

**2014 Annual Report on Korean Multinational Corporations’
Human Rights Practice**

Field Investigation Report: Vietnam

(December 3 - 11, 2014)

Korean Transnational Corporation Watch (KTNC Watch)

[Advocates for Public Interest Law / GongGam Human Rights Law Foundation / Hope and Law / Korean House for International Solidarity / Lawyers for Democratic Society / International Labor Team / Korean Confederation of Trade Unions / Good Corporations Center]

This report was sponsored by the ‘Scenarios of Change Project’ of the Beautiful Foundation

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Sponsor: The Beautiful Foundation

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Preface

In 2013, South Korea's Foreign Direct Investment (FDI) reached 33 billion USD –a 14% increase from the previous year– and South Korea ranked the 13th largest source of FDI in the world. With the rapid international expansion of Korean corporations, their human rights practice in overseas operations is also receiving attention. 72% of cases filed to the Korean NCP for breaching the OECD Multinational Corporation Guideline are complaints against Korean corporations' human rights violations abroad, while most of these cases involve trade union dissolution, nonpayment of wages, physical abuse, and layoffs. Human rights violations against laborers committed during the rapid growth phase of the 1970s and 80s in Korea are being committed even today, only this time the location is different.

As such, we saw a need for the government and civil society to take action against Korean corporations' human rights abuses abroad, which, in turn, required a field investigation to better identify the current human rights situation.

In particular, in early 2014, there were many instances of abuse in Southeast Asia in which Korean corporations are suspected to have been complicit: Korean corporations and the Korean Consulate are likely to have been implicated in the violent repression of Cambodian textile workers' strike; a female employee of a subsidiary of Youngone Holdings Co., Ltd. was killed during a labor protest in Bangladesh; many workers were injured by private securities at a construction site for a new Samsung Electronics factory in Vietnam.

In response, the Advocates for Public Interest Law (APIL), the head office of KTNC Watch, applied for support from the 'Scenarios of Change Project' of the Beautiful Foundation to conduct a field investigation of Korean corporations' human rights conditions in the countries mentioned above.

During the investigation, Cambodia was excluded since the Korean House for International Solidarity and the Korean Confederation of Trade unions, both members of KTNC Watch, had already visited the country twice in 2014 and published reports. Instead, we decided to visit Philippines, where human rights and environmental issues surrounding dam construction were being raised.

The ten investigators were selected amongst employees of organizations under KTNC Watch, and the reports have been compiled for each country visited. The kind and degree of human rights violations in which Korean corporations were involved were different in each country, but a common grievance involved the minimum wage. The minimum wage in the countries mentioned above were not enough to satisfy the basic living needs of the worker and his/her families, but many Korean corporations continued to pay the minimum amount.

In addition to releasing the findings of the field investigations in this report, KTNC Watch will use the information obtained to deal with these issues in various ways, and will take further action against Korean corporations' human rights violations in other countries as well.

December 25, 2014
APIL, Head Office for KTNC Watch

Table of Contents

I. Introduction----- 05

1. Country Overview: Vietnam
2. Korean Multinational Corporations Operating in Vietnam
3. Reasons for Selecting Vietnam as an Investigation Site
4. Method of Investigation
 - A. Areas visited
 - B. Investigators
 - C. Period of investigation
 - D. Detailed schedule of investigation

II. Legal Framework ----- 13

1. Labor Conditions
 - A. Labor contracts
 - B. Wages
 - C. Working hours and breaks
 - D. Female and underage workers
 - E. Occupational safety and industrial accidents
 - F. Labor regulations
2. Trade unions, Collective Negotiations, and Labor Disputes
 - A. Trade unions
 - B. Collective negotiations and other issues
 - C. Labor disputes

III. Major Findings: Korean Multinational Corporations' Human Rights Practice ----- 27

1. Unpaid Wages
2. Wages Insufficient for Basic Sustenance
3. Breaks
4. Degrading Treatment of Workers
5. Overtime Work
6. Labor Contracts, Layoffs, and Social Insurance
7. Meals and Accommodation
8. Discrimination and Protection of Motherhood
9. Environmental Issues
10. Livelihood of Local Residents

IV. Summary, Recommendations and Analysis ----- 41

Field Investigation Report: the Vietnam

I. Introduction

1. Country Overview: Vietnam¹

The surface area of Vietnam is 331,000km², about 1.5 times the size of the Korean peninsula. The population is approximately 92.5 million (2013). After gaining independence from France in September 1945, Vietnam has been a Socialist Republic, a single-party state under the Communist Party.²

After the *Đổi Mới* Reform Policies of 1986, the Vietnamese economy enjoyed high economic growth rates during the 1990s with an average annual growth of 7.6%, continuing the trend with 8% annual growth from 2005. However, the impressive economic growth has staggered since 2008, in the aftermath of the global economic crisis and unfavorable conditions both at home and abroad. Moreover, since 2010, Vietnam has faced significant difficulties including rapid inflation; increase in government debt; slow economic growth; rise in the prices of commodity, crude oil, and major resources. During the last five years, Vietnam saw a much higher inflation rate than China and other ASEAN countries (in 2011 alone, the inflation rate was a striking 18.6%), adding further to the economic woes. Since 2012, the Vietnamese government has set price stabilization as the most important policy goal, and has focused its efforts in stabilizing macroeconomic indicators.

Year		2008	2009	2010	2011
Total number of strikes		720	218	422	885
Number of strikes at foreign-invested firms		584	157	339	675
Proportion of strikes at foreign-invested firms to total (%)		81	72	80	76
Inflation rate (%)		22.6	6.9	9.2	18.6
Increase rate of Minimum wage (%)	Domestic firms	37.7	29.0	22.5	37.7
	Foreign-invested firms	122.2	20.0	11.6	49.2
Unemployment rate (%)		4.7	6.0	5.0	3.6

[Sources] Vietnam General Confederation of Labor (VGCL), Ministry of Labor, Invalids, and Social Affairs (MOLISA)

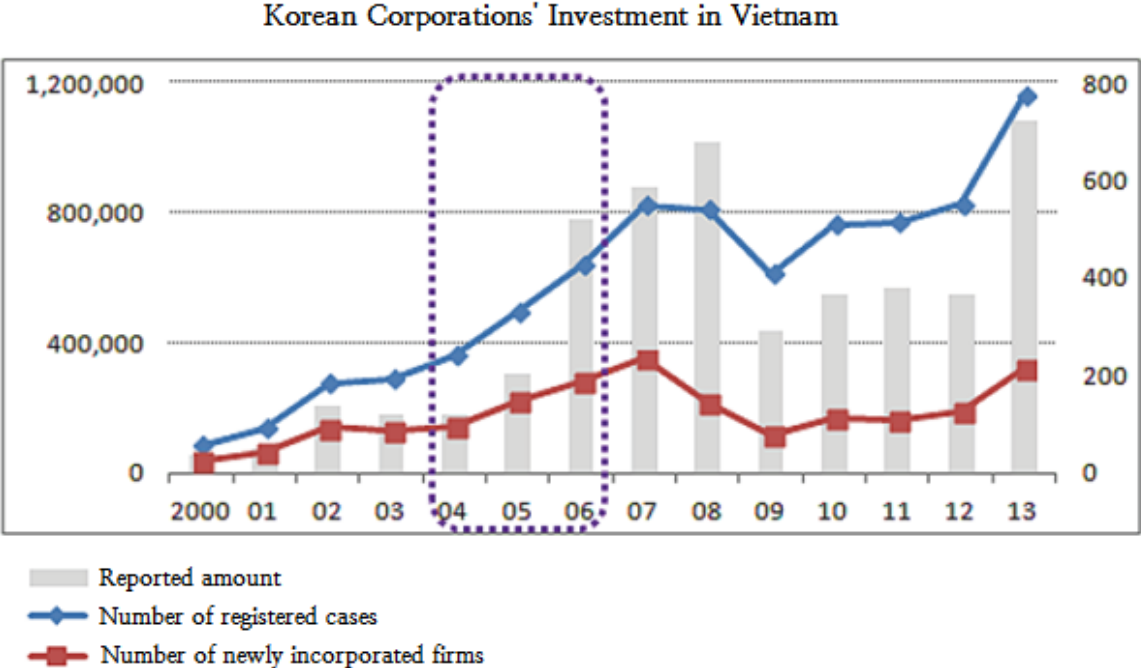
¹*Country Overview: Vietnam*. Foreign Economies Research Center, Export-Import Bank of Korea. 2013.

²The Communist Party directs the actions of the country, the National Assembly, and the government. However, the National Assembly's powers have been strengthened in comparison to the past, and the authority of the government (Prime Minister) that executes policies determined in the National Assembly is on a rising trend as well. ("Vietnamese Politics," Korean Ministry of Foreign Affairs. Nov. 2011.)

According to data released by the Vietnamese Ministry of Planning and Investment (MPI), the total reported amount of foreign direct investment (FDI) between January and May of 2014 was 5.5 billion USD, indicating a decrease of 34% from the previous year, but maintaining last year's levels in terms of executed funds.

2. Korean Multinational Corporations Operating in Vietnam

From the early 1990s to 2013, a cumulative total of approximately 3,000 Korean firms entered Vietnam, investing 29.4148 billion USD in 3,546 cases. Korea is thus the third largest investor in Vietnam after Japan and Singapore. After a phase of brisk Korean investment in China from 2004 to 2006, Vietnam has enjoyed heightened investor interest as a 'Post-China,' the speed and size of which is expected to rise even more since the Korea-Vietnam Free Trade Agreement has been signed on December 11, 2014.

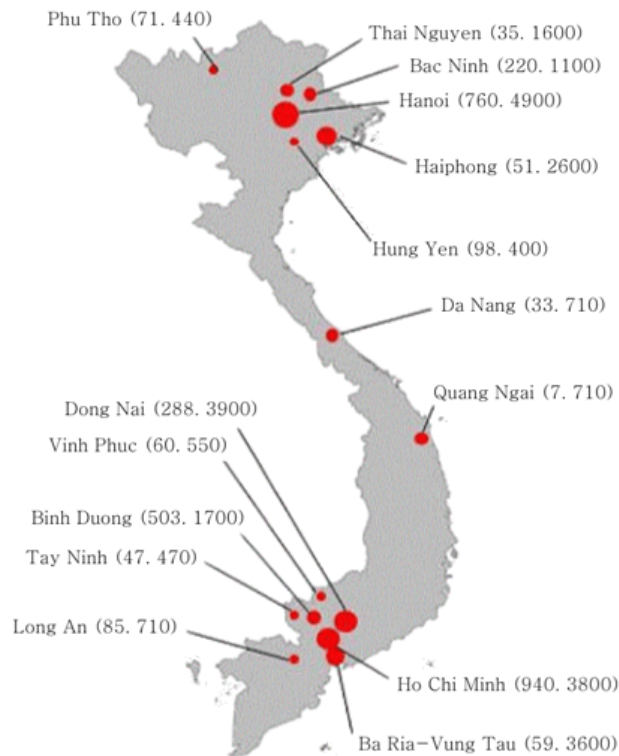


[Source: Korea Export-Import Bank]

According to data from the Korea Export-Import Bank, amongst the 3,000 Korean corporations that have investments in Vietnam, 1,972 are in manufacturing, 286 in construction, 213 in wholesale and retail, and 138 in real estate; manufacturing is thus the most popular investment area, claiming 65.6% of direct investment from Korea. The manufacturing industry can further be divided into 610 companies in textile/clothing; 317 in electronics/electro-mechanics; 166 in metals/metal processing; 125 in chemicals; 112 in rubber and plastic; and 110 in bags/shoes.

Korean Corporations' Investments in Vietnam, by Area (First Quarter of 2014)

* Area (Number of cases, in millions)



Recent Korean investment in the Philippines has upgraded from a concentration on labor-intensive industries like textile/needlework taking advantage of cheap labor to new investments in higher value-added industries. Areas of investment are also diversifying, from manufacturing centered on basic textile processing to primary metals, electrical equipment, electronic components, and etc. Investment in distribution/retail and services is also on a rising trend.

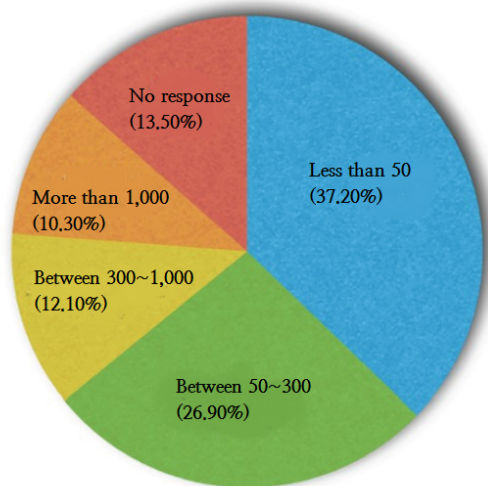
Currently, approximately 3,000 Korean firms have operations in Vietnam, with 50% of investments in the South around Ho Chi Minh City, and 34% in the North around Hanoi (by investment amount). Recently, investment in the North, centered around Hanoi, has had a sudden surge due to Vietnamese government policies aimed at developing the Hanoi area as its capital city, continuous expansion of Korean firms and partners, and heightened accessibility to China.³

There are some changes in the forms of investment as well. Compared to individual, small-scale investments that were dominant in the past, large-scale, joint entries to the market are becoming more common. With the expansion of investment from major Korean conglomerates (including Samsung Electronics, LG Electronics, Doosan Heavy Industries and Construction, POSCO), joint

³ Hanoi is responsible for 30% of the GDP and 40% of exports in Vietnam. It is the largest city with a population of 9 million people. There are approximately 85,000 Korean nationals living in the city, and approximately 1,800 Korean firms in business.

investments in particular are increasing, prompting primary and secondary subcontractor firms to enter the Vietnamese market as well.

