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Towards an independent workers' voice in Vietnam?

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ABSTRACT

The 2019 Vietnamese Labour Law, coming into effect on 1 January 2021, allows for the establishment of workers' representative organisations, namely Internal Employee Organisations (IEOs), independent from official trade unions of the Vietnam General Confederation of Labour. This reflects widespread endemic industrial conflicts marked by illegal wildcat strikes led by unofficial workers' representatives in the absence of effective trade union representation. The new legislative framework can be seen as a significant step towards industrial democracy and there is the potential to see a change of course in Vietnamese industrial relations in regards to representative dynamics at the workplace level, with likely outcomes in terms of working conditions, law enforcement and conflict resolution to be assessed. However, more than two years have transpired since the legislation was enacted, no IEO has been established to date. This paper provides an in-depth analysis of why this is the case. It also demonstrates how the corporatist and authoritarian political system in Vietnam has adapted to sustain its longevity and legitimacy in the era of globalisation. Finally, the paper outlines a research agenda on the conditions of emergence, development and future function of IEOs.

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Introduction

The rise in power of workers' grassroots militancy over the last fifteen years in Vietnam has taken place outside the framework of official trade unionism. The multiplication of wildcat strikes is the result of workplace activists organising in a form of industrial 'guerrilla' action in the vein, to take a sociological view, of a culture and practice of resistance inherited from the war of independence. The emergence of these 'unofficial' workers' representatives (UWRs) were the subject of a former research (Cox 2015). Under intensive pressure, both internally as a consequence of workers' agitation and externally from international organisations such as the ILO and members of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Vietnamese government has made it legal for workers to establish 'internal employee organisations' (IEOs) - *tổ chức của người lao động tại doanh nghiệp* - local workers' organisations independent of trade union structures, in the new 2019 Labour Law, which came in effect on 1 January 2021.

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The main aim of this paper is to investigate whether and how workers' bases and their representatives could seize the new legislative framework to gain legitimacy and consolidate their presence in the workplace. The case of Vietnam is interesting to look at as it sheds light into two questions, namely in what way do the corporatist and authoritarian legacies, as can be seen in socialist and former socialist countries, influence the opportunities for and restrictions on the establishment of new forms of workers' representatives? and how has the corporatist and authoritarian nature in these countries evolved to maintain its durability and legitimacy in the globalisation process?

Given the recent nature of the new Labour Law's implementation, the aim of this article is not so much to take stock of this still incipient process, as to identify the factors that might hinder the development of an independent form workers' representation. These factors relate to the parameters of the legislation and workplace representatives themselves in their ability and willingness to establish IEOs. This is an important issue because the inclusion of such organisations in the representation system could potentially change the course of industrial relations in Vietnam.

After a short note on the research background, we will first outline the specificities of Vietnamese official trade unionism and the constraints that weigh on its functioning. The second part looks back at the context of the emergence of labour protest, which has grown strongly in the absence of an effective representative capacity from the trade union apparatus (Schweisshelm and Do 2017). The following section considers the prospects of an independent labour voice, which is the focus of the research agenda outlined in the conclusion.

The research background

The context of this paper is informed by a longitudinal research on industrial relations in the garment and textile industry in Vietnam, starting in 2009. The foundation of this research is the paper 'The pressure of wildcat strikes on the transformation of industrial relations in a developing country: The case of the garment and textile industry in Vietnam', which was published in the *Journal of Industrial Relations* in 2015.

The background research adopted a qualitative design as the sensitive nature of the investigated issues and the importance of contextualising company practices meant that the case study was the most appropriate strategy. Multi-level interviews were utilised in order to gain a more holistic understanding of trade unions and UWRs within these workplaces. Interviews were conducted inside and outside companies under examination. The first group included management, employees at the shop floor level, trade union officials and focus group interviews with employees. The second group included government officials at the national and local level who are in charge of administering the relevant laws and regulations and overlook the activities of these companies. They provided the official and in some cases unofficial views of the Ministry of Labour, Invalids and Social Affairs (MOLISA), the Vietnamese General Confederation of Labour (VCGL), the Management of the Industrial Zone, in which the enterprises were located, the local Planning and Investment Department, the occupational and industrial trade unions to name but a few. The researchers establish a long-term relationship with some key informants in both groups, with whom updated interviews have been conducted over time.

