises.³³⁹ According to the Law, state-owned enterprises are economic organizations where the State owns the entire charter capital or holds dominant shares or contributed capital, which are organized in the form of State companies, joint-stock companies or limited liability companies.

³⁴⁰ In terms of labour rights protection, state-owned enterprises have the obligation to ensure the rights and interests of labourers according to labour legislations, including labourers' rights to participate in the management of companies. In terms of environmental protection, state-owned enterprises must comply with relevant legislation on natural resources and the environment while doing their business. In addition, they are also required to observe laws and regulations on culture, social order and safety, ensure product quality and conduct business in accordance with their registered production and business lines.³⁴¹ When participating in public-utility activities, they are obliged to sell public-utility products or provide public-utility services to the right subjects, at the prices and

charge levels set by the State and held accountable to the State for their public-utility activities and to their customers and laws for the public-utility products or services that they provide.³⁴² Directors of state-owned companies have to do their job with honesty and responsibility and have to compensate for damage according to law provisions and the companies' charters if breaching the companies' charters, making decisions ultra vires or abusing their positions and powers. When committing labour violations that are not serious enough to be examined for criminal liability, directors shall be disciplined according to the seriousness of their violations.³⁴³

With the entry into force of the 2005 Enterprise Law, all state-owned enterprises established under the 2003 Law on State-owned Enterprises had four years to transform into limited liability companies or joint-stock companies.³⁴⁴ The idea is to create an equal playing field for all types of business enterprises. In fact, the transformation period ended on 1 July 2010 and from that time, the 2003 Law on State-owned Enterprises expired. State-owned enterprises are now defined as enterprises of which over 50 per cent of charter capital is owned by the State and subject to the 2005 Enterprise Law.³⁴⁵ They are equally bound by law to comply with relevant provisions on rights issues such as labour rights, environment protection (environmental impacts assessments obligation included) or land rights (refer to answer to Question 2 for more details). Their directors also have the same rights and obligations, including due diligence obligations, as directors of other limited liability companies or joint-stock companies (refer to answer to Question 4).

338 Ibid.

339 2003 Law on State-owned Enterprises, Article 2. English-translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=8259, (last visited 11 November 2012).

340 Ibid., Article 1.

341 Ibid., Article 16.

342 Ibid., Article 2.

343 Ibid., Article 19.

344 2005 Enterprise Law, Article 166. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5953, (last visited 11 November 2012).

345 Ibid., Article 4.

Certain separate legal documents have been issued to further ensure implementation by state-owned enterprises of environment protection obligations. Decree 81/2007/ND-CP dated 23 May 2007, for example, provides detailed guidance on how to organize environment divisions at state agencies and state-owned enterprises. According to the Decree, the management board, director-general or director of state-owned enterprises must establish environmental task forces in the enterprises, set up expert and advisory panels on environmental issues, and assign specific leaders or managers to be responsible for directing the implementation of legal provisions on environmental protection.³⁴⁶

In the Vietnam Electricity (EVN), a state-owned enterprise which produces, transmits and distributes electricity for the country, there is a division on Science, Technology and Environment.³⁴⁷ Each electricity project has its own environmental impact assessment report and environmental protection policy or commitment, which are usually posted online.³⁴⁸ Many planned reservoirs, however, do not have strategic environmental assessment reports.³⁴⁹ A lot of inter-provincial scale projects which started before the entry into force of the 2005 Environmental Protection Law have not met all requirements set out in the document.³⁵⁰ The lack

346 Decree 81/2007/ND-CP dated 23 May 2007 on the Organization of Environment Divisions at State Agencies and State-owned Enterprises, Article 10, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=25761, (last visited 11 November 2012).

347 See EVN structure, available in Vietnamese at <http://www.evn.com.vn/Home/Detail/tabid/84/ItemId/1133/View/2/CateId/131/language/vi-VN/Default.aspx>, (last visited 11 November 2012).

348 See, for example, environment protection policy of Thac Ba project, available in Vietnamese at <http://www.thacba.evn.com.vn/Pages/2/24/CHINH-SACH-MOI-TRUONG.aspx>, (last visited 11 November 2012).

349 Nhan dan Online, “Đánh giá tác động các công trình thủy điện,” available in Vietnamese at <http://www.nhandan.com.vn/cmlink/nhandandientu/toisu/chinh-tri/cung-suy-ngam/anh-gia-tac-ng-moi-tr-ng-cac-cong-trinh-th-y-i-n-1.371640>, (last visited 11 November 2012).

350 Ibid.

of an integrated strategic impact assessment of the ladder system of reservoirs on the environment was accompanied by the lack of necessary measures to reduce the impact or restrictions. As a result, developments of hydropower projects in many cases have caused damage to the ecosystem, destroyed vegetation and affected communities, including ethnic minorities, living near the project areas.³⁵¹ Inspection missions by the Ministry of Natural Resources and Environment in the Central Highlands and the northern mountainous provinces have reported that hydropower projects have contributed to destroying a natural part of the forest area and forest watershed in these localities. A review of some of the environmental impact assessment reports which were already appraised by the provincial People’s Committee reveals that these reports did not have sufficient information on the progress of construction, environmental problems and hazardous waste management solutions.³⁵² Again, the challenge is not really the lack of legal provisions but rather a lack of effective mechanisms to enforce these provisions in practice.