Out of 288 industrial parks in the country, 144 are concentrated in Ho Chi Minh City, Dong Nai Province, and Binh Duong Province. Most of the firms in these complexes are foreign-funded enterprises of East Asian origins, including Taiwanese, Korean, and Hong Kong firms; the majority of these firms are in labor-intensive industries producing clothing/textile and electronics to meet domestic and foreign demands. Most of the employees at these labor-intensive firms have insufficient schooling and training, and mostly female; their wages are thus relatively low despite high labor intensity and long hours.



[Number of Employees in Korean Multinational Corporations Operating in Vietnam⁴]

While Korean firms recently entering Vietnam tend to be larger, the average number of employees is small since a significant number of small and medium-sized enterprises began their operations in the past. As seen in the table above, only 10% were mega-firms with over 1,000 Vietnamese employees, while 12% were large firms with 300 to 1,000 employees; the majority of the remainder works in small and medium-sized enterprises with 50 to 300 employees.

3. Reasons for Selecting Vietnam as an Investigation Site

Besides the large foreign direct investment and overseas development assistance (ODA) from Korea to Vietnam, and frequent strikes at Korean-invested firms, one of the primary reasons why we selected Vietnam as an investigation site for evaluating Korean MULTINATIONAL CORPORATIONS' human rights practice abroad was the violent confrontation between one thousand workers and private security personnel that had occurred in January 2014 in Thai Nguyen Province.⁵⁶⁷ While different media have

⁴ "Report on Korean Corporations' Overseas Expansion: Grand Survey of China, Vietnam, and Indonesia." KOTRA. Dec 2010.

⁵ In the first half of 2014, 765.6 million USD was additionally invested, measuring up to 22.9% of total FDI in Vietnam, and making Korea the largest source of FDI in Vietnam. See "'RoK - largest investor in Vietnam in 11 months.'" *DTI News*. 25 Nov 2014. <http://www.dtinews.vn/en/news/017/37475/rok---largest-investor-in-vietnam-in-11-months.html>

different accounts of the incident's causes, details, and consequences, the gist of it was that Samsung C&T Corporation had hired a private security company in their construction of a Samsung Electronics factory, and violent conflict arose when the security guards beat a worker to loss of consciousness with an electric club for entering construction facilities without a permit, and co-workers who saw this set fire to containers and motorbikes nearby and threw rocks at the guards.

But unlike other countries, evaluating the case above and the general human rights practice of Korean corporations in Vietnam was not easy. In most cases, for similar investigations, we collect data from a desk research before a field visit, and meet stakeholders through the help of a trustworthy coordinator. However, in the case of Vietnam, very little information was available from the desk research, and we could not receive help from a local coordinator during the visit. This was not only because of linguistic barriers – there was limited information accessible in languages other than Vietnamese, like English or Korean – but more fundamentally because no strong civil society existed in Vietnam, especially civil groups that deal with corporate human rights abuse.^{8 9 10} Thus, we were forced to conduct our investigation in a rather limited way, as described below.¹¹

⁶ The ODA extended to Vietnam is substantial compared to other countries; from 1991 to 2008, approximately 89 million USD was given.

⁷ “Workers Riot at Samsung Factory Site in Vietnam.” *Radio Free Asia*. 9 Jan 2014. <http://www.rfa.org/english/news/vietnam/riot-01092014152426.html>.

“Workers building Samsung factory riot in Vietnam.” *Libcom.org*. 9 Jan 2014. <https://libcom.org/news/clashes-samsung-factory-vietnam-09012014>

⁸ As recent as December 4, 2014, bloggers who criticized government policies were arrested. See “Vietnam Jails Two Bloggers in Crackdown.” *Missouri School of Journalism Global Journalist*. 8 Dec 2014. <http://globaljournalist.org/2014/12/vietnam-jails-blogger-bad-content>

⁹ Since the Vietnam Communist Party is concerned of NGO action against party policies, there are many restrictions on NGO establishment and activities (see report by the Seoul NPO Support Center). The United States has proposed as one of the conditions under the Trans-Pacific Partnership that Vietnam guarantee unrestricted activity of NGOs (see ILO meeting notes from 10 Dec 2014).

¹⁰ Usually, if the subject country has many NGOs engaged in corporate and human rights abuse work, there is little difficulty in accessing related literature and meeting stakeholders through the help of a local NGO. This is because these NGOs would proactively look for Korean NGOs for solidarity while responding to human rights abuse of Korean corporations operating in their home country.

¹¹ As with other developing countries, in the beginning, we chose not to approach Korean corporate human rights abuse issues through government bodies, since little more than statistical information could be obtained as governments in developing countries tend to be favorable to foreign investors. In particular, we were reluctant to contact the VGCL since it was well-known that the confederation is under the control of the party and the government, and also under the influence of employers. However, as research progressed, notwithstanding certain limitations, we realized that in this case, the most effective research method was obtaining a permit from the Vietnamese government in the form of a research project and accessing related information through the VGCL. As will be discussed later, we witnessed the delicate relational dynamics between the VGCL and the Vietnamese government, and learned that the VGCL is also trying to figure out how to achieve independence from employers and properly represent workers.

4. Method of Investigation

A. Areas visited

Ho Chi Minh, Hanoi, Bac Ninh, Binh Duong

B. Investigators

Jong-Chul Kim (Lawyer, Advocates for Public Interest Law); Daae Kim (Researcher, Advocates for Public Interest Law); Jung Yoo (Manager, Good Corporations Center)

C. Period of investigation

December 3-11, 2014 (nine days)

D. Detailed Schedule of Investigation

Date	Area visited	Main itinerary
Dec. 3 (Wed)	Ho Chi Minh	<ul style="list-style-type: none">- Interviewed officials from SG Consultants, an accredited independent auditing company in Vietnam- Visited the office of and interviewed representatives of the Ho Chi Minh Federation of Labor¹²- Met with officials from the Center for Development and Integration (CDI), a local activist group
Dec. 4 (Thurs)	Ho Chi Minh	<ul style="list-style-type: none">- Met with an official in charge of labor issues at a foreign embassy in Vietnam- Visited H, a Korean firm, and interviewed the President of the trade union
Dec. 5 (Fri)	Ho Chi Minh	<ul style="list-style-type: none">- Visited the Ho Chi Minh office of Yulchon LLC (a Korean law firm) and conducted interview- Visited the Korean Embassy in Ho Chi Minh and met with an official
Dec. 6 (Sat)	Hanoi	<ul style="list-style-type: none">-Arrived in Hanoi-Interviewed Korean expatriate in Hanoi
Dec. 7 (Sun)	Hanoi	<ul style="list-style-type: none">-Interviewed Gae-Syun Lee, a visiting professor at Hanoi University
Dec. 8 (Mon)	Hanoi	<ul style="list-style-type: none">- Visited the International Office of Migration (IOM)- Met with an official in charge of labor issues at a foreign

¹² The Federation of Labor may be understood as a federation of trade unions, while the VGCL may be understood as a national federation of all trade unions.

		embassy in Vietnam <ul style="list-style-type: none"> - Visited and met with officials from the VGCL - Visited the Institute of Labor Science and Social Affairs(ILSSA) under MOLISA
Dec. 9 (Tues)	Hanoi	<ul style="list-style-type: none"> - Interviewed Dr. Do Quynh Chi, a local researcher - Visited an Oxfam office - Visited Center for Development and Integration
Dec. 10 (Wed)	Hanoi	<ul style="list-style-type: none"> - Visited the Bac Ninh Trade union and interviewed representatives - Visited B, a Korean enterprise; interviewed company officials and workers - Visited the International Labor Organization (ILO) office
Dec. 11 (Thurs)	Ho Chi Minh	<ul style="list-style-type: none"> - Visited Ton Duc Tang University, the first university to have established an official Department of Labor Relations and Trade Unions; interviewed the President and Department Head of Labor Relations and Trade Unions - Visited the office of Better Work Vietnam, a program co-managed by the ILO and the International Finance Corporation (IFC) -Interviewed P, a representative from the Binh Duong Korean Businessmen’s Association

Before visiting Vietnam, the research team conducted preliminary research on previous research and media reports. While basic information of the country, statistics on Korean MULTINATIONAL CORPORATIONS’ operations, and present conditions like investment trends were readily available, information on labor-management relations and labor disputes in Korean firms was difficult to find. Amongst several possible reasons for this challenge was the dearth of research on the violation of labor rights with a focus on Korean firms, especially regarding the abuse of human rights.¹³ Second, most of the data on local labor disputes was limited to describing that labor troubles are increasing in foreign-invested firms, and that the Korean firms are preceded only by Taiwanese firms in the proportion of cases. Such reports contained some analysis on the characteristics of these labor disputes and causes, but additional research was needed to understand the circumstances particular to Korean firms. Third, information in Korea on Vietnamese labor-management relations and disputes rarely deal with specific issues or case studies, since they tend to be reference materials meant to aid Korean

¹³ Amongst several comprehensive reports that monitored foreign-invested firms in certain industries, we were able to find some parts discussing Korean firms.

firms' personnel management in Vietnam. Fourth, for news reports, the aforementioned linguistic barriers hindered our access to local media.

Thus, we were keenly aware of the need for a comprehensive research on Korean multinational corporations' human rights practice in Vietnam, and had to proceed with the field investigation with only a general understanding of Vietnamese labor and human rights environment and some human rights abuse cases in Korean-invested firms.

The field investigation took the form of visiting related institutions and organizations identified during the preliminary research and talking to their representatives. Interviews focused on corporate human rights issues we judged to be in need of more information based on the preliminary research, checking the validity of existing information and confirming additional cases of abuse, and identifying potential stakeholders with whom we could continue to cooperate in the future. During the short trip, we were able to meet a diverse range of stakeholders, including the VGCL, city/provincial trade unions, branches of international organizations, Korean and foreign embassies and consulates, NGOs, and research institutes; we specifically inquired into the issues on which these institutions focus their activities, and learned that no group in Vietnamese civil society was monitoring general corporate human rights practice issues. In addition, due to the nature of a Socialist state, it was required that we lead the discussions with a 'non-adherence to Vietnamese Labor Code' approach rather than a 'human rights' one when talking to local organizations. As such, most Vietnamese institutions found it difficult to specify related groups when talking about issues that are yet to be publicly discussed in Vietnam, including occupational accidents and forced evictions.



[The Vietnam representative of the ILO commented that the field investigation is a very timely and interesting attempt, particularly since the organizational rate of trade unions is high and the labor code is relatively well-established in Vietnam, so if trade unions are strengthened, labor/management relations would be very constructive [...] Vietnam is headed in a desirable, albeit slow, direction.]

The most challenging part was meeting actual victims of human rights abuse, the biggest reason for which was the lack of a group that consistently monitors and follows up on corporate human rights issues or cases of abuse.¹⁴ Furthermore, contacting workers was extremely difficult, as

¹⁴For instance, we tried to identify a group that investigated or monitored the Samsung labor conflict case in January 2014 or other Korean corporate human rights abuse cases that have been reported in the media in order to examine the possibility of cooperation, but failed to find any. The VGCL was regularly collecting statistical data on labor disputes, but did not manage specific cases. On the other hand, Better Work Vietnam, the most detailed-oriented and professional inspector of corporate adherence to labor regulations, did admit having some research data related to Korean firms, but was not able to share it with us due to agreements with the firms.

evidenced by the fact that the majority of existing research is based on interviews from random sampling.¹⁵ It was also challenging to reach victims, because besides slowdowns or strikes, workers or victims tend not to pursue proactive measures like lawsuits to claim their rights, and many victims frequently change jobs or move to another region. Fortunately, we did manage to talk to some workers at several firms with the help of city/provincial trade unions. However, in light of the trade union's internal and external concerns on, and different evaluations of the representativeness of individual units of trade unions, direct correspondence with workers and victims would be important in future research.

Before the investigation trip, the research team also requested a meeting with the Korean Consulate, KOTRA (Korea Trade-Investment Promotion Agency), and Samsung Electronics. The consulate and Samsung Electronics rejected our request saying they were busy, while we received no response at all from KOTRA.¹⁶

II. Legal Framework

Vietnam ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1982. Amongst the eight core conventions of the International Labor Organization, Vietnam has ratified No. 29 (Forced Labor Convention), No. 100 ([Equal Remuneration Convention](#)), No. 111 ([Discrimination \(Employment and Occupation\) Convention](#)), No. 138 (Minimum Age Convention), and No. 182 (Worst Forms of Child Labor Convention); Vietnam has not ratified No. 87 (Freedom of Association and Protection of the Right to Organize Convention) and No. 98 (Right to Organize and Collective Bargaining Convention).

The Labor Code of Vietnam has been amended four times since being established in 1994; the most recent (fourth) amendment was in 2012, and has been in effect since May 1, 2013.¹⁷¹⁸¹⁹ As

¹⁵For example, in the 'Make it Fair Report' published by SOMO ('Centre for Research on Multinational Corporations,' a Dutch NGO) in 2011 that is based on interviews with approximately 84 workers, one author said he had to conduct interviews with some workers on their way home after work because it was so difficult to locate the victims.

¹⁶On May 7, 2014, we also sent a questionnaire containing specific questions on the aforementioned incident in January 2014 at Thai Nguyen to Samsung Electronics and Samsung CT&T Corporation. Samsung CT&T responded on May 20, 2014 that "it seems like there was a conflict between a local security guard and some workers while checking visitors' identification and safety equipment for the sake of on-site safety and employee protection, which caused a misunderstanding amongst other workers nearby [...] local police is also investigating the incident." The company further asserted that "in order to prevent similar incidents in the future, [they] immediately implemented safety measures like providing special education to local security personnel, establishing and operating a cooperative agency between workers at subcontracted firms and CT&T, and positioning a Korean employee at the gate."

¹⁷The Labor Code has been in effect since 1995.