Additionally, the findings and arguments of this paper are supported by documentary and media analysis. Documentary data predominantly came from legal documents such as Labour Laws, Trade Union Laws, official Circulars, Decisions and Guidelines. We also inspected news published by mainstream newspapers, including, but not limited to Báo Người Lao Động (The Labourer Newspaper), Báo điện tử VnExpress (vnexpress), Báo Nhân Dân (The People Newspaper), Tạp chí Bảo hộ lao động (Labor Protection Magazine), Tạp chí Cộng sản (Communist Magazine), Tạp chí Lao động và Công đoàn (Labor and Trade Union Magazine), Việt Nam News, Báo Pháp luật Việt Nam (Vietnam Law Newspaper). It is important to note that the different forms of evidence collected in interviews and documentary analysis yield complementary findings.

Constrained, under-resourced and co-opted trade unions

Vietnamese workers are represented by the VGCL. There are two major constraints on the development of trade union activity in Vietnam. The first is the subordination to the Vietnamese Communist Party, who holds a strong stance on maintaining a 'harmonious' relationship with employers. The second is the lack of financial resources.

The subordination of VGCL to the Communist Party and the imperative to maintain harmonious labour relations are enshrined in both the Labour Law and the Trade Union Law. The revised Labour Law of 2012, which took effect in 2013, reaffirms these principles. The control of the Communist Party is enshrined in Article 1 of the Law on Trade Unions, which states that: 'Trade unions are (...) an integral part of the political system of Vietnamese society under the leadership of the Communist Party of Vietnam'. The notion of 'harmonious' labour relations is found in both bodies of legislation. For example, Article 4.6 of the revised Labour Law specifies that the objective of the law is to 'develop harmonious, stable and advanced labour relations'.

One of the main tasks of trade unions is to negotiate and sign collective labour agreements (CLAs) with employers and monitor the implementation of these agreements (Tran 2013, Chapter 2, Article 11). In line with the position of the Communist Party, the need for a non-conflictual relationship is emphatically expressed in all collective agreements. For example, the collective agreement of one of the Korean multinational companies states in its introductory chapter that:

In the administration of this Agreement, and in day to day relationships, the Parties will exhibit mutual trust, understanding and sincerity, and, to the fullest extent possible, will avoid confrontational tactics.

Should differences or misunderstandings occur they will be resolved through full and open communication. The manufacturing environment will be based on the teamwork, mutual trust and respect that gives recognition to the axiom that people are the most important resource of the Company. The Parties are cognisant that if this endeavour is to be a success, labour and management must work together as members of the same team.

Further, the exercise of collective bargaining at the workplace level is significantly constrained due to the governmentally centralised 'floor of rights'. The structure and content of CLAs are highly regulated by law: the foundation 1994 Labour Law was divided into component chapters, each dealing with a specific subfield, resulting in little space for company-level bargaining. The same strict guidelines were upheld in the 2012 Labour

Law and then in the 2019 Labour Law. As a result, collective bargaining is a secondary only source of rights and obligations in labour relations after the legislation. The lack of monitoring and weak penalties for violating or not signing CLAs are yet other factors explaining the low number of collective agreements signed. Commonly fines range from \$500,000 VND (US\$22) for small employers to 20,000,000 VND (US\$657) for large employers (Decision 95/2013/ND-CP). Union activity at the local level is also largely limited by a lack of financial resources. Union income comes mainly from employers' and members' contributions, supplemented by grants, donor contributions and resources from social activities. In 1997 the government exempted multinational companies from paying the employer's contribution, which was set at 2% of the company payroll. In 2013, the government decided to reinstate the levy, which was met with strong protests from the companies in question. Membership fees are negotiated between members and the local union. They are modest and can vary considerably, from 35,000 VND (1.54 USD) to 200,000 VND/month (8.80 USD) – as a point of reference, the minimum wage varies by region, ranging from approximately \$US130 to \$US195 in industrial districts formerly under examination –, yet remain essential for local operations.