6.2. Does the State require or encourage businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights?

There is no information available regarding legal or policy documents that specifically require “beneficiary enterprises” (enterprises that receive substantial support and services from State agencies) to respect human rights. The establishment, organization, operation, and the rights and responsibilities of these enterprises are regulated by those documents applicable to all other enterprises, including the 2012 Labour Code, 2005 Enterprise Law, 2005 Environment Protection Law, 2005 Investment Law and 2003 Land Law. Under the 2005 Investment Law, for instance, investors, in general, have the obligation to comply with

351 Ibid.

352 Ibid.

the provisions of law on investment procedures; carry out investment activities strictly according to contents of investment registration and their investment certificates; implement the provisions of law on accountancy, audit and statistics; perform obligations provided by insurance and labour laws; respect the honour, dignity and ensure the legitimate interests of labourers; respect and create favourable conditions for labourers to establish and participate in political or socio-political organizations; observe the provisions of environmental protection law, and perform other obligations in accordance with the provisions of law.³⁵³

6.3. When services that may impact upon the enjoyment of human rights are privatized, is the State taking steps to ensure that the business enterprises performing these privatized services respect human rights?

Decree No. 59/2011/ND-CP dated 18 July 2011 of Government on the Transformation of Enterprises with 100% state-owned Capital into Joint Stock Enterprises requires these enterprises to ensure labour rights during and after the privatization process.³⁵⁴ Circular 2/CT-BXD dated 16 July 2007 of the Ministry of Construction provides that during privatization process, special attention shall be given to ensure labour rights. In their privatization plans, enterprises under the Ministry of Construction must provide solutions on the use of their land. Lands that are not approved for use by the privatized enterprises shall be returned to the

State.³⁵⁵ Circular 11/2008/CT-UBND dated 6 June 2008 of the People's Committee of Ba Ria – Vung Tau Province directs the province's Department of Labour, Invalids and Social Affairs to continue monitoring privatized enterprises in the province to ensure their compliance with laws and regulations, including their obligations to respect labour rights.³⁵⁶

An examination of a number of other decisions made by the central and local authorities to privatize certain state-owned enterprises, including Decision 131/2005/QD-TTg dated 2 June 2005 approving the Plan of the People's Committee of Ho Chi Minh City to reform and privatize state-owned enterprises,³⁵⁷ Decision 6213/QD-UN dated 9 December 2004 of the People's Committee of Ho Chi Minh City privatizing ADC Construction, Design and Architecture Company,³⁵⁸ and Decision 6211/QD-UN dated 9 December 2004 of the People's Committee of Ho Chi Minh City privatizing

³⁵³ 2005 Investment Law, Article 20.

³⁵⁴ Decree 59/2011/ND-CP dated 18 July 2011 of Government on the Transformation of Enterprises with 100% state-owned Capital into Joint Stock Enterprises, Article 10, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=101801, (last visited 11 November 2012).

³⁵⁵ Circular 2/CT-BXD dated 16 July 2007 of the Ministry of Construction on Strengthening the Transformation of Enterprises with 100% state-owned Capital under the Ministry of Construction into Joint Stock Enterprises, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=2&mode=detail&document_id=89468, (last visited 11 November 2012).

³⁵⁶ Circular 11/2008/CT-UBND dated 6 June 2008 of the People's Committee of Ba Ria – Vung Tau Province on the Transformation of State Enterprises into Joint Stock Enterprises in the province, available at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=81266, (last visited 11 November 2012).

³⁵⁷ Decision 131/2005/QD-TTg dated 2 June 2005 approving the Plan of the People's Committee of Ho Chi Minh City to reform and privatize state-owned enterprises.

³⁵⁸ Decision 6213/QD-UN dated 9 December 2004 of the People's Committee of Ho Chi Minh City to privatizing ADC Construction, Design and Architecture Company, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=13611, (last visited 11 November 2012).

Nhatico Company,³⁵⁹ however, indicates that there are no provisions specifying obligations imposed upon privatized enterprises to ensure human rights protection.

In short, state agencies have taken steps, albeit not very consistently, to ensure that privatized business enterprises respect human rights. At a minimum, whether they are state-owned enterprises which provide public services, e.g. water and electricity, or privatized enterprises which provide services that may affect human rights, e.g. education, they are subject to the 2012 Labour Code, the 2005 Enterprise Law, the 2005 Environment Protection Law, the 2005 Investment Law and 2005 Education Law and have relevant obligations to respect labour rights and land rights and to protect the environment in accordance with these documents.

6.4. Does the State require or encourage respect for human rights in carrying out public procurement?

Vietnam enacted the Law on Procurement in November 2005. This Law introduces greater transparency into procurement procedures and creates a Procurement Gazette to provide general information on tendering activities, invitations for tender, lists of bidders participating in limited tendering proceedings, and criteria for bids selection. The Law also aims at decentralizing procurement decision-making to government ministries, agencies, and local authorities. The Law includes a definition of what constitutes fraudulent behaviour and establishes sanctions against such misconduct. Competition for government procurements may take any of several forms: sole source direct negotiation, limited tender, open tender, appointed tender or special purchase. Different ministries and agencies have different threshold values for the

359 Decision 6211/QD-UN dated 9 December 2004 of the People's Committee of Ho Chi Minh City to privatizing Nhatico Company, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=13619, (last visited 11 November 2012).

purchase of material or equipment which must be subject to competitive bidding.³⁶⁰

Article 32 is the only provision in the Law that mentions environmental elements, according to which bidding documents must include, among other things, information on environmental requirements. Besides that, there are no further requirements for contractors to report on social, environmental or ethical considerations in respect of their relevant projects. The State does not have a public policy favouring companies that respect human rights norms. It is also not known that the State has among public tender conditions a requirement that contractors comply with environmental, social and governance standards.