¹⁸Labor codes, general labor and employment acts. Labour code (10/2012/QH13). *Vietnam Labor Statutes*. Trans. Tae-Ho Choi. Korea Labor Foundation. 2014. http://ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=VNM&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

¹⁹The four amendments were in 2002, 2006, 2007, and 2012.

evidenced in its nickname as the ‘Comprehensive Labor Law,’ the Labor Code encompasses every aspect of general labor relations (i.e. trade unions, labor disputes, labor conditions), even covering social insurance like medical insurance unemployment insurance.²⁰ Therefore, the legal framework for labor is constituted by the Labor Code, the related statutes that specify the Code (Law on Trade Unions, Law on Social Insurance, Law on Apprenticeship and Training, etc.), decrees, and circulars.²¹²²²³ Our discussion below will explain the major aspects relating to labor conditions, trade unions, and collective negotiations and labor disputes, as well as changes from the fourth amendment, and particularly the statutes related to Korean corporations’ labor rights’ abuse. When needed, we will also introduce relevant aspects of certain decrees and circulars.



[Tae-Ho Choi, a labor official at the Korean Consulate in Vietnam (in Ho Chi Minh), thinks that Korean firms operating in Vietnam have an inadequate understanding of legal statutes on labor. He is thus focusing on accurately translating and publicizing the Vietnamese labor law.]

²⁰The Labor Code is made of 242 articles, including Chapter I - General Provisions; Chapter II – Employment; Chapter III- Labor Contracts; Chapter IV – Apprenticeship, Training and Retraining for Vocational Qualification and Skill Improvement; Chapter V- Dialogue at Workplace, Collective Bargaining, Collective Labor Agreements; Chapter VI – Wages; Chapter VII – Working Time and Rest Time; Chapter VIII – Labor Discipline and Material Responsibilities; Chapter IX – Occupational Safety and Health; Chapter X – Separate Provisions for Female Employees; Chapter XI – Separate Provisions for Child Labor and Other Types of Employees; Chapter XII – Social Insurance; Chapter XIII – Trade Unions; Chapter XIV – Settlement of Labor Disputes; Chapter XV – State Management of Labor; and Chapter XVII – Implementation Provisions

²¹The major contents of the Law on Social Insurance are the following: *Social insurance* means the guarantee to fully or partially offset a laborer’s income that is lost or reduced due to his/her sickness, maternity, labor accident, occupational disease, unemployment, retirement or death, on the basis of his/her contributions to the social insurance fund (Article 3). Both workers and employers have a responsibility to pay social insurance premiums, workers have a right to have their social insurance books returned when they cease to work (and employers have the responsibility to do so), and to preserve social insurance books of laborers during their working term (Article 18). Compulsory social insurance covers sickness, maternity, labor accident or occupational disease, retirement, survivorship, and other allowances. Discretionary social insurance includes occupational accident and disease, retirement, and survivorship allowances.

²² There is a decree on labor contracts; decree on wages; decree on regional minimum wages; decree on working hours, rest breaks, labor safety and hygiene; decree on outsourcing; decree on labor dispatch and social insurance; decree on labor disputes; decree on the rights and responsibilities of trade unions; decree on financial affairs of trade unions, etc.

²³ There is a circular on labor contracts; circular on regional minimum wages; circular on labor dispatch; circular on labor disputes, etc.

1. Labor Conditions

A. Labor Contracts

1) Conclusion of Labor Contracts

While in principle, labor contracts must be concluded on paper, if a worker is hired on a temporary basis of less than three months, the contract may be done orally.²⁴ Whether oral or written, the worker and employer must directly conclude a labor contract before commencing work (Article 18). When signing a labor contract, the employer cannot keep the employee's original identification documents, degrees and certificates, or request the employee to make a deposit in cash or asset to guarantee his/her compliance with the employment contract (Article 20). There are three types of labor contracts: an 'indefinite term employment contract,' a 'definite term (12-36 months) employment contract,' and a 'employment contract for seasonal work or a specific task which has a term of less than 12 months'. For a 'definite term employment contract,' if the contract expires, parties must conclude a new contract within 30 days from the date of expiry of the contract; they may conclude another 'definite term employment contract' only once, and must conclude an 'indefinite term employment contract' thereafter.²⁵ Furthermore, it is prohibited to enter into a 'seasonal or work-specific employment contract of less than 12 months' to carry out regular work which has the duration of more than 12 months (Article 22). Worker and employer may also negotiate on an 'probationary period,' but while allowing for some differences in the period length depending on the work's characteristics and complications, the probationary period should not exceed 60 days; the remuneration may not be lower than 85% of the wage for the work; and if the probation work meets the requirements, the employer must conclude an employment contract with the employee (Articles 26 to 29).²⁶ One of the new regulations related to the conclusion of labor contracts from the fourth amendment is the article relating to part-time employees. A 'part-time employee' is defined as "an employee who works for less than the usual daily or weekly hours of work as prescribed by law, the collective bargaining agreement of the enterprise or sector, or the employer's regulations (Article 34)."

2) Termination of Labor Contracts

An employee has the right to unilaterally terminate the employment contract with only a few restrictions (Article 37), but the cases in which employers may terminate the contract are strictly

²⁴Professor Do Quynh Chi and Oxfam activists told us that many employees in Vietnamese construction firms do not have a labor contract, even if they are working for longer than three months.

²⁵ If no new employment contract is entered into after a 'definite term contract' has expired, the contract becomes an indefinite term employment contract; likewise, an 'employment contract for seasonal work or a specific task which has a term of less than 12 months,' becomes a definite term employment contract with the term of 24 months if no new contract is signed after expiry (Clause 2, Article 22).

²⁶ An employment contract is completely invalid if the entire contents of the employment contract are illegal; is concluded by a person without due competence; or the contents of the employment contract restrict or prevent the employee to exercise his/her right to establish, join trade unions and participate in trade union activities. An employment contract is partially invalid when a part of its contents is illegal but does not affect the remaining contents of the employment contract. The Labor inspector and People's Court have the right to declare an employment contract invalid (Articles 50,51).

limited to when the employee repeatedly fails to perform his/her work in accordance with the terms of the employment contract, or when an employee is sick or has an accident and remains unable to work after having received treatment, etc. (Article 38).²⁷ Employers are further restricted from terminating the contract if the employee is being treated for occupational accident; is pregnant or on maternity leave; or is a mother taking care children of under 12 months of age (Article 39, Article 155 Clause 3). In cases of illegal unilateral termination of employment contracts, the employer must reinstate the employee, and also pay the wage for the period during which the employee was not allowed to work with additional payment of at least 2 month (Article 42). One of the responsibilities of the employer when a labor contract is legally terminated is returning the social insurance books held in the employer's possession to the employee. As demonstrated, the labor law focuses on protecting the employee in the case of labor termination, but the fourth amendment supplemented a new ground for contract termination by adding a provision for mass layoffs due to economic reasons (Articles 44 to 49).

3) Labor Dispatch

One of the most significant changes brought by the fourth amendment of the Labor Code is the recognition of labor dispatch, and an elaboration on its regulations in a whole chapter (Articles 53-58). Furthermore, to specify the articles, the government has also set up a corresponding decree (55/2013/ND-CP) and a circular (01/2014/TT-BLDTBXH). The decree limits the purpose of the dispatch to a) meeting sudden labor need for a set period of time; b) replacing a worker who is away because of childbirth, industrial accidents or labor injuries, citizen responsibilities, or shortened working hours; and c) satisfying a need for a high-skilled or professional worker. In total, there are 17 types of work in which labor dispatch is permitted, but a dispatch may not exceed 12 months in duration (Decrees 23, 25, 26).²⁸

B. Wages

1) Minimum Wage

An employee's wage must not be lower than the minimum wage set by the Government (Article 90). Minimum wage is the lowest payment for an employee who performs the simplest work and must ensure the minimum living needs of the employee and his/her family (Article 91, Clause 1). The minimum wage differs for region and sector. Sectoral minimum wages are determined through sectoral collective bargaining, while the regional minimum wage is set by the government on the basis of the recommendation of the National Wage Council and "based on the minimum living needs of the employee and his/her family, social and economic conditions, and wage levels in the labor market(Article 91, Clause 2)."^{29,30}

²⁷While an 'indefinite term' employee may terminate a contract with no restrictions by informing the employer 45 days in advance, but 'definite term' and 'seasonal work' employees do need to have one of the provided reasons for unilaterally terminating the contract before the date of expiry (Article 37). If the employee terminates the contract without a recognized reason, the employee cannot receive a severance allowance, must compensate the employer a half of his monthly wage, and must reimburse the training costs to the employer (Article 43).

²⁸ A labor dispatch enterprise must receive a permit from the Ministry of Labor, Invalids, and Social Affairs after meeting certain pre-conditions; this permit may not be valid for more than 36 months (Decrees 5, 12, 13).

²⁹ Sectoral minimum wage cannot be lower than the regional minimum wage announced by the government.

The Vietnamese government announced the “2015 Decree on Regional Minimum Wages (103/2014/ND-CP)” on November 10, 2014, to be in effect from January 1, 2015³¹:

Area	2013	2014	2015		
			Recommended amount from the National Wage Council	Final amount decided by the government	Increase from 2014 (rate of increase)
1	235	270	310 (145 USD)	310	40 (14.8%)
2	210	240	275 (129 USD)	275	35 (14.5%)
3	180	210	242 (113 USD)	240	30 (14.3%)
4	165	190	220 (103 USD)	215	25 (13.2%)

2) Wages for Overtime and Nighttime Work

The Labor Code stipulates that additional wages be given for overtime and nighttime work. If overtime work was done on a regular day, the pay must be at least equal to 150%; on a weekly day off, at least equal to 200%; and on public holidays and paid leave days, at least 300%. An employee who performs night work must be paid an additional amount of at least 30% of the wage calculated according to the wage unit (Article 97).

3) Wage Deductions

In principle, an employer shall not deduct from an employee’s wages, except when compensation is needed for the damage to the tools and equipment belonging to the employer.³² Any monthly deduction cannot exceed 30% of the net monthly wage of the employee (Labor Code Articles 101, 130).

C. Working hours and breaks

1) Working Hours

Normal working hours cannot exceed eight hours per day, or 48 hours per week; employees who carry out especially heavy or hazardous work, or who work under exposure to toxic substances, cannot work more than six hours per day (Article 104). Overtime work must receive the

³⁰The National Wage Council is an advisory body to the government. It is composed of 15 representatives, five each from the Ministry of Labor, Invalids and Social Affairs, the VGCL, and employers’ organizations at central level. The Chief of the Council is the Vice Minister of the Ministry of Labor, Invalids, and Social Affairs. (Labor Code Article 92, Decree on wages Article 3 and 5)

³¹ “2015 Announcement of Regional Minimum Wages in Vietnam.” Compiled by Tae-Ho Choi, Chief of Employment and Labor at the Korean Consulate in Ho Chi Minh. 13 Nov 2014.

³²Article 130 of the Labor Code stipulates the conditions in which an employee must compensate the employer for damages, defined more broadly as “damage to tools and equipment or [...] another act which causes damage to the assets of the employer.” However, Article 131 provides that the “consideration and decision on the level of compensation for damages [...] be based on the nature of the offence, the actual extent of damages, the actual situation of his or her family, personal profile, and the properties of the employee.”

employee's consent, and cannot exceed 12 hours per day, 30 hours per month and 200 hours per year (Article 106).³³

2) Rest Periods

An employee who works consecutively for six or eight hours is given a rest break of at least 30 minutes, which is included in the working hours.³⁴ An employee performing nighttime work is given a rest break of at least 45 minutes, also included in the working hours (Article 108). Furthermore, breaks required to relieve natural physiological needs are also counted as paid working hours (Article 3, Decree on working hours, rest time, labor safety and labor hygiene). Furthermore, an employee who performs shift work is entitled to a break of at least 12 hours before beginning another shift (Article 109). Moreover, an employee is entitled to a break of at least 24 consecutive hours each week, and any employee who has been working for the same employer for 12 months is entitled to fully-paid annual leave of at least 12 business days (Articles 110, 111). The most important national holiday is the Lunar New Year Holidays, when employees receive a 5-day paid leave (Article 115).³⁵

D. Female and Underage Workers

1) Female Workers

The law encourages employers to create conditions for providing female employees with regular employment, and promote wide application of the systems of flexible working hours, part-time work, or home-based work. The law also provides tax reductions for employers who employ a large number of female employees (Article 153). Employers must provide appropriate bathrooms and toilets in the workplace for female employees (Article 154). Furthermore, in order to protect the maternity of female employees, if the worker is more than seven months pregnant or is nursing a child under 12 months of age, an employer cannot demand her to work at night, work overtime, or go on a long distance working trip. In particular, a female employee who performs heavy work, on reaching her seventh month of pregnancy, is entitled to be transferred to lighter work or to have her daily working hours reduced by 1 hour while still receiving her full wage. An employer cannot dismiss a female employee or unilaterally terminate the employment contract of a female employee due to her marriage, pregnancy, maternity leave, or her nursing a

³³ In some special cases as regulated by the government, overtime working hours could exceed 200 hours in one year; but the total number of overtime working hours must not exceed 300 hours per year (Article 106). According to Article 4, Clause 2 of the Decree on working hours, rest time, labor safety and labor hygiene, overtime work is permitted for companies producing and processing textile, needlework, leather, shoes, and agricultural/marine produce for exports.

³⁴ An employee who works for more than 10 hours, including overtime work, receives an additional rest period of at least 30 minutes (Article 5, Clause 2 of the Decree on working hours, rest time, labor safety and labor hygiene, overtime work).