In fact, company-based unions need this contribution from their members, as modest as it is, as after contributing to upper level unions, the remaining sum is not sufficient to cover their activities. (Interview with a member of Board of Director, Industrial Park)

This problem, identified by the union apparatus, led to a rebalancing of income in favour of local units. The 12th Congress of the Vietnam Trade Union Resolution No. 02-NQ/TW of the Politburo on 'Renovating the organisation and operation of Vietnamese Trade Unions in the new situation', states that starting from 2022, trade union funding will be adjusted in the direction of reducing the proportion of funding distribution to the upper levels of trade unions and increasing funding for grassroots trade unions. Specifically, in 2022, grassroots trade unions will be able to use 75% of total trade union revenue (in 2021, it was 71%) and 60% of trade union fees (Ministry of Finance 2021). This is a clear sign showing the Vietnam Communist Party (VCP) acknowledged the financial difficulties of trade unions and the government's intention to improve the effectiveness of company-based trade unions.

Trade union officers must be paid from trade union funds (Article 15.3 of the Trade Union Law). However, in practice and in the current framework, it is insufficient to maintain a full-time representation function. Trade union leaders earn their income from their jobs, and the 'supplement' provided by the trade union apparatus is negligible. According to the Law, union leaders should be given six days leave monthly for union duties in companies with more than 150 employees, and three days for smaller companies. Yet, it is reported that companies are not willing to allow any time off and union activities are typically carried out outside working hours.

Burdened by these external and internal constraints, the unions are limited to a function of relaying management decisions, occasionally intervening to cool things down. Functionally, the role of trade union officials has therefore remained virtually unchanged since the period of the centralised economy which prevailed until the mid-1980s. Rather, their focus has changed: the function of supporting Party cadres has been replaced by that of supporting management.

It is clear from the above discussions that the role and nature of trade unions in Vietnam do not conform to the Western liberal-democratic model of unionism in which unions are independent representatives of collective employee interests. This is similar to the situation in China, where the official trade union has been treated as 'a *de facto* government institution' (Chen 2009, 665).¹ Vietnam's current State-union relations have been embedded in a form of state corporatism. Crouch (1983) distinguished different forms in corporatism, consisting of authoritarian corporatism and liberal or bargained corporatism and pluralism, consisting of pluralism/bargaining and contestation by a continuum of organisations exercising functions of 'no representation' at one end, to 'prosecuting the demands of members without compromise' at the other. The Vietnamese constitution fits well with Crouch's definition of authoritarian corporatism 'where government imposes what is essentially its own regulation but, for various reasons, prefers to have this administered by a trade association rather than its own officials. The content of the regulations, the nature of policing and the sanctions are all statutorily imposed on the association, which is required by law to carry out the disciplinary function with no (or, probably more realistically, only marginal) scope for negotiation or representation (1983: 458).

Vietnam's economic reforms have led to an industrial society with the emergence of pluralist interests among the state, employers and workers. Constrained by the philosophy of non-adversarial employment relations, trade unions have limited liability for dispute resolution. It is into this representative vacuum that workers' collective action developed.

Rising industrial conflicts

The weaknesses of the system, from the lack of effective trade union representation to deficient inspection and enforcement mechanisms, are well known and the need to address them has always been controversial within the VCP. On the one hand, Vietnam, like most countries in the South Asian region, needs foreign investment for its development. In order to attract international capital, the country provides a reservoir of low-wage labour and a legal framework where it can be exploited without too many problems. Thus, as elsewhere, the 'pacification' of industrial relations (Ford and Gillan 2016) is a strong imperative. The case of Vietnam can indeed be seen through the prism of labour subordination under state authoritarianism and state-controlled unionism, a common feature, to varying degrees, in East/South-East Asia (Ford and Gillan 2016, 174–176) and historically prevalent in labour intensive, export-oriented industries. This is particularly a shared feature with China where challenges for labour reform have been at the centre of a growing number of critical studies (Froissart et al. 2019; Howell and Pringle 2019; Hui and Chan 2011).

The rapid and uninterrupted growth in the number and extent of 'wildcat' or illegal strikes in the sense that they are not conducted by unions is worrying investors, who are putting pressure on the government to put a halt to industrial disturbance. Mounting industrial conflict is not new: it has been going on for years. Siu and Chan pointed out in 2015 that Vietnam was the most strike-ridden country in the region. It was recently stated that the resulting instability was such that it undermined the business climate and social order (Vu et al. 2021).