At the international level, Vietnam is currently not a party to the WTO Agreement on Government Procurement.³⁶¹

7. Is the State taking steps to support business respect for human rights in conflict-affected and high-risk areas?

7.1. Is the State engaging with business enterprises operating in conflict-affected and high-risk areas in relation to identifying, preventing and mitigating the human rights-related risks of their activities and business relationships?

It is not clear whether the State is working with business enterprises to identify, prevent or mitigate human rights-related risks in conflict-affected and high-risk areas that they are operating in. In fact, there is no information that Vietnamese enterprises are currently operating in conflict-affected and

360 2005 Law on Procurement, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=4&mode=detail&document_id=29535, (last visited 11 November 2012).

361 See Parties and Observers to the GPA, http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties, (last visited 11 November 2012).

high-risk areas. Websites of the government, different ministries and many enterprises, including some that have investment projects overseas, such as Viettel, a state-owned telecommunication company under the Ministry of Defence, do not reveal such engagements or measures.

7.2. Is the State providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risks of human rights abuses, including gender-based and sexual violence?

There is no known official assistance provided by the State to business enterprises operating in conflict-affected and high risk areas to assess and address the heightened risks of human rights abuses, including gender-based and sexual violence.

7.3. Is the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk areas that they are involved with human rights abuses and refuse to cooperate in addressing the situation? Are there laws, regulations and/or policies that have the effect of doing so?

There is no information on human rights violations committed by Vietnamese enterprises operating in conflict-affected and high-risk areas. There are no laws, regulations or policies that allow the government to impose sanctions on business enterprises operating in conflict-affected and high-risk areas because they are involved with human rights abuses. No known sanction has been imposed by the government on business enterprises that have committed violations.

7.4. Has the State reviewed its policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involvement in human rights abuses in conflict-affected and high-risk areas, and taken steps to address any gaps?

There is no indication yet that the State is reviewing its policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involvement in human rights abuses in conflict-affected and high-risk areas.

8. Is the State taking steps to ensure coherence in its policies domestically and internationally such that it is able to implement its international human rights obligations?

8.1. Is the State taking steps to ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates?

There are different mechanisms to ensure that the State in general, and state agencies, government ministries and other State-based institutions in particular, are aware of and observe obligations accepted by Vietnam. These mechanisms are not only limited to human rights obligations, but also extended to obligations under all treaties to which Vietnam is a party.

First, according to the 2005 Law on the Conclusion, Accession and Implementation of Treaties, the Ministry of Foreign Affairs shall prepare certified copies of treaties in force and transmit them to the National Assembly, the State President and

the Government for reporting purposes, to all relevant agencies, organization and institutions for implementation, and to the Government's Office for publication on the Official Gazette, within 15 days from the date of receipt of the bilateral treaty in force or 30 days from the date of receipt of the notification from the depositary of the multilateral treaty of the entry into force of such multilateral treaty with respect to Vietnam.³⁶² Treaties in force shall be published in the Yearbook of Treaties.³⁶³ Again, the Yearbook of Treaties is also available to all state agencies, organizations and institutions.

Second, an inter-agency approach is applied to basically all major steps in the procedure of concluding and implementing treaties in Vietnam. For each treaty, there is one lead and several relevant agencies working with each other in process of drafting, negotiating and making recommendations to the State or government on the conclusion of the treaty (the recommendations must always be accompanied by opinions of the Ministry of Foreign Affairs and the Ministry of Justice).³⁶⁴ The lead agency, in collaboration with relevant agencies, on the basis of the nature and contents of a treaty and its assigned duties and powers, shall submit to the government a plan for implementation of the treaty. The plan for treaty implementation shall contain steps intended to publicize, popularize, disseminate and raise awareness within and without the govern on the treaty. The plan should also include: a schedule for implementation; proposed responsibilities of relevant state agencies in organizing the implementation of the treaty; recommendations on amendment, supplement, repeal or promulgation of legal normative documents for the implementation of the treaty and measures of organization, management, and financing.³⁶⁵ Upon the decision made by the Prime

Minister on the plan for treaty implementation, the lead agency and relevant agencies and organizations within the scope of their duties and powers shall be responsible to implement the plan.³⁶⁶

Third, there is a reporting mechanism whereby all state agencies have to periodically inform the Ministry of Foreign Affairs of the steps they have taken, within their respective scope of state management, to publicize and implement treaties to which Vietnam is a party. The Ministry of Foreign Affairs then has the obligation to submit to the government a comprehensive report on Vietnam's implementation of its treaties.³⁶⁷ As some ministries, however, have failed to implement their reporting obligations, recently the Prime Minister has issued a Directive, ordering state agencies and local authorities to strictly implement their reporting obligations and to coordinate with the Ministry of Foreign Affairs and relevant agencies to handle difficulties in the implementation process in a timely manner.³⁶⁸

Fourth, there also exist interaction and dialogue mechanisms between state agencies responsible for labour rights, environment or land issues, and other stakeholders, including trade unions, non-governmental organizations, international organizations and business enterprises on Vietnam's implementation of international instruments. The International Labour Organization, the Ministry of Labour, Invalids and Social Affairs, the Vietnam Chamber of Commerce and Industry (VCCI) and the Vietnam General Confederation of Labour (VGCL), for example, have jointly organized the National Tripartite forum on Labour and Social Issues in the past.³⁶⁹ The Ministry of Natural Resources and Environment has, on its website,

³⁶⁶ Ibid.