³⁵ If the national holiday coincides with a day-off during the week, the laborer receives a break on the following day (Clause 3, Article 115). In the case of the Lunar New Year Holidays, an employer may choose between giving a break during the last day of the previous year and the first four days of the new year, or during the last two days of the previous year and the first three days of the new year; an employer has a responsibility to inform the employee of the plan at least 30 days before the holidays begin (Article 8, Decree on working hours, rest time, labor safety and labor hygiene, overtime work).

child under 12 months of age, nor can disciplinary measures be applied to the female employee. During her menstruation period, a female employee is entitled to a 30-minute break every working day; a female employee nursing a child under 12 months of age is entitled to 60 minutes breaks every working day, and receives the full wage (Article 155). A female employee is entitled to six months of prenatal and postnatal leave, and is entitled to maternity benefits as regulated in the Law on Social Insurance (Article 157).³⁶

2) Underage Workers

A ‘minor employee,’ defined as a worker under the age 18 (Article 161), is “prohibited from heavy work, hazardous work, or work with exposure to toxic substances (Article 163).” Furthermore, workers between the ages of 15 and 18 cannot work more than eight hours a day and 40 hours a week. Workers under the age of 15 cannot work more than four hours a day and 20 hours a week, and cannot undertake overtime or nighttime work. Workers between the ages of 13 and 15 can only “undertake light work in accordance with the list issued by the Ministry of Labor, Invalids and Social Affairs (Article 163).”³⁷ Employment of children under the age of 13 is “prohibited except for certain specific work as regulated by the Ministry of Labor, Invalids and Social Affairs (Article 164).”³⁸

E. Occupational safety and industrial accidents

1) Health and Safety

The Ministry of Labor, Invalids and Social Affairs must develop and issue guidance on the implementation of national technical standards on occupational safety and health (Article 136). Employers must ensure that the workplace meets the occupational safety and health requirements pertaining to space, ventilation, dust, steam, toxic gas, radiation, electro-magnetic fields, heat, moisture, noise, vibration and other harmful factors, while checking and measuring these factors on a regular basis (Article 138). Moreover, an employer must assign officer(s) in charge of

³⁶ In the third amendment version of the Labor Code, the maternity leave was four months long. If an employee gave birth to two or more children at the same time, the leave was extended by one month per child, and could be granted an additional one-month leave without pay under terms agreed upon with the employer (Article 157).

³⁷ An employer must arrange the working hours so as not to negatively affect the minor’s schooling hours (Article 164, Clause 2.b)

³⁸ The Labor Code also regulates the employment of the elderly, disabled persons, and domestic workers. Elderly workers (men over the age of 60 and women over the age of 55; defined in Articles 166 and 187, respectively) cannot work in heavy or hazardous work or in work with exposure to toxic substances, and may, during the last year of work before retirement, have reduced regular working hours, or work on a part-time basis (Articles 166, 167). In this case, up to one reduced hour per day is recognized as a working hour (Article 3, Clause 10, Decree on working hours, rest time, labor safety and labor hygiene). For domestic workers, either party has the right to terminate the employment contract at any time provided that an advance notice of 15 days is given, but the labor contract itself must be concluded in a written form (Article 180). One of the responsibilities of the employer is to pay the domestic worker his/her social insurance and health insurance premiums, so that the worker may join the insurance him/herself (Article 181). On the other hand, an employer is strictly prohibited from keeping personal identification papers of the domestic worker (Article 183).

occupational safety and health, who in turn must receive appropriate training (Article 139).³⁹ An employer must provide employees engaged in hazardous and toxic work with adequate personal protective equipment for employees engaged in heavy and hazardous works (Article 149), and provide yearly health check-up for employees (Article 152).⁴⁰ The Inspectorate of Ministry of Labor, Invalids and Social Affairs and regional Departments of Labor, Invalids and Social Affairs have a responsibility to inspect employers' compliance with the standards of labor safety and hygiene (Article 237).⁴¹

2) Occupational Accidents and Diseases⁴²

Employers must provide paid leave for employees suffering from occupational accidents and diseases. For an employee who is insured by the health insurance scheme, the employer and the worker must share the self-paid expenses of the guaranteed part, and the full amount of the costs which are not guaranteed by the health insurance scheme must be paid by the employer. Where an employee is not covered by the health insurance scheme, the employer must pay all medical expenses incurred, from emergency first aid to the completion of the medical treatment (Article 144). As for employment injury benefits, an employee who is part of the compulsory social insurance scheme receives the employment injury benefit in accordance with the Social Insurance Law. Where the employee is eligible for the compulsory social insurance scheme, but the employer has failed to pay the insurance premiums to the Social Insurance Agency, the employer must pay the employee an amount equal to the guaranteed benefits according to the Law on Social Insurance (Article 145).⁴³⁴⁴

³⁹Article 150, Clause 1 of the Labor Code requires that the employers and occupational safety and health officers participate in training courses on occupational safety and health, and that they be examined and granted a certificate by an occupational safety and health training institution

⁴⁰Female employees who require obstetrics and gynecology check-ups, employees with disabilities, minor employees, and elderly employees must receive a health check-up at least once every 6 months (Article 152).

⁴¹Moreover, the Inspector inspects compliance with labor law regulations and handles complaints and denunciations involving labor issues as prescribed by law (Article 237).

⁴²The Labor Code distinguishes the two by defining 'occupational accidents' as "accidents which cause injury to any parts or functions of the body of the employee or cause death that occur during the performance of work (Article 142)," and 'occupational diseases' as "illnesses caused by the effect of harmful working conditions on an employee (Article 143)."

⁴³Persons eligible for the compulsory social insurance include Vietnamese citizens who are working under an indefinite period labor contract or a definite period labor contract of more than three months (Article 2, Clause 1, Law on Social Insurance). If the employee is not eligible for compulsory social insurance, the employer must pay not only the wages but also the amount equivalent to the contribution rate of compulsory social insurance schemes (Article 186, Clause 3).

⁴⁴Article 145 has provisions depending on the severity of reduced ability to work and the responsible party for the injury, but the content is very simple. For instance, if the employer pays an amount equivalent to at least 1.5 month's wage where the employee's ability to work is reduced from 5.0% to 10%. If the occupational injury is due to the fault of the worker, the worker receives an allowance of an amount equivalent to at least to 40% of the compensation."

F. Labor regulations

1) Labor Regulations and Internal Work Regulations

An employer with more than ten employees must have internal work regulations in writing, covering labor regulations including working hours, protection of technological secrets, and production/management, as well as disciplinary measures against breaches of labor disciplinary regulations and responsibilities regarding equipment (Articles 118, 119).

2) Breaches of Labor Regulations and Disciplinary Measures

There are three types of disciplinary measures for breaches of labor regulations: reprimand, deferment of wage increase for no more than six months or demotion, and dismissal. Dismissal is strictly regulated, permissible only when a) an employee commits an act of theft, embezzlement, using illicit drug inside the workplace, disclosing technological or business secrets; b) an employee who is subjected to deferment of wage increase recidivates while the disciplinary measure is in process; or c) an employee has been absent from work for five accumulated days in a month or 20 accumulated days in a year without proper reasons (Article 126).⁴⁵ But even in such cases, as aforementioned, no disciplinary measures are allowed if the employee is a female who is pregnant, or on maternity leave, or nursing a child under 12 months of age (Article 123). Disciplinary measures may never infringe upon the physical integrity and human dignity of the employee, and applying monetary fines or deducting wage in lieu of a disciplinary measure is prohibited (Article 128).

2. Collective Negotiations with Trade unions and Labor Disputes

A. Trade Unions

1) Right to Establish, Join Trade Unions and Participate in Union Activities

The Labor Code specifies that an employee has the right to establish, join a trade union, and participate in union activities in accordance with the law (Article 5 Clause 1; Article 189 Clause 1). Employers are also prohibited from discriminating workers to interfere with establishing, joining, or participating in trade union activities (Article 8 Clause 1, Article 190).

2) Roles of Local Trade Unions (“Grassroots Level Trade Unions”) and Upper-Level Trade Unions

A local trade union exists to represent union members and workers; conclude collective agreements; and participate in resolving labor disputes. Where such union is not established, the upper-level trade union takes on the role of a local union, while having the right and responsibility “to mobilize workers to establish grassroots level trade unions in the enterprises [...] at which they work” or to join an upper-level trade union (Article 189).⁴⁶

⁴⁵For b), the consequence is the same for an employee who was demoted as a labor discipline and recidivates (Article 126, Clause 2)

⁴⁶Where there is a grassroots level trade union, the immediate upper level trade union exists to assist the grassroots level union to perform its functions and tasks, and to advocate, educate and improve the workers’ understanding of labor law and trade union law (Article 188, Clause 2).

3) Trade Union Officers

Trade union officers may visit the workplace to meet with employers to discuss, share information, and get involved in labor issues, and also may meet workers within their mandate of representation.⁴⁷ If the officer is a full-time officer, he/she receives pay from a trade union; if the officer is part-time, he/she may use some of the working hours on trade union activities, and receives pay from the employer. If an employer unilaterally terminates the labor contract with, transfers, disciplines, or dismisses a part-time trade union officer, he/she must first consult with Executive Committees of grassroots level or upper level trade unions. Where the employment contract of a part-time trade union officer expires during tenure, his/her employment contract is extended until the end of the union tenure (Article 192).

4) Establishment of Trade Unions

A unique characteristic about union finances is that the union receives support from the corporations and the government. Whether a firm has a grassroots level trade union or not, employers must pay the equivalent of 2% of the wage which forms the basis of the social insurance premiums together with the monthly social insurance premiums for their employees (Articles 4-6, Decree on establishment of trade unions). Furthermore, financial support from the central and local governments may be available depending on the activities of the trade union (Article 7 of the same decree).

B. Collective negotiations and other issues

1) Labor-Management Dialogues

Although it is rarely implemented in practice, the Labor Code provides that a dialogue be held between the workers and the management once every three months, discussing a) business and production situation of the employer; b) implementation of the employment contract, collective bargaining agreement, and other commitments and agreements; c) and working conditions, amongst others (Article 65).

2) Collective Bargaining

Each party has a right to request collective bargaining. The requested party must not refuse the request, and within seven working days from the day on which the request was received, the parties must agree upon the time for the negotiation meeting. The negotiating meeting must be scheduled within 30 days of the date the request was received. If a party unilaterally refuses collective bargaining, or fails to conduct the bargaining within the timeline, the other party may initiate the procedures to request labor dispute settlement (Article 68). Within 15 days from the conclusion of the collective bargaining meetings, the representative of the worker's collective must disseminate the minutes of the negotiation meeting to the worker's collective, and organize a vote for workers to approve the agreements (Article 71, Clause 3).

3) Collective Bargaining Agreements

Collective bargaining agreements concluded between laborers and the management include agreements at enterprise level and agreements at sector level. The former is finalized when over

⁴⁷In workplaces where a grassroots trade union does not exist, the immediate upper level trade union officers take on these responsibilities (Article 191, Clause 3).

50% of the worker's collective vote in favor of the issues which have been agreed, while the latter is finalized when over 50% of the representatives of the Executive Committee of the grassroots trade union or upper level trade union vote in favor of the issues which have been agreed (Article 74). The collective bargaining agreement is valid for one to three years, while the duration may be as short as less than a year if a corporation is establishing a collective bargaining agreement for the first time (Article 85, Clause 89). Within 10 days of the conclusion of the agreement, a copy of the agreement must be sent to the provincial level state labor management authority if the agreement is at enterprise level; if the agreement is at sectoral level, a copy of the agreement is sent to the Ministry of Labor, Invalids, and Social Affairs. An agreement is considered invalid if the contents of the agreement are contrary to the law or the signing of the collective bargaining agreement did not follow the prescribed collective bargaining procedure; The People's Court has the right to declare a collective bargaining agreement invalid (Articles 78, 79).

C. Labor disputes

1) Individual Labor Disputes

The Labor Code distinguishes an individual labor dispute (between an employee and an employer) from a collective labor dispute (between a worker's collective and an employer). The latter is further classified into a 'collective labor dispute on right' and 'a collective labor dispute on interest,' with different procedures of resolution.⁴⁸⁴⁹ An individual labor dispute, in principle, must be resolved through mediation by a Labor Mediator before being brought to court.⁵⁰ A Labor Mediator must complete the mediation process within five working days from the date on which the application for mediation is received. In case of unsuccessful mediation, or when either party does not follow the agreement, or when the Labor Mediator does not conduct the mediation, each disputing party has the right to request the Court to settle the dispute (Article 201).

2) Collective Labor Disputes⁵¹

In the case of a collective labor dispute, a 'dispute on right' is resolved through a sequence of negotiation-mediation-arbitration-lawsuit in order, while a 'dispute on interest' is resolved on a

⁴⁸A 'collective labor dispute on right' refers to a dispute between a worker's collective and the employer arising out of different interpretation and implementation of provisions of labor laws, collective bargaining agreements, internal working regulations, and other lawful regulations and agreements (Article 3, Clause 8).

⁴⁹A 'collective labor dispute on interest' refers to a dispute arising out of the request of the worker collective on the establishment of new working conditions, as compared to the provisions of labor laws, collective bargaining agreements, or internal working regulations, or other lawful regulations and agreements, in the negotiation process between the worker's collective and the employer (Article 3, Clause 9).

⁵⁰Labor Mediators are assigned by the labor management authority of a district, urban district, town and provincial city to mediate labor disputes and disputes regarding vocational training contracts.

⁵¹In the third amendment, the time-limit to request the resolution of a collective labor dispute was "one year from the date of occurrence of the act which a party claims has infringed its rights or interests." This was changed in the fourth amendment to the "date of detection of the act (Article 207)."

sequence of negotiation-arbitration-mediation.⁵² Both parties must first negotiate directly (Article 194, Clause 6) before moving on to other stages. If a negotiation fails, the Labor Mediator begins to intervene, and if mediation is unsuccessful or if either party does not follow the agreement, parties of rights-based collective labor disputes may request the Chairperson of the People's Committee at district level to settle the dispute; Parties of interest-based collective labor disputes may request the Labor Arbitration Council to settle the dispute.⁵³ If a dispute is still unresolved, parties of a rights-based dispute have a right to request the Court to settle the dispute, and parties of an interest-based dispute have a right to immediately proceed with a strike (Articles 203 to 206).