Yet, as Do (2016) notes, while the government is concerned with economic development, political stability is the priority. The VCP sees strike movements as undermining its credibility: the failure of the Communist Party and its trade union apparatus to reflect the difficulties of workers and to reflect the concerns of the working class is ideologically and politically dangerous, to the extent that the question of recognising the latter is causing strong divisions within the Party (Linh 2022). Should the situation get out of control, it could open the field to forces hostile to the Party leadership and pave the way to political upheaval. Reforming trade unions to effectively address workers' demands and mitigating industrial conflicts has thus become unavoidable and an urgent item on the Party's agenda.

Characteristics of labour disputes

Tran (2020) provides a portrait of labour disputes, with a focus on foreign multinational companies, where three quarters of these disputes occur. The textile sector alone accounts for almost half of the conflicts recorded, followed by the footwear and leather sector for almost another quarter. The nature of militant activity in the Taiwanese- and Korean-owned companies dominant in these sectors has been detailed in the background research (Cox 2015).

Remarkably, all the strikes taking place are strikes being led by unofficial representatives, therefore all illegal in the sense that unions are not involved (Tran 2020, 88). The majority of these are short strikes, lasting between one and three days, and it has been found that workers are successful in 90% of cases (Schweisshelm and Do 2018). They can extend to an entire industrial cluster, depending on the coordination of the informal activist networks involved (Do 2017).

It is estimated that in 80% of cases they concern immediate working conditions (wages, working hours, overtime pay, etc.) as well as employer abuse. These strikes could be avoided, according to Tran (2020, 87, 90), if the parties knew how to negotiate with knowledge of and respect for the law. There are different views on whether the conflicts are more about material interests or rights violations. Clarke et al. (2007) argued that there was a shift towards interest-based strikes where workers struck for higher than government regulated payment. Cox (2015) observed however that these strikes, although appearing to be interest-based on paper, in fact remained rights-based, as the government regulated minimum salary level is sub-standard. Tran (2012) claimed that the export-oriented textiles and garments industry may have created employment, but most workers do not earn a living wage. This statement is backed up by numerous reports on the Vietnamese media, newspapers and surveys (for instance, refer to vnexpress 2022b). There is thus a strong correlation between inflation, the determination of the minimum wage and the frequency of strikes.

Besides, as stated earlier, the violation of rights reflects the lack of inspection services and the weakness of sanctions: in 2014, there were only 50 labour inspectors for over 100,000 companies in Ho Chi Minh city. If these inspectors visited one factory every day of the year, including weekends and holidays, they would only be able to inspect around 18% of all enterprises a year. As mentioned, even when inspectors uncover a violation, the sanctions are not punitive. Exceeding the working hour limit or obstructing union establishment causes a fine of maximum 20 million dong (US\$1,265).

According to Article 208 paragraph 4 and 5 of the Labour Law, it is forbidden to punish or discriminate against employees involved in a strike. However, it is commonly observed that management tactics oscillate between disguised sanctions (e.g. a change of working hours or position, but which can go as far as dismissal in spite of the law) and forms of bribery (promotion or salary increase) aimed at buying off activists or tainting the trust placed in them.

The 2019 Labour Law: legalising independent workers' voices

After much debate, the new 2019 Labour Code (Dao 2019) was approved by the National Assembly of Vietnam, taking effect in 2021. Its preamble reinstates the stereotypical rhetoric of 'harmony' between the parties, echoed in Article 4.7, which states that this principle applies, as state policy, to social dialogue, collective bargaining and labour relations alike. But remarkably, for the first time since the establishment of the Socialist Republic of Vietnam, the legislation recognises that official local workers' representative bodies now include both local trade unions and IEOs (*tổ chức của người lao động tại doanh nghiệp*), not affiliated to the VGCL or the Communist Party (Labour Code 2019, Chapter XIII). This new legislation thus breaks with Article 3.4 of the previous legislation which, in line with the Labour Code of 1994, specified that only trade unions affiliated to the VLGC could assume the function of collective representation at the local level, or at the higher level of the trade union structure in non-unionised settings.