³⁶⁷ Ibid., Article 99.

³⁶⁸ *Thủ tướng chỉ thị tăng cường công tác quản lý nhà nước về điều ước quốc tế, thỏa thuận quốc tế*, <http://www.mof.gov.vn/portal/pls/portal>, (last visited 11 November 2012).

³⁶⁹ International Labour Organization, Follow-up on and the promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, <http://www.ilo.org/public/english/standards/relm/gb/docs/gb279/pdf/mne-1.pdf>, (last visited 11 November 2012).

³⁶² 2005 Law on the Conclusion, Accession and Implementation of Treaties, Article 68. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5509, (last visited 11 November 2012).

³⁶³ Ibid., Article 69.

³⁶⁴ Ibid., Chapter II.

³⁶⁵ Ibid., Article 71.

guidelines for enterprises to comply with the Montreal Protocol.³⁷⁰ A section on instruments of the International Labour Organization is also available on the website of the Ministry of Labour, Invalids and Social Affairs.³⁷¹

8.2. Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?

From our research, it is not clear to what extent the State has maintained an adequate domestic policy space to meet its human rights obligations when concluding bilateral economic or investment agreements with other States or business enterprises.

First, not all bilateral economic agreements are available online. For those that are accessible online, there are agreements that have no provisions on human rights obligations while doing business, e.g. the Vietnam-China Agreement on Economic Cooperation.³⁷² There are, however, agreements that provide domestic policy space for a party to prepare, adopt, and apply regulations to fulfil its rights and obligations objectives. The Vietnam-Japan Agreement for an Economic Partnership, for example, states that nothing shall limit the right of a party to adopt domestic regulations to protect national security, prevent deceptive practices and protect human health or safety, animal or plant life or health, or the environment.³⁷³ On 27 June

2012, Vietnam and EU signed the Partnership and Cooperation Agreement (PCA), regulating all aspects of cooperation between Vietnam and EU in areas such as science and technology, education and training, agro-forestry and fisheries, natural disaster prevention and mitigation. Unfortunately, the PCA text is not available online now for scrutiny.

Second, a check of available bilateral investment agreements concluded between Vietnam and its counterparts reveals that there are no provisions in these agreements obliging investors to respect human rights while doing business. We should note that, again, not all bilateral investment agreements are available online, although all of them are required by the 2005 Law on the Conclusion, Accession and Implementation of Treaties to be published in paper on the Official Gazette.³⁷⁴ Third, there have not been any reported instances where an economic agreement to which Vietnam is a party has constrained Vietnam from fully implementing its human rights obligations. The State has not made any statement with specific reference to human rights issues or to the relationship between domestic human rights obligations and international investment or economic obligations, although as stipulated in the 2005 Law on the Conclusion, Accession and Implementation of Treaties, in cases where a legal document of Vietnam and a treaty to which Vietnam is a party contains different provisions on the same matter, the provisions of the

370 See “Thông báo cho các công ty xuất nhập khẩu các chất làm giảm tầng ô zôn”, http://www.noccop.org.vn/modules.php?name=Ozon_protec&op=ndetail&n=33&nc=88, (last visited 11 November 2012).

371 <http://www.molisa.gov.vn/Default.aspx?tabid=356&temid=687>, (last visited 11 November 2012).

372 Agreement on Economic Cooperation between Vietnam and China, available in Vietnamese at <http://trungtamwto.vn/cachiepdingkhac/hiep-dinh-hop-tac-kinh-te-giua-chinh-phu-nuoc-cong-hoa-xa-hoi-chu-nghia-viet-nam-va>, (last visited 11 November 2012).

373 Agreement between Vietnam and Japan for an Economic Partnership, available at <http://www.mofa.go.jp/region/asia-paci/vietnam/epa0812/agreement.pdf>, (last visited 11 November 2012).

374 There is no single database where one can have access to every investment agreements signed between Vietnam and its counterparts. Some of the agreements are available online, at different websites, such as the agreement between Vietnam and Denmark at <http://www.thuongmai.vn/thuong-mai-quoc-te/hiep-dinh-thuong-mai/hiep-dinh-song-phuong/94192-hiep-dinh-ve-khuyen-khich-va-bao-ho-dau-tu-giua-chinh-phu-cong-hoa-xa-hoi-chu-nghia-viet-nam-va-chinh-phu-vuong-quoc-dan-mach.html>, between Vietnam and Argentina at <http://danangwto.center.gov.vn/vi/van-kien/hiep-dinh-song-phuong-da-phuong/165-hiep-dinh-khuyen-khich-va-bao-ho-au-tu-lan-nhau-giua-chinh-phu-chxhcn-viet-nam-va-chinh-phu-ch-argentina>, between Vietnam and Laos at <http://trungtamwto.vn/cachiepdingkhac/hiep-dinh-ve-khuyen-khich-va-bao-ho-dau-tu-giua-cong-hoa-xa-hoi-chu-nghia-viet-nam--1>, (last visited 11 November 2012).

treaty shall prevail.³⁷⁵

8.3. Is the State taking steps to ensure and promote business respect for human rights when acting as members of multilateral institutions that deal with business-related issues?