3) Strikes⁵⁴

Since rights-based disputes are settled through the court, a strike can only be initiated in the case of an interest-based collective labor dispute, and at least three days after the Labor Arbitration Council makes a record of unsuccessful mediation (Article 209).⁵⁵ In unionized undertakings, strikes are organized and led by the Executive Committee of the grassroots level trade union, and where the grassroots level trade union does not exist, strikes are organized and led by the upper-level trade union upon the request of the employees (Article 210). In terms of the procedure to initiate a strike, there must first be a soliciting of the worker's collective's opinion, followed by a decision to go on strike and notification of the initiation date of the strike (Article 211). When soliciting the opinion of the worker's collective, opinion of the members of the Executive Committee of the grassroots level trade union and the heads of production units must be solicited, and if the majority agrees, the Executive Committee of the trade union can issue a written decision to go on strike (Article 212).⁵⁶ After the decision to strike is finalized, the Executive Committee of the trade union must notify the employer at least five business days in advance, and simultaneously submit a copy to the provincial labor management authority as well as the

⁵²Song, Jung-Nam and Yoo-Kyung Jung. "Predicted Changes in Labor-Management Relations Following the 2012 Amendments to the Labor Code," *Commentary on Foreign Statutes*. Book 37, No.1. Feb 2013. Page 353.

⁵³The Chairperson of People's Committees at provincial level decides on the establishment of a Labor Arbitration Council, consisting of a Chairperson who is the head of the labor management authority and members who are representatives of trade unions at provincial level or of employers' representative organizations. The number of members of a Provincial Arbitration Council must be an odd number and must not exceed seven members (Article 199 Clause 1).

⁵⁴In the case of China, there are no regulations on strikes in the Labor Law. In contrast, Vietnam has ratified the United Nations International Covenant on Economic, Social, and Cultural Rights in 1982, and started stipulating the workers' right to strike since the Labor Code was established in 1994. (See Jung, Yoo-Kyung. "Vietnamese Workers' Right to Strike and the Role of Grassroot Level Trade Unions at Foreign-Owned Firms," *Southeast Asian Research Review*. Book 22, No. 3. Page 341.)

⁵⁵If either party does not follow the agreement after five or more days from the date on which the Labor Arbitration Council makes the record of successful mediation, the worker's collective has the right to initiate the procedure to go on strike (Article 206, Clause 3).

⁵⁶In undertakings where the grassroots level trade union has not been established, the opinion of the heads of production units or employees must be solicited (Article 212, Clause 1).

provincial Federation of Labor (Article 213).⁵⁷⁵⁸ For a strike to be legal, it must arise from an interest-based collective labor dispute; be organized for employees who are working for the same employer; follows the procedure mentioned above; occurs in an enterprise not on the list of enterprises where the government prohibits a strike; and not receive a decision to postpone or cancel the strike (Article 215).⁵⁹ As for the rights and responsibilities of workers and employers during a strike, employees who take part in the strike, in principle, cannot receive wages (Article 218, Clause 2), while an employer may not terminate an employment contract, impose disciplinary measures, or transfer employees to another position or workplace on the ground of the employee's involvement in the strike (Article 219).⁶⁰ However, the employer may decide to temporarily close the workplace (Article 216).⁶¹ With regards to determining the lawfulness of a strike and punishment for illegal activities, either party may request the court to consider the lawfulness of strikes (Article 223). If the court rules that the strike is illegal, but the employees do not stop the strike, depending on the seriousness of the violation, the employees may be subject to disciplinary measures in accordance with labor law, and if an illegal strike has caused damages to the employer, the union that led the strike must compensate for the damages (Article 233).

Many people we met told us that the Labor Code in Vietnam is completely favorable towards laborers, causing difficulties for Korean corporations who need to follow the regulations, and that there are almost no cases in which a Korean firm violates the rights of Vietnamese workers. Indeed, the VGCL reported having had complaints from Korean employers that the Labor Code is employee-friendly, the minimum wage is too high, and the premiums to the trade unions and social insurance premiums are too high. SG Consultants also stated that while some problems in implementation exist, in general, the legal framework of labor is well-established; further, SG suggested that foreign-invested firms have a high adherence to labor rights standards, since they are inspected by the government and buyers. Tae-Ho Choi, the labor official at the Korean Consulate, echoed the opinion that the Vietnamese Labor Code is protecting the rights of workers better than in Korea, arguing that our field investigation has reached a wrong destination, since labor rights violations by Korean firms are extremely rare; Choi cited as proof the fact that

⁵⁷ Amongst others, the decision to go on strike must include the starting time and the venue for the strike; the scope of the strike; and the demands of the worker's collective (Article 213, Clause 2).

⁵⁸ In the case of a strike that does not follow statutory procedures, within 12 hours from the receipt of the notification of the Chairperson of the People's Committee at the provincial or district level must collaborate with the labor management authority, trade unions at the same level and other relevant agencies and organizations to directly meet with the employer and the Executive Committee of the grassroots level trade union or upper-level trade union in order to consult and support the parties in finding a resolution to the case and in resuming the normal operation of the enterprise.

⁵⁹ When deemed that a strike presents a risk of serious damage to the national economy or public interest, the Chairperson of the People's Committee at provincial level can postpone or cancel the strike (Article 221).

⁶⁰ Employees who do not take part in the strike but are forced to stop working due to the strike are entitled to work suspension allowance (Article 218 Clause 1).

⁶¹ This is a new stipulation from the fourth amendment.

Korean firms were mostly unscathed from the arson attacks on a Taiwanese factories in May 2014.⁶²

First, it is true that the Labor Code in Vietnam, a country that claims to be a nation of workers and farmers, does have very advantageous provisions for laborers, especially in stipulations on labor contracts, dismissal, protection of maternity, and overtime work. However, it is also true that Vietnam is changing the Labor Code to better accommodate foreign investors who have been the driving force of economic growth after market reforms. To give a few examples from changes brought by the fourth amendment, provisions for part-time workers; an additional ground for termination of labor contract (mass layoffs due to financial difficulties); permission for workplace closure during a strike; and making the trade union officer compensate for the damages if an illegal strike has causes damages to the employer are amongst new stipulations that favor investors and employers. A more serious problem from legal and institutional perspectives concerns the reality in Vietnam in which the ‘three most basic rights of workers’ (right to unionization, right to collective bargaining, and right to collective action) on which employees can claim their rights and interests are not protected in practice. This is not only because the Labor Code limits the ground for a legal strike to an interest-based collective labor dispute and has made the procedure complicated, but also because trade unions are far from being proper representatives of workers; although labor relations after market reforms have changed from that between the state and employees at state-owned enterprises to that between private enterprises and employees, the characteristics of Corporatism from the past still dominate.⁶³⁶⁴

There are several possible reasons for the unions’ inadequate representation of workers, including the fact that trade unions are under the control of the Communist Party and the government and that trade union officers are under the influence of the management of the

⁶²Choi further stated that the Taiwanese factories attacked were known for mistreating workers from the past, and the exceptional case of a Korean firm that suffered damages was also because the firm was very strict about labor management. However, the credibility of such position is in doubt, considering the significant number of strikes that occurred in Korean firms in the past several years. While the reasons for a strike need not necessarily be related to corporate abuse of human rights, given the limited conditions on which a strike can occur, it is reasonable consider the possible correlation between Korean firms’ non-adherence to labor rights standards and the high number of strikes.

⁶³The Vietnamese government’s position on strikes is rather complex. They would like to make it easier for workers to strike within certain boundaries that do not threaten the regime and in numbers that do not discourage foreign investment; since, even in illegal strikes, workers’ demand for a rise in wages is reasonable considering the high inflation in consumer prices, the government mostly overlooks illegal strikes and interferes to satisfy worker demands.

⁶⁴“The 1992 Vietnamese Constitution defined a trade union as ‘a political and social organization of all classes of people,’ making VGCL a sub-department of the Communist National Fatherland Front. The VGCL, which was established in 1946 and started officially representing workers from 1979, had four initial responsibilities: protecting the rights and interests of workers, operating state-owned enterprises, enhancing worker productivity, and providing socialist education to trade union members. After market reforms and the privatization of state-owned enterprises, VGCL’s role was reduced to the protection of the rights and interests of workers, but the legacy of the past lives on.” (Jung, Yoo-Kyung. ““Vietnamese Workers’ Right to Strike and the Role of Grassroots Level Trade Unions at Foreign-Owned Firms,” *Southeast Asian Research Review*. Book 22, No. 3. Page 352.)

corporations' management levels.⁶⁵ Whatever the reasons are, it is evident that workers cannot enjoy their 'three basic rights' because of the unions' failure to sufficiently represent worker interests. While a Korean firm may be blamed for the violation of these rights as in the case of the Samsung Electronics in Thai Nguyen that aggressively hindered the efforts to establish a trade union, some may reasonably contend that the root cause is the legal and institutional problems, while some could also question the need for addressing labor rights for Vietnamese workers, despite the workers not having the 'three basic rights', as long as Korean corporations do not violate labor rights.

However, as we will discuss later, we did find several instances of Korean firms in Vietnam being complicit in human rights and environmental abuses through a review of related literature and interviews. Most common areas of grievance were wages and bonuses, overtime work, breaks, degrading treatment, health and safety, labor contracts, meals and lodging, discrimination, and the environment.⁶⁶

III. Major Findings: Korean Multinational Corporations' Human Rights Practice

From 2009 to 2014, there were approximately 800 strikes in Korean firms operating in Vietnam, accounting for 26% of total strikes, the second highest proportion after Taiwan.⁶⁷ According to

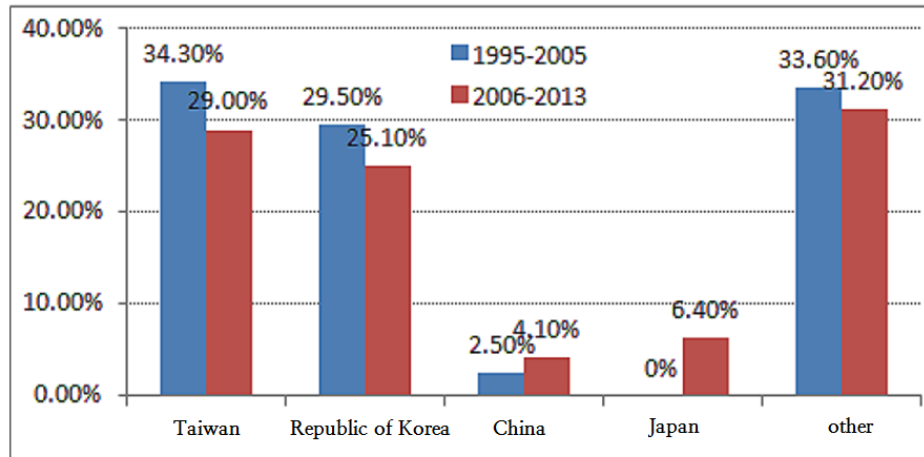
⁶⁵Part-time trade union officer receive their wages from the private enterprise employer, while the finances of the trade union also come from the enterprise. Furthermore, the legacy of the responsibility of operating state-owned enterprises that trade unions had in the past under state-owned enterprises continues to have influence, while firms also take part in the selection process of a trade union officer. Therefore, in many cases, the trade union officer at grassroots level is the manager of the human resources department.

⁶⁶Choi suggested that most of the labor disputes in Korean firms involve dissatisfaction with wages, overtime work, management attitude towards workers, and the quality of meals provided.

⁶⁷To briefly discuss labor strikes in Vietnam, a total of 4,142 strikes happened between 1995 and 2011. The number of strikes slowly increased until 2005, before rising substantially at the end of 2005; the number of strikes in 2006 saw a 163% increase from the previous year. Strikes decreased significantly after 130,000 workers lost their jobs because of the global financial crisis in 2008, but started to increase again since 2010 as the economy recovered. There were 885 strikes in 2011, 675 (76.2%) of which occurred in foreign-invested firms. Jung-Nam Song and Yoo-Kyung Jung summarized the characteristics of strikes in Vietnam: 1) Most strikes are 'wildcat strikes' that a group of workers initiate with no relation to trade unions. 2) Before 2005, many strikes were rights-based disputes, but after 2005, strikes that are in part rights-based and in part interest-based disputes are on the rise. 3) Before 1994, when the Labor Law was established, strikes were most frequent in state-owned enterprises, but most of the strikes afterwards have taken place in foreign-invested firms in the manufacturing industry; over 70% happen in Taiwanese, Korean and Japanese firms. 4) Most of the strikes are concentrated in the southeast area, but more strikes have been occurring in the north since 2005. 5) Not a single strike that happened was legal. (see Song, Jung-Nam and Yoo-Kyung Jung. "Predicted Changes in Labor-Management Relations Following the 2012 Amendments to the Labor Code," *Commentary on Foreign Statutes*. Book 37, No.1. Feb 2013. pp. 350-352. And Jung, Yoo-Kyung. "Vietnamese Workers' Right to Strike and the Role of Grassroot Level Trade Unions at Foreign-Owned Firms," *Southeast Asian Research Review*. Book 22, No. 3. pp. 342-351.) Jung suggests that employers' violation of the Labor Code, conflicts arising from cultural differences, low wages compared to high labor intensity, and the increase in the absolute number of firms are amongst the reasons why most of the strikes happen in foreign-invested firms (see Jung, Yoo-Kyung. "Vietnamese Workers' Right to Strike and the Role of Grassroot Level Trade Unions at Foreign-Owned Firms," *Southeast Asian Research Review*. Book 22, No. 3. pp. 344).