In this new legislation, IEOs are defined as worker representative entities at workplace or enterprise levels. The legislation details the parameters of local collective representation in a series of provisions:

- Article 172. Establishment, participation and operation of internal employee organisations;
- Article 173. Management board and members of internal employee organisations;
- Article 174. Charter of internal employee organisation;
- Article 175. Prohibited acts by the employer regarding the establishment, operation of and participation in representative organisations of employees;
- Article 176. Rights of members of the management board of a representative organisation of employees;
- Article 177. Obligations of the employer to the representative organisation of employees;
- Article 178. Rights and obligations of the representative organisation of employees in labour relations.

Articles 172 to 174 relates directly to IEOs and 175 to 178 are concerning both official unions and IEOs as representative organisations. Article 178 is important in substance because it gives IEOs the right to engage in collective bargaining, to take strike action (within the framework of the law on strike action) and to ensure the enforcement of rights, including the inspection of compliance with statutory or negotiated working conditions (hourly rates, pay scales, reward policies, etc.). Overall, the new legal provisions make IEOs and trade unions technically equivalent in legal status in terms of rights and obligations in the legitimate representation of employees' rights and interests in labour relations.

As such, the legislation extends the freedom of association of workers outside the party boundaries, with the choice of either joining a VGCL union or setting up their own representative organisation. Importantly though, unlike VGCL unions, IEOs are identified as being social organisations, to the exclusion of any broader political and economic function. Noteworthy, the legislation also aims to adhere to international labour standards, as most free trade agreements signed by Vietnam require the country to subscribe to International Labour Office (ILO) standards. Vietnam plans to ratify Convention 87 on Freedom of Association and the Right to Organise by 2023. As debates and deliberations on freedom of association were underway, Tran and Bales (2017) pointed out that allowing workers to associate in organisations independent of the CGTV (and therefore not subordinate to the Party) was a ‘significant’ step in the right direction and a ‘positive sign of rapid progress in labour reforms’.

What to expect?

The question encompasses two facets: 1) Will activists and UWRs engage in the new legal framework that formally gives them full legitimacy; 2) What is the future for IEOs?

It is noteworthy that since 1 January 2021 until early February 2023, there has not been one single IEO established in Vietnam. Buckley (2021) identifies several obstacles to this. Firstly, he argues that it is not clear that the legislation allows for the capacity to act beyond the local company level, thus preventing sectoral or regional coordination which would provide considerable leverage to workers’ collective action. This point is corroborated by Ca Dao (2019), who sees it as a factor that would weaken independent local organisations and hinder their growth. While unions are allowed (and supposed) to intervene in labour policy debates at all levels, (national and organisational levels), IEOs, in contrast, are only allowed to do so at the enterprise level. Ca Dao (2019) goes further, arguing that the Vietnamese government is trying to constrain the capacity of grassroots activism. While Article 178 allows IEOs to engage in strike action, the provisions around the right to strike in article 198 of the Labour Law applies to all representative bodies: IEOs must therefore abide by the same legal and technical constraints as trade unions (Articles 200, 201 and 202). There are many hurdles surrounding the right to lawfully strike: to start with, engaging in mediation is required; if mediation fails, a court must authorise the strike. Strike actions require five days’ notice. Prior to the strike, a list of claims must be displayed, and a ballot must be organised and resulting in a majority vote.

It is fair to say that the VCP is exceedingly on guard and will keep a close eye on the development of IEOs. The Communist Review, which is the official organ of political theory of the VCP’s Central Committee (2021) states that the introduction of IEOs has the potential to affect many aspects of the political life of the country and sees the need to ‘control’ the development of workers’ representative organisations, especially in enterprises with foreign direct investment and enterprises outside the state sector. In order to do so, the Communist Review emphasises two main strategies: reforming and strengthening trade unions and restricting IEOs’ activities at the level of individual enterprises. In their own words, the Communist Review (2022) advises that ‘it is necessary to have a good solution to control the scope of operation of IEOs in terms of space (within each enterprise) and activities that must be limited in labour relations. Do not allow these organisations to develop into political forces, especially opposing political forces’.