Vietnam is a member of many multilateral institutions and cooperation frameworks dealing with business-related issues, such as the World Bank, Asian Development Bank, APEC, ASEAN, TPP (negotiations on the Trans-pacific Partnership are still on-going). These institutions, to different extents, have taken steps to ensure or promote respect for human rights in business enterprises. However, it is not known whether and to what extent these steps were initiated by Vietnam, or only initiated by other members of the institutions or the institutions themselves.

As of February 2012, the World Bank's cumulative commitment to Vietnam was almost US\$ 15 billion for 111 projects.³⁷⁶ These projects concentrate on infrastructure, including transportation and urban development, rural development, energy, water resources management, public administration reforms, finance, education, health, social services, environment³⁷⁷ and other areas that the World Bank sees as contributing to the promotion of human rights.³⁷⁸ Creating the conditions for the attainment of human rights, as stated by the World Bank, is a central goal of its development policy.³⁷⁹ Documents

375 2005 Law on the Conclusion, Accession and Implementation of Treaties, Article 6. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5509, (last visited 11 November 2012).

376 World Bank, Vietnam Projects and Programs, <http://www.worldbank.org/en/country/vietnam/projects>, (last visited 11 November 2012).

377 World Bank, Vietnam Projects and Programs, <http://www.worldbank.org/en/country/vietnam/projects>, (last visited 11 November 2012).

378 World Bank, Human Rights, <http://web.worldbank.org/WBSITE>, (last visited 11 November 2012).

379 Ibid.

such as “Human Rights and Development: the Role of the World Bank” (1998), “World Development Report, Equity and Development” (2006), “Legal Opinion on Human Rights and the World of the World Bank” (2006) indicate that human rights may represent legitimate considerations for the Bank where they have economic ramifications or impacts.³⁸⁰ The Bank has published policies for safeguards on natural habitats, pest management, cultural property, involuntary resettlement, indigenous peoples, safety of dams, projects on international waterways, and projects in disputed areas designed to prevent unintended impact from its projects on individuals and the environment.³⁸¹

Similarly, the Asian Development Bank (ADB) also has different projects that are purported to contribute to the promotion of human rights in different areas, e.g., improving poor people's access to healthcare, education, water and public transport; promoting development in areas of indigenous peoples and improving social services for the poor. The 2012-2015 ADB's country partnership strategy (CPS) for Vietnam focuses support on six core sectors: agriculture and natural resources, education, energy, finance, transport, and water supply and other municipal infrastructure.³⁸² Loan agreements concluded between Vietnam and the ADB, similar to those concluded between Vietnam and the World Bank, have requirements for environmental impact assessments.³⁸³ One of the stated goals of the ADB is also to support structural and policy reforms including state-owned enterprise (SOE) reforms, promote inclusive growth by targeting disadvantaged regions, and strengthen the government's ability to address environmental and climate change challenges.³⁸⁴

380 Ibid.

381 World Bank, Policies and Procedures, <http://web.worldbank.org/WBSITE>, (last visited 11 November 2012).

382 ADB, Strategy - Vietnam, <http://www.adb.org/countries/viet-nam/strategy>, (last visited 11 November 2012).

383 See, for example, <http://www2.adb.org/Documents/Environment/Vie/36352-VIE-EIA.pdf>, or <http://www2.adb.org/Documents/Environment/Vie/36352-VIE-EIA.pdf>, (last visited 11 November 2012).

384 ADB, Strategy - Vietnam.

At the ASEAN level, the 2009 ASEAN Comprehensive Investment Agreement provides that, subject to its immigration and labour laws, regulations and national policies relating to the entry, temporary stay and authorization to work, each Member State shall grant entry, temporary stay and authorization to work to investors, executives, managers and members of the board of directors of a juridical person of any other Member State, for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Member State of an investment to which they, or a juridical person of the other Member States that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources.³⁸⁵ Article 44 of the 2008 Agreement on Economic Comprehensive Partnership among ASEAN Member States and Japan states that nothing in the Agreement shall limit the right of a Party to prepare, adopt and apply standards and technical regulations, to the extent necessary, to fulfil a legitimate objective. Such legitimate objectives are, *inter alia*, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In pursuance of this, each Party retains all authority to interpret its laws, regulations and administrative provisions.³⁸⁶

The Trans-Pacific Partnership Agreement (which currently covers Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States), once completed, is also expected to contribute to raising standards on labour, environment and property rights while promoting trade, investment, innovation,

³⁸⁵ 2009 ASEAN Comprehensive Investment Agreement, Article 22, available at [http://www.aseansec.org/documents/ASEAN%20Comprehensive%20Investment%20Agreement%20\(ACIA\)%202012.pdf](http://www.aseansec.org/documents/ASEAN%20Comprehensive%20Investment%20Agreement%20(ACIA)%202012.pdf), (last visited 11 November 2012).