VGCL, most of the strikes are regarded to have arisen from non-adherence to the Labor Code. The Federation of Labor (FOL in Ho Chi Minh) reported 18 strikes in Korean firms in 2014 only, the majority of which involved the firm's failure to adhere to the Labor Code.⁶⁸⁶⁹ The FOL in Bac Ninh told us that out of the 28 strikes in 2014, 26 occurred in foreign-invested firms, 16 of which were Korean; they also suggested that the majority of these strikes arose from the firms' failure to respect the Labor Code.

<Number of Strikes in Foreign-Invested Firms by Firm Nationality, 1995-2013>



[Source] VGCL, MOLISA



[Photograph with VGCL officials after the interview. The VGCL explained to us the characteristics of the Labor Code in Vietnam, strikes in Korean-invested firms, and VGCL's efforts to change.]

⁶⁸ Amongst the 18 Korean firms are KM (900 employees), SB (800 employees), and DW (350 employees).

⁶⁹ The upper-level trade union has a detailed understanding of the causes of strike at the grassroots level trade union, since the latter not only reports relevant information to the former, but the former assumes the role of a labor inspector in Vietnam, and also takes part in conflict resolution after the strike.

1. Unpaid Wages

According to the Ho Chi Minh FOL, some of the 18 strikes that happened in Korean firms in 2014 arose because the firm had not failed to raise the wages according to the increased minimum wage standards, or provide promised bonuses.⁷⁰ The trade union department of BJ, a Korean firm in Bac Ninh Province that we visited, explained that the strike in January 2014 happened because of low wages, no pay raises for long-term employment, and the failure to provide promised bonuses.^{71,72}

There were some cases in which the employer had run away without the wages paid in full. The Laodong Journal reported in an article on August 13, 2013, that 518 employers nationwide were on the run as of May 31, 2013, creating problems like nonpayment of wages and social insurance premiums.⁷³ Professor Gae-Sun Lee of the University of Hanoi stated that Korean employers on the wanted list can be checked on the ‘Investor Tracking List’ of Ho Chi Minh and Binh Duong; some of these employers were DC in Binh Duong, and SC, HJ, KS in Ho Chi Minh.⁷⁴

The Lunar New Year, commonly known as ‘Tet,’ is the biggest holiday in Vietnam. It could be seen as the equivalent of a combination of the Korean Thanksgiving and the Lunar New Year celebrations, ranging from six to nine days of rest. During Tet, workers – mostly domestic migrants - expect to receive a bonus before visiting home, but employers tend to prefer giving the bonus after the holidays out of concerns that employees may not return to work afterwards.⁷⁵ Indeed, the Bac Ninh FOL cited the firms’ failure to provide appropriate bonuses and gifts before the Tet as one of the reasons for the strike in Korean firms in 2014.

⁷⁰ SG Consultants asserted that in some cases, firms are not ready to meet the new wage standards because the government publicizes the new standards only about a month before they come into effect.

⁷¹ After the strike, the wages reportedly rose to 2,900,000 dong (135 USD).

⁷² A Korean manager at the company had a different explanation from the Executive Committee. According to the manager, the strike began before the company had gone through the procedure for raising wages and notified the workers. The manager also argued that the strike only went on for one day, while the laborers suggested it lasted for three to four days. The company further asserted that the strike was solely for higher wages, but the workers reported additional grievances including unpaid bonuses, the failure to provide promised winter jackets, and the insulting treatment by Korean managers.

⁷³ “More than 500 FDI suddenly ‘absentee landlords,’” Laodong Journal. 13 Aug 2013. <http://laodong.com.vn/kinh-doanh/hon-500-doanh-nghiep-fdi-bong-dung-vang-chu-nguoi-lao-dong-lanh-du-132437.bld>

⁷⁴ For further reference, Prof. Le Vinh Danh, President of the Ton Duc Thang University of Ho Chi Minh, had also mentioned a Korean company while discussing firms that had outstanding wages and insurance premiums in his research in 2011. [See Le Vinh Danh. The Influence of Business Owner Ethics on the Vulnerability of Low-Income Labor Currently in Some Industrial Cities of Vietnam. Journal of Applied Business and Economics vol. 12(6) 2011. pp. 149-150]

⁷⁵ The job turnover rate in Vietnam is very high; the company BJ also has a yearly retirement rate is 50%, and most of these workers do not return to work after the Lunar New Year holidays. The most common reason for changing jobs is for higher wages. In order to prevent this kind of turnover (or strike that demands higher wages), some Korean firms collude to determine a certain wage (according to Tae-Ho Choi and P of Binh Duong Korean Businessmen’s Association), and give the bonuses after the Lunar New Year holidays.

Cases involving nonpayment and delay of wages were also identified: in the latter half of 2013, 400 workers at WT, a Korean firm located in the Chon Thanh Industrial Complex in Binh Phuoc Province, demonstrated outside the company for not having received three months' worth of wages.⁷⁶ A more recent strike was at YV, a Korean firm located in the Quang Nam Industrial Complex, in April 2014; hundreds of workers went on strike for consistent delays in wage payment, and the media reported the employer stating that he “will not pay the wages to workers who do not return to work.”⁷⁷

2. Wages Insufficient for Basic Sustenance

Even in cases where the employer paid wages equal to or higher than the minimum wage, if the pay is not enough to sustain the worker and his/her family's livelihood, it is possible that there is a violation of labor rights, although not a violation of domestic laws. OECD Multinational Enterprise Guidelines also recommends in Article 4 of Chapter V. Employment and Industrial Relations that “multinational enterprises operat[ing] in developing countries [...] provide the best possible wages, benefits and conditions of work, within the framework of government policies,” and that “these should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.”

In Vietnam, due to the high inflation in consumer prices, the current minimum wage is not enough to satisfy the basic needs of the workers and their families; the research team was able to confirm this from almost all of the individuals we interviewed, including those in ILSSA or VGCL offices. The minimum wage falls short of the living wage, meeting only 30~40%. The MOLISA plans to adjust the minimum wage closer to the subsistence wage, on the basis of the “2020 Roadmap for Minimum Wage Adjustment” in accordance with Article 56, Clause 1 of the 2012 Labor Code and the decision from the Central Committee of the Party (23-KL/TW78).^{78,79} Amongst several possible reasons for the minimum wage falling short of the living wage, the most significant factor is that the Vietnamese government cannot raise the minimum wage too much because cheap labor is one of the main draws for foreign investors. Raising the minimum wage is difficult also because it becomes the standard for determining the wages of all workers, including white-collar employees, besides serving as a safety net for the subsistence of

⁷⁶ “Hundreds of workers strike for non-payment” DTI News. 28 Feb 2014.

<http://www.dtinews.vn/en/news/018/33601/hundreds-of-workers-strike-for-non-payment.html>.

⁷⁷ “Wage delay, workers protest.” Tuoi Tre. 11 Apr 2014. <http://tuoitre.vn/tin/chinh-tri-xa-hoi/20140411/cong-ty-cham-tra-luong-cong-nhan-phan-doi/602328.htm>

⁷⁸ 2.1- “... Điều chỉnh mức lương tối thiểu khu vực doanh nghiệp nhanh hơn để đến năm 2015 đạt mức nhu cầu tối thiểu.” 29 May 2012.

(http://www.tuyengiao.soctrang.gov.vn/wps/portal!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gLR1dvZ09LYwMLc3cDA0_fAHc3VzcXYwsjI6B8JJK8v3Ogs4GnWYibs4-lu5OHhzEFul0DCOkOB7kWv-145MHmg-QNcABHA30_j_zcVP2C3NAIg8yAdADR3Rmh/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfOEFfS0NJOTMwR0VTNTBJTUdLTDYxNjBQODAl/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/bantuyengiao/bantuyengiaosite/octapnghiquyet/daihoixi/ket+luan+hoi+nghi+tw5+ve+tien+luong)

⁷⁹ Vietnam's “Minimum Wage Roadmap” to 2020. (American Chamber of Commerce

Vietnam)<http://www.amchamvietnam.com/30445570/thinking-about-vietnams-minimum-wage-roadmap/>

employees in manual labor.⁸⁰ Below are some of the cases of strike at Korean firms because of inadequately low wages for basic sustenance:



[The Director of ILSSA under MOLISA explains the problem of the minimum wage in Vietnam and possible ways to resolve it.]

In February 2010, about 20,000 employees at TK, a Korean firm in Dong Nai Province, went on strike demanding an increase in wages. At the time, the basic wage had been set at 1,300,000 Vietnamese dong (approx. 65USD) per month, despite consumer prices rising 9.2%. Around the same time, 4,000 employees at NY, a Korean firm in the same province, demanded a cessation of operations, pushing for an increase in wages.⁸¹

In July 2011, approximately 2,000 employees at IG, a Korean firm in Hanoi, went on strike, demanding a raise, including extra pay for overtime work and bonuses, arguing that it is impossible to survive on current wages. The consumer prices had risen 13.29% during the first half of 2011, but the starting monthly salary for workers was only 1,500,000 dong (approx. 75 USD) and employees who had worked for more than five years at the firm were also receiving only 2,000,000 dong (approx. 100 USD).⁸²

3. Breaks

The VGCL mentioned complaints against the restrictions on the use of toilets at work as one of the reasons for strike at Korean firms. For instance, some workers were forced to stand facing the wall, or have their wages deducted, for ‘going to the toilet too often.’ The Ho Chi Minh FOL reported a strike that occurred because a Korean firm in Ho Chi Minh had allowed only one toilet access card in a production line, preventing more than one person going to the bathroom at a time. Similarly, the Bac Ninh FOL mentioned another Korean firm that had unhygienic

⁸⁰ Taken from interview with Nguyen Thi Lan Huong, Chair of the ILSSA under MOLISA. 8 Dec 2014.

⁸¹ “24,000 Vietnam workers strike at S.Korean plants.” The Hankyoreh. 25 Dec 2010.
http://www.hani.co.kr/arti/english_edition/e_national/455723.html

⁸² “2,000 workers strike at South Korean garment plant in Vietnam.” Signalfire. 14 Jul 2011.
<http://www.signalfire.org/2011/07/14/2000-workers-strike-at-south-korean-garment-plant-in-vietnam/>

bathrooms and limits on the number of bathroom visits, noting that there was a Korean firm that allotted two ‘bathroom tickets’ per person.

Indeed, we were able to identify comparable cases from the preliminary research and data from local researchers. According to media reports, in March 2014, workers went on strike at SL, a Korean firm located in District 12 of Ho Chi Minh, because the company had not only restricted the time of bathroom visits to 9:30-10:30 a.m. and 2:00-3:00 p.m., but also forced employees to put down their names and the length of the visit on a card set up in the production line, preventing employees from using the bathroom without the card. However, each production line had 80-100 workers, there were only three such cards in a production line, and only ten bathrooms in the entire factory of over 1,000 workers. Furthermore, these bathrooms did not have enough water or were unclean. On the 12th of March, female employees had begged security guards, crying, to let them go to the bathroom, but were not allowed.⁸³ According to another media report, employees who used the bathroom for too long in the company in question were frequently insulted, and workers who had gone to the toilet multiple times throughout the day received a warning; more than two warnings translated into a ‘yellow card,’ meaning a deduction of 50,000 Viet dong (approx. 3 USD), and two ‘yellow cards’ meant dismissal. The report stated that YW, another Korean firm in Hoc Mon District of Ho Chi Minh, was also restricting the use of bathrooms, even for pregnant women.⁸⁴

VD, a Korean firm in Da Nang, had restricted the length of time during which employees could go to the bathroom, and deducted wages if an employee spent more than the permitted amount of time, despite the bathroom being far away from the workplace. 4,000 workers went on strike in October 2014 to oppose such encroachment on breaks.⁸⁵ In November 2014, workers at TV, a Korean company, went on strike to oppose the firm’s unreasonable policies, including one that deducted wages if a worker used the bathroom more than three times a day. TV had appeared several times on local media before; the news reported that TV regulated the employees’ use of bathrooms by placing a security guard in front of the bathroom.⁸⁶

4. Degrading Treatment of Workers

The Ho Chi Minh FOL cited the degrading treatment of workers, including verbal violence committed by Chinese managers, as one of the reasons for labor disputes at Ho Chi Minh Korean firms in 2014. While the trend may not be generalized to other areas (e.g. Binh Duong, Hanoi), many Korean firms in Ho Chi Minh seemed to have a Chinese middle manager, according to the Chairman of the trade union at the Korean firm we visited. For instance, most of the 30 middle

⁸³ “Workers strike to oppose company’s unfair regulation.” DTI News. 14 Mar 2014.
<http://www.dtinews.vn/en/news/017/33797/workers-strike-to-oppose-company-s-unfair-regulation.html>.

⁸⁴ “Foreign investors in southern IZs accused of maltreating workers.” Talk Vietnam. 25 Mar 2014.
<http://www.talkvietnam.com/2014/03/foreign-investors-in-southern-izs-accused-of-maltreating-workers>

⁸⁵ Taken from interview with Dr. Do Quynh Chi. 9 Dec 2014.

⁸⁶ “Da Nang: Hundreds of workers go on strike for strange behavior.” Lao Dong. 20 Nov 2014.
<http://laodong.com.vn/cong-doan/da-nang-hang-tram-cong-nhan-dinh-cong-vi-bi-hanh-xu-la-lung-270539.bld>

managers at HS, a Korean firm we visited in Ho Chi Minh, were Chinese.⁸⁷ The Chair of the trade union at HS said that many Korean firms in the area employed a Chinese person as a middle manager, explaining three reasons for this trend. First, since many Korean firms had had similar investments in China, they bring the Chinese managers who have experience working in the firm. Second, Chinese managers are more strict in managing and supervising workers than a Vietnamese person. Third, related to the second reason, if a Vietnamese is hired as a middle manager, other workers may take revenge on the person. Firms' insistence on hiring Chinese middle managers - despite barriers to communication between workers and Chinese middle managers and the hostility towards Chinese people in Vietnam - seems to reflect a strong intention and custom to manage and supervise employees in a severely strict manner, to the point where the manager may face retaliation. The degrading treatment from Chinese middle managers, in turn, could be seen as arising from such intention and custom.⁸⁸



[The Chair of the trade union at HS, a Korean textile manufacturer, explains why most of the 30 middle managers at the firm are Chinese.]

