

## Social protection in Vietnam: Future prospects from the legal perspective

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**Abstract:** *In the last 25 years, Vietnam has been one of the fastest growing economies in Asia. Regarding social protection and social insurance, there are many practical challenges ahead. In 2012, only 10.4 million workers were enrolled in compulsory social insurance, less than 20% of the total workforce. Furthermore, there are more than 1 million people entering the labour market every year. Recent work has shown different approaches and proposals for social insurance reform, in particular regarding access to social insurance and social insurance benefits. The current paper expands the analysis regarding social protection in Vietnam by looking at the new Constitution and the revision of the social insurance law. Both developments may have an enormous impact on social protection in Vietnam as will be elaborated. The analysis also shows that the prevalence of the legislation and the executive acts has risen over the last few years. This indicates that the government is about to implement a rights-based and law-based social protection system in accordance with the rule of law. Furthermore, the paper shows that the ambitious social protection goals in Vietnam require effective, systematic and comprehensive policies for social protection. It is, rather, the structural deficits which endanger the sustainability of the entire system. The reason for this can be found not only in the shortcomings of the existing law, but more specifically in the deficits in implementing the law. As an emerging economy with increasing integration into the world trade, Vietnam will be increasingly exposed to global economic downturns and external economic shocks. The country's overall socio-economic development and changes in family structures will also yield new risks. In the future, the overall social protection system will have to target these new risks and new groups.*

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### Introduction

Since the introduction of the *Doi Moi* (renewal) process in 1986, there have been manifold and fundamental changes in the Vietnamese economy, in the overall society and, accordingly, in the entire legal system. A new constitution was approved in November 2013, replacing the Constitution of 1992, which was amended in 2001. Furthermore, after seven years of imple-

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mentation, Vietnam's first-ever comprehensive social insurance law is now under revision. Both developments may have an enormous impact on social protection in Vietnam as will be elaborated on. Nevertheless, there are many practical challenges ahead. The paper starts with an overview regarding social protection in Vietnam (A.). Afterwards, it focuses on social protection and its perspectives from the point of view of the Constitution (B.), and from the point of view of the social insurance law (C.). Finally, the contribution of the German development cooperation will be touched on (D.) and an outlook will be given (E.).

## A. Overview regarding social protection in Vietnam

### I. Socio-economic background

In the last 25 years, Vietnam has been one of the fastest growing economies in Asia. It achieved an average growth of more than 7 percent in its gross domestic product (GDP) between 1990 and 2012.<sup>1</sup> The poverty headcount in Vietnam fell significantly from nearly 60 percent in the early 1990s to 14.2 percent in 2010.<sup>2</sup> In line with the renewal process, Vietnam developed from one of the poorest countries in the world, with per capita income below 100 USD, to a lower middle income country with per capita income of 1,130 USD by the end of 2010.<sup>3</sup> Agriculture's share of economic output has continued to shrink from about 25% in 2000 to less than 22% in 2012, while industry's share increased from 36% to nearly 41% in the same period. But state-owned enterprises still account for roughly 40% of GDP.<sup>4</sup>

With its 54 ethnic groups, Vietnam is a multi-ethnic country. It has an estimated population of around 92 million with an annual population growth of 1.03%.<sup>5</sup> The population is still young as the median age is 28.7 years (nearly one quarter of the population is aged 0-14