³⁸⁶ 2008 Agreement on Economic Comprehensive Partnership among ASEAN Member States and Japan, Article 44, available at <http://www.aseansec.org/agreements/AJCEP/Agreement.pdf>, (last visited 11 November 2012).

economic growth and development in the region.³⁸⁷ Participating countries have stated their aim to work together to ensure that the agreement appropriately addresses important environmental challenges, enhances the mutual supportiveness of trade and environment, establishes mechanisms to ensure cooperation, coordination, and dialogue on labour issues of mutual concern, and enhances animal and plant health and food safety.³⁸⁸

9. Is the State taking steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy?

9.1. What are the legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses?

First and generally speaking, in Vietnam, if people find their rights and legitimate interests violated, they can either lodge a complaint or denunciation with competent state agencies or initiate a lawsuit at the Court against the violator. As provided in the 2011 Law on Complaints and the 2011 Law on Denunciations, those whose rights are violated can make complaints and denunciations and seek for remedies. They are entitled to complain about administrative decisions and administrative acts of State agencies or state officials if they have grounds to believe that such decisions or acts have contravened laws or infringed upon their legitimate

³⁸⁷ See Outlines of the Trans-Pacific Partnership Agreement, <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement>, (last visited 11 November 2012).

³⁸⁸ See *Ibid.*

rights and interests.³⁸⁹ They are also entitled to denounce to competent agencies, organizations or individuals illegal acts committed by any agencies, organizations or individuals that cause damage or threaten to cause damage to the interests of the State or their legitimate rights and interests.³⁹⁰ Agencies, organizations and individuals shall, within their respective functions, tasks and powers, have to receive people who come to make complaints, denunciations, petitions and reports; and to receive and settle complaints and denunciations in a timely manner and according to laws.

Second, according to the 2002 Ordinance on Sanctioning Administrative Violations, individuals and organizations, whether domestic or foreign, intentionally or unintentionally committing violations prescribed by law, which do not constitute crimes defined under the Criminal Code, must be held accountable and face administrative sanctions.³⁹¹ All consequences caused by acts of administrative violation must be remedied by violators.³⁹² The violating individuals or organizations shall be subject to either warning or fines.³⁹³ In addition, depending on the nature and seriousness of their violations, individuals or organizations that commit administrative violations may be stripped off the right to use permits, professional practice certificates or have their materials or means used to commit the violations confiscated.³⁹⁴ Violating individuals and organizations may also be subject to the application of one or more of the following

389 2011 Law on Complaints, Article 2, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=162374, (last visited 11 November 2012).

390 2011 Law on Denunciation, Article 2, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=162375, (last visited 11 November 2012).

391 2002 Ordinance on Sanctioning Administrative Violations, Article 2. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10046, (last visited 11 November 2012).

392 Ibid., Article 4.

393 Ibid., Article 12.

394 Ibid.

consequence-overcoming measures: (i) restoration of the initial state altered due to the administrative violations or forcible dismantling of illegally constructed works; (ii) application of measures to redress the environmental pollution or epidemic spreads caused by the administrative violations; (iii) destruction of articles which cause harms to human health, domestic animals and cultivated plants, and harmful cultural products; and other measures prescribed by the Government³⁹⁵ (See answers to Question 2.2. and Question 2.3. for available number of cases of complaints and inspection and amount of fines imposed and compensation paid in some examples of violations, including the dumping case of the Taiwanese food manufacturer Vedan Co., Ltd).

Third, as elaborated in response to Question 2.2 and Question 2.3, relevant laws on labour, environment and land rights in Vietnam, including the 2012 Labour Code,³⁹⁶ the 2005 Environment Protection Law³⁹⁷ and the 2003 Land Law,³⁹⁸ all have a provision on the handling of violations, stating that agencies, organizations or individuals who commit unlawful acts, depending on the nature and levels of violations, shall be dealt with by disciplining and administrative sanctions and required to pay compensation in case of causing damage. Each of these laws is accompanied by a decree that specifies administrative violations, sanctioning forms and levels, remedies, and competence and procedures for administratively sanctioning violations of the laws. For the 2012 Labour Code, there is Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative Sanctioning of Violations

395 Ibid.

396 Ibid., Article 239.

397 2005 Environment Protection Law, Article 127. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5961, (last visited 2 November 2012).

398 2003 Land Law, Articles 140-142. English translated version is available at http://moj.gov.vn/vbpq/en/_layouts/printeng.aspx?id=8269, (last visited 2 November 2012).

of the Labour Code.³⁹⁹ For the 2005 Environment Protection Law, there is Decree 117/2009/ND-CP of the Government dated 31 December 2009 of Handling Violations in Environment Protection.⁴⁰⁰ For the 2003 Land Law, there is Decree 105/2009/ND-CP of the Government dated 11 November 2009 on Administrative Sanctioning of Violations in the Land Domain⁴⁰¹ (see example of sanctions in answer to Question 2.2. and Question 2.3). If the violation constitutes a crime defined under the Criminal Code, the violating individuals shall be criminally prosecuted.