Korean middle managers are also involved in degrading treatment of workers. The Executive Committee of the trade union at BJ, a Korean firm in Bac Ninh, explained that the strike in January 2014 happened in part because some Korean managers had insulted employees by yelling when criticizing workers and dumping out a whole basket of products to the floor when there is a problem with the product. According to the committee, employees are reluctant to file a complaint against such degrading treatment to the company out of fear that they may be dismissed; employees are afraid even when the union raises the issue instead to protect the victim's anonymity, since the victim needs to be identified if the company demands proof.⁸⁹ The

⁸⁷Tae-Ho Choi asserted that many Korean firms opt to have a Chinese middle manager, one of the reasons for which is that the manager has experience working at a Chinese branch. While there are also Filipino and Indonesian managers, Choi argued that Korean firms in general are trying to localize their personnel.

⁸⁸ An official at Better Work Vietnam, a program co-run by the ILO and IFC, suggested that it is not rare for an expatriate supervisor or management to oversee workers, which frequently causes communication problems arising from cultural differences, an issue not limited to Korean firms. Meeting with Better Work Vietnam, 11 Dec 2014.

⁸⁹ According to the Executive Committee, there are separate petition drop-offs, one provided by the company and the other provided by the union, neither of which has received any petitions. The trade union official at HS, a Korean firm in Ho Chi Minh, said that the union board collects petitions from the four boxes at each factory. However, since the Human Resources Manager, who can be thought of as the management, serves as the Chair of the trade union and selects petitions for review, it is doubtful whether the petitions could actually reach the management who can make real policy changes.

Bac Ninh FOL said that it is common for Korean middle managers to scream and yell at workers, even citing a case in which a Korean factory closed the doors and searched the workers' bodies when the number of products was short. The VGCL gave further examples of degrading treatment: some middle managers at Korean firms insulted workers by swearing and screaming, and punishing employees by making them stand outside under the sun.⁹⁰

5. Overtime Work

The Bac Ninh FOL cited long hours (ten hours per day) as one of the reasons for strikes at Korean firms in 2014. SG Consultants also suggested that labor rights are generally well-observed, but excessive overtime work is a problem in Korean factories.⁹¹

The trade union officer at HS said that the company had not adhered to the new Labor Code regulations on overtime work until October 2014, when pressure from buyers forced the company to adjust its policies.⁹² Workers at DJ, a Korean firm in Phu Nghia Industrial Complex of Ho Chi Minh City, were forced to work 110 to 120 hours of overtime a month with an extra pay of only 18,000 Viet dong (0.86 USD) per hour; sometimes, employees reportedly worked from 8 a.m. on Saturday to 8 a.m. on Sunday.⁹³

One of the Korean firms the VGCL mentioned had forced employees to work for 20 hours a day. BJ, a company in Bac Ninh, also admitted to some departments exceeding the legal limits on overtime work.

In November 2014, workers at TV, a Korean firm in Hoa Khanh Industrial Complex, went on strike because the wages for overtime work were not paid.⁹⁴ Over 300 workers in TYV, a firm in Hoc Mon District in Ho Chi Minh, went on strike in June and December 2014 to oppose compulsory overtime work.⁹⁵

⁹⁰In one extreme case, a worker's hands were tied together with adhesive glue.

⁹¹According to a representative of Y, a law firm with an office at Ho Chi Minh, a significant part of client inquiries involve dismissal and overtime work. Meeting with Y, 5 Dec 2014.

⁹² This company had enforced 50 hours of overtime work per month.

⁹³ "Workers strike against mistreatment in Hanoi industrial park." DTI News. 9 Apr 2014. <http://www.dtinews.vn/en/news/017/28597/workers-strike-against-mistreatment-in-hanoi-industrial-park.html>

⁹⁴ "Da Nang: Hundereds of workers go on strike for strange behavior." Loi Quyen cua Nguoi LaoDung. 20 Nov 2014. <http://laodong.com.vn/cong-doan/da-nang-hang-tram-cong-nhan-dinh-cong-vi-bi-hanh-xu-la-lung-270539.blđ>

⁹⁵ "Forcing the workers." Chuyen Trang Cua Nguoi Lao Dong Online. 29 June 2014. <http://suckhoedinhduong.nld.com.vn/cong-doan/o-ep-cong-nhan-20140629204614584.htm>

6. Labor Contracts, Layoffs, and Social Insurance

A representative from the Ho Chi Minh Office of Y, a Korean law firm, asserted that the Vietnamese Labor Code is employee-friendly in terms of its termination of labor contract and severance pay. SG Consultants echoed this opinion by saying that dismissing an employee is difficult according to the law, and that the Code itself is very strict; the problem, however, was in implementation. Indeed, we were able to confirm cases in which problems arose because a labor contract was not concluded after an employee performed labor for a set period of time, as well as unlawful dismissal cases.



[Dr. Do Quynh Chi explains how employment is structured with Vietnamese subcontractors in construction projects funded by the ODA.]

According to Dr. Do Guynh Chi, many temporary workers who are hired by a local construction company involved in a project sponsored by Korean ODA work without a labor contract despite performing long-term labor.⁹⁶ This situation also happens to workers who are not under a seasonal employment contract: in August 2014, in an interview with local media, female janitorial staff at DV reported that the firm refused to sign the promised labor contract even after five to six months of work, and that they have not joined social insurance.⁹⁷⁹⁸

According to the Vietnamese media, in October 2014, 13 workers in the Trang Bang Industrial Complex in Tay Ninh filed a lawsuit against RAV, a Korean firm, for unlawful dismissal and other charges. Workers contended that the dismissal was wrongful since the company had forced them to repeatedly fill out a new contract saying they lost the contract papers; treated the three

⁹⁶According to Dr. Do Quynh Chi, all construction projects supported by Korean ODA are given to Korean corporations, who in turn subcontract Vietnamese construction companies. Thus, in effect, Vietnamese construction companies carry out the projects.

⁹⁷According to the Vietnamese Labor Code, while the probationary (apprenticeship) period is determined on the basis of the nature and complexity of the work, it and shall be applied only one time for each employment and must satisfy the following conditions: the period must not exceed 60 days in respect of work which requires technical qualification of technical college diploma and above; 30 days in respect of work which requires technical qualification of secondary vocational certificate, secondary professional qualification; or specialized worker; 6 working days in respect of other work (Article 27).

⁹⁸ “Daesung Vina company violated the interest of laborers.” Binh Phuoc Online. 8 Sept 2014. <http://baobinhphuoc.com.vn/Content/cong-ty-daesung-vina-duoi-viec-nguoi-lao-dong-doi-quyen-loi-chinh-dang-31951>

days they participated in a strike as arbitrary absence and fired them under the ground of ‘five days of arbitrary absence’ specified in the contract; and unilaterally terminated the contract without an official notification. The People’s Court in Trang Bang District ruled in favor of the workers, stating that the company’s unilateral termination of contract without an official notice is against the Labor Code.⁹⁹

DV, an aforementioned firm, was also known to have unlawfully dismissed some of the female janitorial staff that raised concerns against the non-implementation of labor contracts.¹⁰⁰ Besides DV, several Vietnamese media reports discussed cases of unlawful dismissal and strikes caused by unlawful dismissal. For instance, in 2013, there were three strikes in Nghe An Province, the first of which occurred at PV, a Korean firm. 2,500 workers had gone on strike in defiance of degrading treatment by managers and unreasonable termination of labor contracts.¹⁰¹ DJ, another aforementioned firm, forced workers to do excessive overtime work in 2013; when employees requested a reduced overtime workload or holidays to attend weddings or take care of sick family members, DJ either dismissed or terminated the labor contracts with the workers.

While we briefly covered social insurance when discussing nonpayment of wages in earlier sections, there were several cases in which problems arose because an employer had not joined the social insurance schemes at all. For instance, many employees at DJ did not receive the social insurance books after their employment was over; when they made an inquiry to a social insurance company, workers found out that DJ had never registered the employees to social insurance schemes even though the workers had been consistently paying the insurance premiums.¹⁰²

JK, a Korean firm in the Cam Giang District in the Hai Duong Province in the North, was sued in July 2014 for neglecting to pay social insurance and unemployment insurance premiums for over 100 employees hired in dangerous working conditions; forcing workers to do overtime work exceeding the length permitted in regulations, without regular health checkups; and failing to pay proper wages to nighttime workers.¹⁰³

⁹⁹Dismissal following Collective Labor Agreement, Company loses an action.” Tay Ninh Online. 24 Oct 2014. <http://baotayninh.vn/xa-hoi/sa-thai-cong-nhan-theo-thoa-uoc-cong-ty-bi-thua-kien-64588.html>

¹⁰⁰ “Daesung Vina company violated the interest of laborers.” Binh Phuoc Online. 8 Sept 2014. <http://baobinhphuoc.com.vn/Content/cong-ty-daesung-vina-duoi-viec-nguoi-lao-dong-doi-quyen-loi-chinh-dang-31951>

¹⁰¹ “Pháp phòng đòi công nhân dệt may.” Daidoanket. 12 Nov 2013. <http://daidoanket.vn/PrintPreview.aspx?ID=71573>

¹⁰² “Workers strike against mistreatment in Hanoi industrial park.” DTI News. 9 Apr 2014. <http://www.dtinews.vn/en/news/017/28597/workers-strike-against-mistreatment-in-hanoi-industrial-park.html>

¹⁰³ “Korean firm fined for mistreating workers.” Vietnamnet. 25 Jul 2014. <http://english.vietnamnet.vn/fms/society/108232/korean-firm-fined-for-mistreating-workers.html>

7. Meals and Accommodation

The Bac Ninh FOL suggested that one of the issues at Korean firms is the provision of low-quality food; Tae-Ho Choi, a labor official at the Korean Embassy, said substandard meals are one of the causes for labor disputes; and the trade union officer at BJ asserted that the quality of food needs to be improved.¹⁰⁴

To discuss the problem more specifically, in October 2013, more than a thousand workers at WD, a Korean firm in Mekong Delta Province, were hospitalized because of food poisoning. Investigation by the Vietnamese food safety authorities revealed that the lunch the company provided was contaminated with salmonella.¹⁰⁵ The March 2014 strike at SL, a Korean firm located in District 12 of Ho Chi Minh city, was in part because of bathroom use restrictions but also in part because of inadequate meals; workers contended that the food was unhygienic, reporting seeing sand in rice and maggots in soy sauce.¹⁰⁶ In December 2011, leech was found in a meal provided by SL, another Korean firm located in Ho Chi Minh, causing some workers to be hospitalized.¹⁰⁷

8. Discrimination and Protection of Motherhood¹⁰⁸

The Executive Committee of the trade union at BJ, a Korean firm in Bac Ninh, asserted that the managers' attitudes towards them were not friendly, although there was no evident discrimination for reasons of their participation in trade union activities. However, the Bac Ninh FOL suggested that some Korean firms were discriminating against trade union officer by making them work in undesired positions.

The August 2013 strike at DJ, a Korean firm located in the Phu Nghia Industrial Complex in Hanoi, was caused in part by DJ's neglect of female workers' right to maternity leave in accordance with the Labor Code and other rights entitled to mothers nursing children under the

¹⁰⁴ Many firms in Vietnam, including Korean ones, tend to hire a large number of domestic migrants, but most of them do not provide accommodation. Since the wages are very low, workers are forced to live in very small and inadequate rooms nearby.

¹⁰⁵ "Salmonella found in Vietnam factory food poisoning, nearly 1,000 workers hospitalized." Thanhnie News. 11 Oct 2013. <http://www.thanhnieenews.com/health/salmonella-found-in-vietnam-factory-food-poisoning-nearly-1000-workers-hospitalized-972.html>

¹⁰⁶ This strike continued after the company announced that it will fire the five workers who led the strike. (See "Workers of Korean company stop working for strike issues." Thanhnie News. 17 Mar 2014.) <http://www.thanhnieenews.com/society/workers-of-korean-company-stop-working-for-strike-issues-24665.html>

¹⁰⁷ "Workers faint from hunger after leeches show up at lunch." Thanhnie News. 25 Dec 2011. <http://www.thanhnieenews.com/society/workers-faint-from-hunger-after-leeches-show-up-at-lunch-8970.html>

¹⁰⁸ It was argued that workplace sexual harassment was not a big issue because of the liberal attitude towards sex in Vietnam (Tae-Ho Choi, P of the Korean Businessmen's Association, and law firm Y), and because Vietnamese women have yet to develop a serious awareness of sexual harassment (Gye-Sun Lee).

age of two.¹⁰⁹ DJ was even found to have signed contracts with female employees saying they will not become pregnant for the first three years of employment.¹¹⁰ Protecting the motherhood of workers, including the maternity leave, is neglected by employers in various ways: one of the Korean firms in Binh Duong had coerced female employees to consult with the company in advance about their childbirth plans, in order to prevent female workers from going on maternity leave all at once.¹¹¹¹¹²

In October 2013, 200 workers went on strike in AD, a Korean firm in Ninh Binh Province. One of their grievances was that the company refused to give maternity leave (pre-natal leave) to pregnant employees.