- 1 But growth slowed down in line with the global recession, with GDP in 2012 growing at 5 percent, cp. *The World Bank*, World DataBank, World Development Indicators, Vietnam, [http://databank.worldbank.org/data/views/variableSelection/selectvariables.aspx?source=world-development-indicator#\\_v](http://databank.worldbank.org/data/views/variableSelection/selectvariables.aspx?source=world-development-indicator#_v) (last accessed 30 November 2013).
- 2 A new poverty line that better reflects the living conditions of the poor was estimated for 2010 by the Vietnamese General Statistical Office (GSO) and The World Bank. Based on this new calculation (a poverty line equal to VND 653,000/person/month or \$2.25/person/day, PPP 2005), the national poverty rate in 2010 is 20.7 percent. In contrast, the official poverty rate of 14.2 percent in 2010 (using official MOLISA urban and rural poverty lines of VND 500,000/person/month and VND 400,000/person/month, respectively); cp. *The World Bank*, Poverty Reduction in Vietnam: Remarkable Progress, Emerging Challenges, <http://www.worldbank.org/en/news/feature/2013/01/24/poverty-reduction-in-vietnam-remarkable-progress-emerging-challenges> (last accessed 30 November 2013).
- 3 *The World Bank*, Vietnam Overview, <http://www.worldbank.org/en/country/vietnam/overview> (last accessed 30 November 2013).
- 4 *Central Intelligence Agency (CIA)*, The World Factbook, East & Southeast Asia, Vietnam, Economy overview, <https://www.cia.gov/library/publications/the-world-factbook/geos/vm.html> (last accessed on 30 November 2013).
- 5 Estimation from 2013, cp. *CIA*, note 4, Vietnam, People and Society.

years).<sup>6</sup> But the country's fast aging process poses a serious long-term problem. Vietnam started its aging phase when over 60-year-olds accounted for more than 10 per cent of the total population in 2012, five years ahead of prediction.<sup>7</sup> Currently, around 30% of the population live in urban areas, while nearly 70% live in rural areas.<sup>8</sup> There is a total labour force of 53.9 million people (aged 15 and above), and an effective unemployment rate of 2.22%.<sup>9</sup> But in 2012, only 10.4 million workers were enrolled in compulsory social insurance, less than 20% of the total workforce.<sup>10</sup> Furthermore, there are more than 1 million people entering the labour market every year.<sup>11</sup>

## II. Social protection in Vietnam

Social protection has a long tradition in Vietnam. The first measures were already implemented in 1945, immediately following the independence.<sup>12</sup> However, in the pre-*Doi Moi* era, the entire system was focused on public servants, army personnel and workers in state-owned enterprises.<sup>13</sup> This orientation has changed fundamentally in the last two decades. Accordingly, government spending on social protection – including basic social services such as education – reached 4.7% of the GDP in 2011.<sup>14</sup> Nevertheless, informal or family safety nets still play a major role for the people in Vietnam, in particular for people in the informal economy.

The current sources of social protection in Vietnam are manifold. On the one hand, there are various specific or targeted programmes run by the government and implemented from the central to the local level; on the other, there are numerous pieces of legislation and ex-

6 Cp. *CIA*, note 4, Vietnam, People and Society.

7 *International Labour Organisation* (ILO), Press release, Project launched to address demographic challenges for national social insurance system, [http://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS\\_216130/lang--en/index.htm](http://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_216130/lang--en/index.htm) (last accessed on 30 November 2013).

8 Cp. *CIA*, note 4, Vietnam, People and Society.

9 As of 1 October 2013, cp. *General Statistics Office* (GSO), Press Release: Socio-economic situation in nine months of 2013, [http://www.gso.gov.vn/default\\_en.aspx?tabid=508&ItemID=14378](http://www.gso.gov.vn/default_en.aspx?tabid=508&ItemID=14378) (last accessed 1 December 2013).

10 Cp. *ILO*, Press release, note 7.

11 Cp. *CIA*, note 4, Vietnam, Economy – overview.

12 *Bao Hiem Xa Hoi Viet Nam*, Vietnam Social Security, Hanoi 2010, p. 31.

13 *The World Bank, the Asian Development Bank, the Department for International Development (DFID) of the United Kingdom, the European Commission (EC), the German Development Cooperation (GDC)*, Vietnam Development Report 2008 Social Protection, Washington 2007, p. 84, 97, <http://documents.worldbank.org/curated/en/2007/12/9499957/vietnam-development-report-2008-social-protection> (last accessed on 3 November 2013).

14 *Nguyen Thi Lan Huong / Matthias Meissner*, Social Protection Reforms in Vietnam: Experiences and Challenges, in: Bender, Kaltenborn and Pfeleiderer (eds.), *Social Protection in Developing Countries – Reforming Systems*, New York 2013, p. 176, 177.

ecutive acts, such as laws, decrees, orders and decisions.<sup>15</sup> The prevalence of the latter has risen in recent years. One could see this as indicating that the government is about to implement a rights-based and law-based social protection system in accordance with the rule of law.<sup>16</sup> However, the laws and the numerous decrees, orders and decisions pose a huge challenge for social protection in Vietnam; the reason being that their understanding, in particular regarding its terms and its implementation varies largely, both on the various levels and between the institutions from the central to the local level.