Fourth, relevant laws in Vietnam, including the 2012 Labour Code,⁴⁰² the 2005 Environment Protection Law⁴⁰³ and the 2003 Land Law,⁴⁰⁴ all establish a system of specialized central and local inspectorates. Labour inspectorates, environmental protection inspectorates and land inspectorates have the responsibility to receive and address appeals, complaints and denunciations made by the people and to either provide a remedy or petition competent authorities to remedy violations in accordance with the provisions of laws on complaints and denunciations and the Labour Code, the Environment Protection Law and the Land Law. In the land domain, for instance, from 2009 to late 2011, nearly 2,000 complaints and denunciations,

399 Decree 47/2010/ND-CP of the Government dated 6 May 2010 on Administrative sanctions imposed upon Violations of the Labour Code, Chapter III. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10629, (last visited 2 November 2012).

400 Decree 117/2009/ND-CP of the Government dated 31 December 2009 of Handling Violations in Environment Protection, available in Vietnamese at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=92587, (last visited 2 November 2012).

401 Decree 105/2009/ND-CP of the Government dated 11 November 2009 on Administrative sanctions imposed upon Violations in the Land Domain. English translated version is available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10701, (last visited 2 November 2012).

402 2012 Labour Code, Article 237.

403 2005 Environment Protection Law, Article 126.

404 2003 Land Law, Article 132.

the majority of which involve land clearance and land return, piled up waiting for resolution by the Government Inspectorate. On orders from the Prime Minister, in May 2012, the Government Inspectorate selected 528 of the most complicated cases for review by the end of the year. By October 2012, the Government the Government Inspectorate has reviewed 486 out of 528 complicated cases, in which 282 cases were settled by central agencies, 131 cases were sent back to local authorities for settlement, 41 cases awaiting a decision from the Prime Minister, and 32 are pending for decisions by ministries and sectors at the central level.⁴⁰⁵

9.2. What barriers to access to remedy through these State-based grievance mechanisms have been reported?

First, in regard to complaint and denunciation mechanisms, the Government has acknowledged⁴⁰⁶ that many agencies, especially those at the district and department levels have failed to properly perform their assigned responsibilities in receiving citizens and addressing and handling citizens' concerns, denunciations and complaints. Not all localities have established effective or well-organized mechanisms to handle complaints and denunciations by citizens. Coordination between central and local authorities has not run smoothly. The number and the capacity of state officials handling complaints and denunciations, in many places, are limited. The process of handling complaints and denunciations is sometimes too slow or complicated. In some cases, while relevant authorities manage to promulgate decisions to settle complaints, they fail to promptly implement their decisions or provide remedies to those whose

405 Tuoitre News, "Government resolves land-rights complaints," <http://www.tuoitrenews.vn/cmmlink/tuoitrenews/society/government-resolves-land-rights-complaints-1.89439>, (last visited 11 November 2012).

406 Report 1198/BC-TTCT dated 16 May 2012 on the Handling of Complaints and Denunciations from 2008 to 2011, available in Vietnamese at <http://thuvienphapluat.vn/archive/Bao-cao-1198-BC-TTCT-ket-qua-cong-tac-tiep-cong-dan-giai-quyet-khieu-nai-to-cao-vb140561.aspx>, (last visited 2 November 2012).

rights are affected. In other cases, local governments have not complied with specific directions of the Prime Minister on handling the violations. It is also reported that a number of state officials have tried to cover up violations to for illegal personal gains.⁴⁰⁷

Second, as for the People's Court system as one of the main venues for remedies for violations of the law, concerns have been expressed over the independence of judges,⁴⁰⁸ who are typically chosen from among the Communist Party officials working in the courts, and whose candidacy must be endorsed by the Party.⁴⁰⁹ With regard to judges' capacity, Resolution 49/NW-TW of the Communist Party on Judicial Reform Strategy to 2020 recognizes that there is still a shortage of judicial and judicial support staff.⁴¹⁰

Third, legal fees in Vietnam are still high relative to average incomes.⁴¹¹ To a certain extent, the state-run legal aid system has proved to be helpful in facilitating disadvantaged group's access to justice. However, in recent years, the need for legal aid of vulnerable groups has rapidly increased, putting resource strains upon the system.⁴¹² With approximately one lawyer per 10,000 people in the country (or 6,000 lawyers in total), legal representatives are few in number and the level of lawyer qualifications and proficiency can vary widely.⁴¹³

Fourth, as even the government has admitted, corruption in Vietnam is serious in many sectors that have an impact on business-related human rights and access to remedies for those whose

rights are violated.⁴¹⁴ In 2007, Vietnam scored 2.6 points on the Transparency International index, ranking 123 out of 179 countries and territories. In 2008, it scored 2.7, ranking 121/180; in 2009 2.7 points, ranking 120/180; in 2010 2.7 points, ranking 116/178.⁴¹⁵ The World Bank in 2012 observed that land-related matters continue to dominate the complaints that the government receives and corruption related to land matters is perceived to be widespread.⁴¹⁶ A recent study conducted by the Vietnam Chamber of Commerce and Industry (VCCI) and the Development and Policies Research Centre (DEPOCEN) suggests that many business enterprises are engaging in corrupt practices in exchange for favourable conditions for business activities.⁴¹⁷ The study findings are based on direct interviews with 270 enterprises, associations and governmental officials. Most of the respondents admitted they are victims of corruption but also bribe-givers themselves. Some 40% of the respondents said unofficial expenditures accounted for around 1% of the total annual business expenditures while 13% said such expenses made up 5%. As high as 40% of the enterprises believed they had to have personal relationships to receive allocated and transferred land.⁴¹⁸

Fifth, many people are not aware of their rights and do not know about available mechanisms that they can resort to in search of a remedy for business-related human rights abuses.