Buckley (2021, 79) concurs with Ca Dao and reaches the conclusion that 'rather than being a progressive step forward, freedom of association reforms are an attempt to reduce labour militancy'. Added to this is the fact that if the CGTV unions decide to improve their effectiveness – and there are indications that under pressure from the Party they will be more vocal, particularly on wages and occupational health and safety – it is unlikely that IEOs will be able to compete in the absence of the resources and external structures that the official unions enjoy. It is instead likely that workers representative organisations will be absorbed by the CGTV to become unions themselves. Chapter XIII of the 2019 Act provides for this scenario.

There are other sociological factors to consider. Wildcat strikes allow for *ad hoc* mobilisation, fast and responsive to shop-floor realities. The transition from a spontaneous, *ad hoc* mode of collective action to the setting up of structures may turn out to be problematic, without organisational skills – these are workers with low levels of education – it also entails the risk of exposing the militants. Informal leaders generally choose not to expose themselves publicly for fear of reprisals (Tran 2020, 89).

Moreover, it is not certain that setting up structures is useful as the tactic of direct-action has been shown to work. And according to recent news releases, it seems that, to date, workers persist in conducting such direct-action tactics (<https://bit.ly/3BDC0Kn>). UWRs manage to mobilise workers effectively, and collective action makes it possible to satisfy their demands, sometimes with the benevolence of union officials, who are themselves employees, who may incidentally benefit from the gains obtained by the strike; the downside, however, may be that these gains do not find formal inclusion into collective agreements.

It should also be noted that this is usually a transitional workforce. In the case of the textile and garment factories analysed by Cox (2015), 70–75% of the workers are migrant workers who change jobs regularly in search of better pay and return to their home region as soon as they have earned enough money to buy a piece of land or open a small business. For many, they had to leave their families behind because of the constraints of the residence permit system (*hộ khẩu*). It is also common for them to give up their work seasonally to help with agricultural work, as highlighted by Do (2012) in her report to the ILO. Thus, the turnover rate of the workforce is high and does not facilitate the maintenance of stable structures. Likewise, the existing informal movements lack stable leadership as a result. Last, Tran (2020, 88) denotes a 'cultural' factor: Vietnam is home to a long tradition of underground organising and revolutionary culture, a tradition of informal actions outside the legal framework known as the '*Le*' (autonomous ruling) (Däubler 2018; Tran 2013), upon which workers – mostly migrants sharing a community of existence and a strong identity bond – can easily be mobilised in a 'guerrilla spirit' and where informal leaders find legitimacy.

It is premature to advance a prognosis on IEOs' nature if they are indeed established in the workplace. One distinct possibility is that they will collaborate and be absorbed into the traditional trade unions. Multi-unionism does not automatically result in conflicts or rivalry between unions (Harcourt and Lammark 2010). Workers may benefit, if inter-union competition leads to greater union efficiency and effectiveness, as unions develop a greater responsiveness to the needs of their members (Rokhani 2008). Furthermore, multi-unionism might undermine unions' solidarity and their effectiveness in bargaining. Inter-union rivalry and conflicts gave employers an opportunity to 'divide and rule' the

labour movement by favouring one union over another' (Metcalf, Wadsworth and Ingram 1993 cited in Harcourt and Lammark 2010, 10). Therefore, it may be advantageous for IEOs and traditional trade unions to collaborate with each other.

In our view, IEOs are unlikely to overtake unions, at least not in the near future. In forming this view, we lean towards Buckley's observation: 'Since existing, wildcat forms of resistance have worked, workers are not demanding independent unions or WROs; such demands have come from capital' (2021, 88). Buckley considers that 'Perhaps wildcat strikes and WROs could work in tandem, with workers making use of both to make bigger and broader demands', yet concludes on a sobering note: '(...) the development of WROs has not come from the grassroots, has not been a development building on wildcat militancy, but is a reaction against such militancy. The excitement and optimism about the proposed reforms from pro-labour quarters may, therefore, be misplaced' (2021, 90).