9. Environmental Issues

JM, a Korean firm located in Viet Yen District of Bac Giang Province, had installed a massive coal steam furnace, without any preventive devices for noise and pollution, next to a residential area. JM operated this furnace for 24 hours, harming local residents by exposing them to coal smoke, coal dust, and noise. Furthermore, the wells nearby were polluted by industrial waste from JM, forcing residents to buy water since they were no longer able to drink from the wells.¹¹³

SV, a Korean dyeing company located in the Long Phuoc Industrial Complex in District 9 of Ho Chi Minh, has been releasing waste water and dust since 2010, making residents near the factory suffer from noise and various kinds of pollution. When locals filed a complaint to regional authorities, SV set up a repository to store unprocessed waste water instead of installing proper disposal facilities in accordance with the Vietnamese Environmental Protection Law, causing an overpowering stench in the area. Further, during heavy rain, SV would release the waste water, polluting the environment in its proximity. In September 2013, it was discovered again that SV

¹⁰⁹An Industrial Park is bigger in size than an Industrial Zone; both belong to an Export Process Zone.

¹¹⁰Tae-Ho Choi was not aware of the DJ case that occurred in 2013 (See “Workers strike against mistreatment in Hanoi industrial park” DTI News. 9 Apr 2013. <http://www.dtinews.vn/en/news/017/28597/workers-strike-against-mistreatment-in-hanoi-industrial-park.html>), but thought that it would not be surprising for a Korean firm to have such an incident, mentioning several Korean businessmen who had asked whether they can sign contracts that forbid female employees from becoming pregnant within a certain period of time from starting work.

¹¹¹A characteristic of the Vietnamese labor force is the significant number of female employees who are domestic migrants and in childbearing years between the ages of 18 and 25. At BJ, a Korean firm in Bac Ninh, 92% of the workers are women, 60% of whom are between the ages of 18 and 25, and about 50% of whom are married. 80% of workers at HS, a Korean firm in Ho Chi Minh, are women, and 80% are domestic migrants. An activist with Oxfam suggested that firms prefer migrant workers because they cannot raise collective voices against the company due to their high turnover rate; thus, the government policy that dictates that firms hire local workers first is not adhered to in practice.

¹¹² Taken from meeting with P of the Binh Duong Korean Businessmen’s Association

¹¹³In December 2007, the provincial authority of Bac Giang ordered a fine of 12 million Viet dong and demanded that JM move the furnace to a safe area; while JM obeyed the fine order, it was not until 2009 that they moved the furnace to a non-residential area. (See Do Quynh Chi et al. “Survey of Local Media Coverage on Environmental Social Impacts of Korean Development Aids and Investments, Vietnam Report.” Korean Environment Institute: 2013. Hanoi. pp.4-6.<http://baobacgiang.com.vn/266/7818.bgo>)

was not processing the waste water through a central facility in the industrial complex as the law stipulates.¹¹⁴ SV thus received a warning from the People's Committee in 2011, but continues to unlawfully release waste water; in 2012, SV was warned again by the People's Committee in District 9 of Ho Chi Minh City as one of 'the nine firms responsible for environmental pollution in the district.'¹¹⁵ Moreover, on December 4, 2012, in accordance with the Environmental Protection Law, the Binh Phuoc Provincial People's Committee charged SV a fine of 1,765,000,000 Viet dong (82,600 USD) for environmental pollution caused by its factory in Minh Hung Industrial Complex in Chon Thanh District of Binh Phuoc Province.¹¹⁶

A more recent case involves MW, a Korean firm in Phu Tho Province, which received an administrative measure from the Phu Tho Provincial People's Committee for releasing industrial wastes exceeding the permitted standards in April 2014. In December, the Police Department of Environmental Crime Prevention of the Ministry of Public Security charged MW with a 515,000,000 Viet dong (24,100 USD) fine for the same violation, and also imposed a three-month suspension of business as an administrative measure.¹¹⁷ On a related note, SHV, a Korean-invested firm that produces sports shoes, was included in the list of 13 most serious polluting firms that the Ho Chi Minh People's Committee recently released.¹¹⁸

10. Livelihood of Local Residents

The Rach Gia detour circuit construction project in Ken Giang Province commenced in 2008 with 83 million USD from the Korean Economic Development Cooperation Fund (EDCF). Three Korean firms – HS, KD, and KN – were selected for the project for this large-scale project (the lengths of the detour circuit and the bridge combined measure up to 20 km) through bidding.¹¹⁹ However, the bank that was installed for the project blocked three canals that residents in Mong Tho B area had been using from a hundred years ago, causing great difficulties for residents who need to move their agricultural products to market. A more serious

¹¹⁴Do Quynh Chi et al. "Survey of Local Media Coverage on Environmental Social Impacts of Korean Development Aids and Investments, Vietnam Report." Korean Environment Institute: 2013. Hanoi. pp.8-10.
<http://www.baotintuc.vn/bao-giay/kho-xu-ly-doanh-nghiep-gay-o-nhiem-moi-truong-20130521064239336.htm?mobile=true>.

¹¹⁵"Saehan Vina blatantly polluting the environment" VietnamPlus. 20 May 2013.
<http://www.vietnamplus.vn/saehan-vina-ngang-nhien-gay-o-nhiem-moi-truong/202554.vnp>

¹¹⁶"A Korean Company Gets Penalty for Polluting Environment." Nguoi Lao Dong. 4 Dec 2012.
<http://nld.com.vn/thoi-su-trong-nuoc/phat-mot-cong-ty-han-quoc-gay-o-nhiem-moi-truong-2012120405446159.htm>

¹¹⁷"Miwon Co., Ltd causing pollution case: Over 500 million dong penalty, working suspended." PhuongNamNet. 2 Dec 2014. <http://phuongnam.net.vn/2-48-6921-Vu-cong-ty-TNHH-MiWon-Viet-Nam-gay-o-nhiem-Phat-hon-500-trieu-dong-dinh-chi-hoat-dong.html%E2%80%A6>

¹¹⁸"TPHCM: Published 13 production facilities that pollute the environment." 1 Aug 2014. <http://ddd.com.vn/thi-truong/tpHCM-cong-bo-13-co-so-san-xuat-gay-o-nhiem-moi-truong-20140801092712442.htm>

¹¹⁹According to Dr. Do Quynh Chi, all construction projects supported by Korean ODA are given to Korean corporations, who in turn subcontract Vietnamese construction companies. Thus, in effect, Vietnamese construction companies carry out the projects.

problem is that the bank blocks the irrigation and drainage needed for the rice paddies as wide as 100 ha in Thanh Loc and 180 ha in Mon Tho, causing a 30% decrease in harvests and posing a serious threat to the livelihood of local residents. As of July 2013, the project is being delayed due to resistance from local residents.¹²⁰

The Vinh Thinh bridge construction project that would connect the suburbs of Hanoi is also funded by the Korean EDCF; GS, a Korean firm, landed the contract and started the construction in December 2011. However, because of heavy machinery used in the construction, many houses around the area were destroyed (i.e. houses tilted, walls cracked), and some houses became completely uninhabitable.¹²¹

In relation to the livelihood of local residents, we also looked into whether there were cases of forced evictions in which Korean firms were complicit. According to a 2013 report by the World Bank, Vietnamese people responded in a survey that corruption involving land administration is the second most significant form of corruption in Vietnam.¹²² A new Land Law was passed in the National Assembly in November 2013, and has been in effect since July 1, 2014. However, the Land Law still does not recognize individual ownership of land.¹²³ The 2013 Vietnam Provincial Governance and Public Administration Performance Index (PAPI) - based on random sampling surveys of 13,982 citizens throughout Vietnam – suggests that land use, land ownership, and corruption still remain as big problems.¹²⁴ The PAPI asserted that the price determination of land is one of the key areas of concern when it comes to land policies; a meager 18.8% of respondents thought that the government-determined prices conform to market prices, while only 41% of the residents of Hung Yen Province – province with the most desirable results from land policy - responded that the compensation from the government was appropriate. In addition, there are research data and media reports on the opaque governmental process of land expropriation and forced evictions for infrastructure projects, indicating that there is reason to

¹²⁰Do Quynh Chi et al. “Survey of Local Media Coverage on Environmental Social Impacts of Korean Development Aids and Investments, Vietnam Report.” Korean Environment Institute: 2013. Hanoi. pp.11-13. (See <http://dancukiengiang.gov.vn/news.php?id=366>.)

¹²¹Do Quynh Chi et al. “Survey of Local Media Coverage on Environmental Social Impacts of Korean Development Aids and Investments, Vietnam Report.” Korean Environment Institute: 2013. Hanoi. pp.17-19. (See <http://phapluatxahoi.vn/20130824111715486p1001c1015/du-an-xay-dung-cau-vinh-thinh-nguy-co-cham-tien-do-do-nguoi-dan-can-tro-thi-cong.htm>)

¹²² The same report found that land administration was the area regarded as most corrupt. (See Corruption from the Perspective of Citizens, Firms, and Public Officials. The World Bank. 2014. pp.37-38. http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/13/000333037_20130313144107/Rendered/PDF/738070REVISED0000January02013000ENG.pdf)

¹²³Land Law Article 4: Land Ownership. (An English translation of the Land Law can be found on the Investment & Trade Promotion Center website: http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/mldocument_view/?set_language=en)

¹²⁴The Vietnam Provincial Governance and Public Administration Performance Index PAPI 2013.p.45. This index has been published by the Center for Community Support and Development Studies, Centre for Research and Training of the Vietnam Fatherland Front, and United Nations Development Programme since 2009. (See <http://papi.vn/en/about-papi.html>)

believe that similar problems occurred in development projects in which Korean firms participated, an area that evidently needs research in the future.¹²⁵ However, as of yet, it is difficult to confirm specific cases in which certain countries are complicit, and the degree of their complicity. For instance, Professor John Gillespie, Director of the Asia-Pacific Business Regulation Group and professor of law at Monash University, mentioned in one of his books that there is no information publicly available on statistics or data related to land disputes in Vietnam.¹²⁶

IV. Summary, Recommendations and Analysis

While the Vietnamese government does try to steer in a direction favorable to foreign investors because it acknowledges the decisive role foreign investment plays in economic development, it is true that the labor law in Vietnam is generally employee-friendly. However, the worker-friendly nature of the labor law does not necessarily imply that the Korean corporations operating in Vietnam are respecting workers' rights. As discussed earlier, reports from the media and information collected or examined by the VGCL refer to many cases of Korean corporations violating labor rights by failing to abide by the Labor Code and other related statutes.

Furthermore, while some cases involved Korean firms directly violating the three basic labor rights by obstructing efforts to build trade unions and discriminating workers who led strikes, the lasting influence of labor relations from the past, especially the fact that the trade union does not have proper representation of workers since it is under the control of the party and the government, and heavy influence of the employer was the most significant hindrance to Vietnamese workers protecting their rights and interests by exercising the three basic rights.

Meanwhile, we found that concerns about the representativeness of trade unions were being raised internally and externally to varying degrees. Many of our interviewees, including VGCL, were keenly cognizant of the problem. VGCL repeatedly emphasized their efforts to strengthen the representativeness of trade unions: first, VGCL gave the upper level union the responsibility and role to cooperate with grassroots level unions or to represent grassroots level union members; second, employers could now elect the trade union official and members of the Executive

¹²⁵ For instance, the "Alternative Report on the Implementation of the UN International Covenant on Economic, Social and Cultural Rights for consideration of the Combined Second to Fourth Reports of the Socialist Republic of Vietnam" discusses the issue of forced evictions while evaluating Article 11 of the Covenant on Social Rights: the right to an adequate standard of living. The report states that according to the revised Land Law, people subjected to eviction receive a notification 90 days before the expropriation of land, while the compensation for eviction is determined by a People's Committee at the provincial/city/district level; considering the high degree of corruption amongst local officials, the report argues, this system is comparable to plundering, and can lead to serious human rights violations. (See "Alternative Report on the Implementation of the UN International Covenant on Economic, Social and Cultural Rights for consideration of the Combined Second to Fourth Reports of the Socialist Republic of Vietnam," Vietnam Committee on Human Rights & International Federation for Human Rights. 25 Sept 2014.p.16.http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/VNM/INT_CESCR_CSS_VNM_18336_E.docx)

¹²⁶Gillspie, John. "Resolving Land Disputes in East Asia: Exploring the Limits of Law." Cambridge: Cambridge University Press. 2014. Pp. 219-314.

Committee through a “bottom-up organizing process.”¹²⁷ One official at VGCL told us that the “bottom-up organizing process” is also a countermeasure to employer efforts to interfere with the establishment of trade unions (e.g. arbitrarily cancelling scheduled visit by an upper level trade union representative), since it allows the upper level trade union to directly organize trade unions with workers without having to go through the company.

Besides these, we were able to see that VGCL was attempting other measures, one of which is the Performance Improvement Consultative Committee (PICC) under a program run by Better Work Vietnam. Better Work Vietnam requests every member company to form a committee with representatives from both the firm and the employees, and employees other than members of the Executive Committee are joining this committee to heighten the representation of workers. A representative at Better Work Vietnam asserted that VGCL enthusiastically supports these attempts, since it highly values active and consistent discussion between the employer and the employees.

While specific human rights violations by Korean corporations include those related to the environment and violation of the three basic labor rights, most problems can be summarized as the firms’ failure to adhere to the labor law and the structural issue of weak three basic labor rights due to the lack of real representation of workers in trade unions. However, since the labor law is generally employee-friendly and since the union density and the union membership rate in Vietnam are higher than any other country, if the trade union can transform into an organization that properly represent workers, and the labor rights practice of Korean firms can be closely monitored by the Vietnamese government or the civil society, we can anticipate much progress in the protection of the rights and interests of workers.

¹²⁷“Bottom-up organizing process” involves a representative from a provincial/city federation of labor directly approaching workers to identify ‘active workers’ who are eager to form a union, forming a ‘core organizer group’ to establish a union and providing relevant education. Afterwards, workers from the ‘core organizer group’ recruit other workers who are interested and receive union membership applications; when five or more employees are gathered, they can register with the upper level trade union, who in turn register them with the government after review, with no agreement needed from the employer. When this process is completed, the upper level union announces that the grassroots level union is recognized as an official trade union. (Taken from meeting with VGCL official. 10 Dec 2014)