407 Report 1198/BC-TTCTP dated 16 May 2012 on the Handling of Complaints and Denunciations from 2008 to 2011, available in Vietnamese at <http://thuvienphapluat.vn/archive/Bao-cao-1198-BC-TTCTP-ket-qua-cong-tac-tiep-cong-dan-giai-quyet-khieu-nai-to-cao-vb140561.aspx>, (last visited 2 November 2012).

408 US Department of State, Country Reports on Human Rights Practice for 2011: Vietnam, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, (last visited 11 November 2012).

409 Human Rights Resource Centre, Rules of Law for Human Rights in the ASEAN Region: a Baseline Study, 293.

410 Ibid., 294.

411 Ibid.

412 Ibid., 292.

413 Ibid., 294.

414 Tuoitre News, Corruption in Vietnam is serious, blatant and rampant, <http://tuoitrenews.vn/cmlink/tuoitrenews/politics/corruption-in-vietnam-is-serious-blatant-rampant-1.85998>, (last visited 2 November 2012).

415 Ibid.

416 The World Bank, Policy Note "Revising the Land Law to Enable Sustainable Development in Vietnam."

417 Vietnamnet Bridge, Corruption still popular among local businesses, <http://english.vietnamnet.vn/en/business/20901/corruption-still-popular-among-local-businesses.html>, (last visited 2 November 2012).

418 Ibid.

9.3. Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

There are currently no known official laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms in Vietnam.

10. Is the State giving the country's National Human Rights Institution sufficient powers to enable it to contribute to the area of business and human rights?

N/A (Vietnam currently does not have an NHRI).⁴¹⁹

11. What are the efforts that are being made by non-State actor to foster State engagement with the Framework and the Guiding Principles?

As mentioned above (see answer to Question 5), many activities have been organized by international organizations in Vietnam and non-governmental organizations or jointly organized by state agencies, international organizations and non-governmental organizations to raise awareness and promote business enterprises' respect for labour, environment and land rights. These activities and programs, however, have yet to make any specific reference to the "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights. There is no information on the projects or activities that non-state actors are

⁴¹⁹ In the Universal Periodic Review, a lot of countries (Mexico, Azerbaijan, New Zealand, Germany, France, Mauritius) recommended Vietnam to establish a national human rights institution in accordance with the Paris Principle. Vietnam responded that this recommendation did not enjoy the support of Vietnam. See UN Human Rights Council, the Report of the Working Group on Universal Periodic Review: Vietnam, Document A/HRC/12/11*, dated 5 October 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf?OpenElement>, (last visited 11 November 2012).

implementing to foster State direct engagement with the Framework and the Guiding Principles (also see answer to Question I).

CONCLUSION

The above examination shows that Vietnam has a legal framework to protect human rights from being violated by business enterprises. As provided in the Constitution and many legal documents, the State ensures and constantly promotes people's rights in all spheres. Business enterprises and individuals are required to take action to avoid causing or contributing to adverse impact on the rights of people through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products and services. Business enterprises that violate the laws shall bear civil and administrative liability. Individuals who commit crimes shall also be held criminally liable. Legal documents are periodically reviewed and assessed. Treaties to which Vietnam is a party may be directly implemented and if there is a conflict between human rights treaties and domestic legal documents, human rights treaties shall prevail. There are different state agencies that, within their bounds of functions, are responsible for different issues which could be associated with business-related human rights abuses such as labour rights (Ministry of Labour, Invalids and Social Affairs), environmental rights (Ministry of Natural Resources and Environment), land rights (Ministry of Natural Resources and Environment), ethnic minority rights (Committee for Ethnic Affairs), anti-corruption (Anti-corruption Steering Committee, Government Inspectorate, Ministry of Justice, Ministry of Public Security), health rights (Ministry of Health). A variety of non-binding initiatives has been implemented to encourage business responsibility to protect rights. A system of specialized central and local inspectorates has been established. Efforts have been made to enforce laws. There exist also legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses.

The picture is, however, not perfect. It is not evident from law that business enterprises have to communicate their human rights impacts, as well as any action taken to address those impacts. Legal documents do not require businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights. It is not stated in law that directors have to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad. There are no regulations specifically requiring business enterprises listed on the stock exchange to respect human rights. It is not known that the state is taking steps to require the respect for human rights in public procurement and to support business

respect for human rights in conflict-affected and high-risk areas. The government has not made any specific references to the “Protect, Respect and Remedy” Framework and the Guiding Principles on Business and Human Rights. No national human rights institution has been established. Law enforcement is a big challenge. Abuses of rights still occur. Corruption is still serious. Barriers to access to remedy remain. Much needs to be done to fully realize to the “Protect, Respect and Remedy” Framework and the Guiding Principles on Business and Human Rights.