A range of outcomes can be envisaged including the likeliness that they could become themselves co-opted and operate as the 'eyes and ears' of the unions, thus turning into a strategic tool from the Party's point of view in order intervene to prevent the spread of conflicts. An alternative path is that IEOs will gain momentum and grow into strong, autonomous organisations that are capable of fulfilling their intended role as worker representatives. When inter-union rivalry emerges, trade unions and IEOs would actively compete 'for the control of the workers employed or the work habitually performed within a particular trade or occupation' (Freeman 1989 cited in Pawlenko 2006, 651). However, such rivalry and competition might trigger social unrest that threatens the integrity of the communist regime. Any organisations that manage to gather enough strength to challenge the Communist regime will be promptly suppressed by the forces of law and order (article 209 of the Labour Law). It has to be acknowledged that the COVID-19 health crisis did not help. Faced with the slowdown in industrial activity and restrictions on movement and/or isolation, many workers decided to return to their region of origin. According to official statistics, from July to September 2021 alone, 1.3 million workers left the industrial districts.

Conclusion and research agenda

The economic reforms that have taken place in Vietnam over the past thirty or forty years have had a profound impact on union structures, necessitating their transformation. However, the presence of authoritarian and corporatist legacies inherited from the Communist political regime has resulted in a multitude of hindrances to the exercise of collective rights.

The 2019 legislation does open the door to the expression of an independent workers' voice, which is a notable advance per se. The Vietnamese authorities have dual intentions, namely the curbing of the accumulation of power and developing the existing institutions. Consequent changes in the institutional system see union pluralism installed, then retracted through restrictions on union pluralism. While the authoritarian and corporatist imprints prevent a more pronounced weakening of unions and fundamental changes in the current institutional setting, this framework may shift to a more progressive model of corporatism. As observed historically, authoritarian corporatism arrangements require accommodation to maintain the status quo in the political exchange (Crouch 1983).

The situation suggests this is occurring in the case of Vietnam. As observed in China, trade-offs may lead to a range of shifts towards 'consultative' (Teets 2013, 35), 'bargaining' (Lee and Zhang 2013), 'adaptative' (Heilmann and Perry 2011), 'pragmatic' (Lai 2016) or 'populist' (Wenfang 2016) forms of accommodation, compromising at the margins to the extent, we may postulate, serves the centrality of the core. This paper thus illustrates how the State and trade unions manage to maintain their legitimacy and durability in a transitional society.

Despite both operating within a state corporatist system, Vietnam shows a greater level of flexibility and adaptability compared to China, its Communist counterpart. It is one step ahead of in recognising the need for greater social and economic inclusion and making efforts to engage with a wider range of interest groups in the IR system. This can be explained by the fact that Vietnam bears much greater pressure to respond to international economic and social actors and is vulnerable to external influences. However, this study shows the limitations of such evolution. Despite the creation of a more favourable environment for pluralism, traditional unionism continues to dominate, and the establishment of new independent employee organisations has yet to be realised. Evidence suggests that IEOs might not be able to mitigate the pronounced power imbalance between labour, employers, and the government. Thus, this dual power model is incompatible with genuine union representation empowered by the legal authority that the 2019 Labour Law ostensibly grants but simultaneously impedes.

This study thus elucidates how multi-unionism was legalised within a Communist country, but its effectiveness was hindered by the restrictions imposed by the institutional setting. It emphasises the need for overhauling the institutional design to redistribute power in the IR and ensure the rule of law become a reality. The required modifications entail the elimination of restrictions on the content of collective bargaining, the lifting of the ban on sector-wide collective bargaining, the expansion of the right to bargain to a broader range of enterprises, the promotion of collective actions, the restriction of the government's power to define the scope of collective agreements, and the discontinuation of the use of strike breakers. Specific reforms are indispensable, in order to open the way to a deeper revitalisation, renovation and democratisation of the unions and IEOs in Vietnam.

The conditions of emergence, development and impact of IEOs constitute a wide open research agenda ahead. To start, can we identify factors that lead to the establishment of IEOs or instead, as we outlined, explain why workers and UWRs decide not to. IEOs may take different forms and perform different functions: can we make a typology? How will IEOs evolve over time: will they merge with VCLG trade unions? Or, if they keep their ground, how are they going to co-exist with unions? Many practical issues may arise: for example, who has more power in bargaining? Will they be able to organise some form of pattern bargaining? Will the new system effectively curb labour disputes, yet be effective in advancing workers' demands? On the management side, will they oppose and/or obstruct IEO's or will companies try to develop HR strategies to co-opt IEOs into enterprise unions or into their HR function, as in Japan for example? There can be useful comparative parallels to be made; as in the case of bottom-up militancy in the wake of democratisation in Indonesia (Collins et al. 2011), struggling independent trade unionism in South Korea (Kwon and O'Donnell 1999), the role of labour NGOs in China (Chan 2018), among other

national contexts regionally and beyond (such as unions' interface in the context of union pluralism in France). As aforementioned, there is much scope to draw parallels with China which has wrestled with similar problems of how to legislate for forms of 'collective bargaining' against the backdrop of a rising number of informal workplace/community protests (Chang and Cooke 2015). There are broader questions to be answered: is this an institutional trap or a step towards industrial democracy? Is there a genuine prospect to witness the emergence of an established independent trade unionism in the long run? How then would Vietnam organised labour evolve in the frame of the Asian 'variety of unionism' (Lansbury, Lee and Ng Sek-Hong 2020)? And there may also be immediate implications for the international labour community: can international labour provide resources, training and leverage in nurturing workers' voice and capacity?

It is too early to set out a research design, but we can outline several methodological considerations. While the general question is simple, that is: what are the conditions of emergence and the future prospects of IEOs?, there is a need to further break this down into sub-questions that can be operationalised in order to identify the factors at play and from there identify any distinctive patterns that emerge. These factors range from the composition of the workforce (gender, level of turnover, migrant, level of skills and education, etc.), the former presence of active UWRs, the presence of an official Union and their attitude towards the IEO and likewise management attitude. This would require a first stage of qualitative research which, pending developments, may lead to a broader investigation including the functions performed by established IEOs, the scope and nature of their representative agenda (interest vs rights) and their effectiveness (leading to CLAs, resolution of the immediate conflict?). There is reasonable ground to set the research within the perimeter of the 2013 research program, which would provide some longitudinal insights and, in practice, easier access. However, if the export-led textile and garment industry is relevant in many respects (notably as mentioned because this is where wildcat industrial conflict is occurring), it may lead to issues of representativity and thus of generalisation. Surveying should then consider a sampling of a cross-section of sectors, including key factors such as size, ownership and eventually the public sector or state-owned enterprises.

The research also involves numerical methodological challenges, among them principally the capacity to reach out (especially to workers' activist networks that are still 'clandestine' in nature) and the openness of both the VCP and (international) business. Furthermore, it is hard finally to envisage the research agenda advancing without the cooperation and involvement of local established research centres. The task ahead is considerable but worth it if it turns out to be a turning point in the course of industrial relations in Vietnam and, if not, may provide a range of additional insights on the conditions and prospects of industrial democracy in Asia.

Note

1. In many significant respects, Vietnam and China can be regarded as a pair. Factors that might account for their similarities include geographical proximity, historical traditions of Confucianism, similar domestic economies, which are predominantly agrarian and rice cultivating, familiarity between the two parties' senior leadership and the mutual effect of the other's experience in internal debates. In the processes of economic reform, both countries have broadly followed parallel paths (Kerkvliet et al. 1999). Politically, both have maintained

centralised political control in the hands of their respective Communist parties, unlike other transition economies in Europe, which have seen the demise of their communist governments. There is still a lack of democratic institutions in both countries, and political pluralism is certainly not on the agenda. The two countries have shown of a combination of economic liberalism with political conservatism. Turley (1993) observed that Vietnam and China seemed to stand apart, implementing similar reform strategies, suggesting the emergence of a distinctive Asian, or at least Sino-Vietnamese, socialism.

There are, however, some significant differences. Wurfel (1993) argued that compared to China, Vietnam's economic 'open-door' and other market-oriented reforms must result in greater sensitivity to world economic forces and vulnerability to external influences. Secondly, Vietnam's Communist Party regimes was generally less ideologically strident and its system of rule less divisive than its Chinese counterpart (Kerkvliet et al. 1999) (see also Womack 1992).

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