From a general or systematic point of view, social protection in Vietnam consists of policies, programmes and laws regarding the active labour market, regarding social insurance and also regarding social assistance.

### 1. Active labour market

The active labour market is a focal area for social protection in Vietnam. It consists of different instruments, such as vocational training, retraining, credit, rural labour migration and labour market information<sup>17</sup>. For example, there are more than 20 different credit policies available to vulnerable groups, such as the poor or ethnic minorities, students, and small and medium enterprises, with the aim of supporting the overall socio-economic development.<sup>18</sup> The National Employment Promotion Fund, implemented in 1992, provides preferential credits to small- and medium-sized enterprises and creates around 300,000 jobs annually in Vietnam. Furthermore, credit policies support the 63 poorest districts with regard to labour mobility. The objective of the Vocational Training programme implemented in 2009 is to improve the skills of 1 million rural workers annually. At the end of 2012, there were 142 colleges for occupational training, 316 occupational training secondary schools and 850 occupational training centres in Vietnam.<sup>19</sup>

### 2. Social insurance

In social insurance schemes, which are based on insurance principles, contributions are paid by employers and employees in order to insure work related risks, such as sickness, unem-

15 *Nguyen Thi Lan Huong / Matthias Meissner*, note 14, p. 176, 177; *United Nations Development Programme (UNDP)*, A Mapping Exercise – Poverty Reduction Programmes and Policies in Vietnam, Hanoi 2009, p. 9; *The World Bank et. al.*, note 13, p. 67-73, 84, 96.

16 Also in Vietnam the rights-based approach to social protection was discussed increasingly in the last years, cp. in general: *Magdalena Sepúlveda and Carly Nyst*, The Human Rights Approach to Social Protection, Ministry for Foreign Affairs of Finland, Erweko Oy 2012, p. 9 f, 17, 63 f.

17 *Institute of Labour Science and Social Affairs (ILSSA) / Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*, Viet Nam Social Protection Glossary, Hanoi 2011, p. 22.

18 *Nguyen Thi Lan Huong / Matthias Meissner*, note 14, p. 178, 179.

19 *General Statistics Office (GSO)*, Press Release: Socio-Economic situation in 2012, III. Social Issues, 3. Education and training, [http://www.gso.gov.vn/default\\_en.aspx?tabid=508&ItemID=13500](http://www.gso.gov.vn/default_en.aspx?tabid=508&ItemID=13500) (last accessed 6 October 2013).

ployment, work accident or old age; they provide social insurance benefits for the employees or other contributors, their dependants or survivors.<sup>20</sup> Social insurance is an emerging area of social protection in Vietnam. One milestone in the effort to broaden the coverage of social insurance was the inclusion of private sector employees in the early and mid-1990s and the revision of social insurance for the military and police forces.<sup>21</sup> Both decrees stipulated benefits which covered the five most common income risks, namely sickness, maternity, work accident (and occupational disease), survivorship and old age. The system was based on social insurance principles, with contributions from both employers and employees. In the last few years, the development of a comprehensive social insurance system has been accelerated. Vietnam's first-ever comprehensive social insurance law was ratified in 2006 and came into force in 2007.<sup>22</sup> Voluntary social insurance was introduced in 2008, followed by unemployment insurance one year later. In 2009, the new Health insurance law also came into force.<sup>23</sup> It is worth noting that the health insurance law provides general health protection for its citizens (e.g. via medical treatment), which is not subject of this paper. In contrast, the social insurance law, with its benefits in cash, is targeted only at employees and covers their typical income risks (see above). However, coverage of social insurance is still low in Vietnam: Until 2012, 10.4 million workers were enrolled in compulsory social insurance, equivalent to 19.5% of the total workforce; only around 140,000 persons contributed to voluntary insurance in 2012, equivalent to 0.3% of the total workforce.<sup>24</sup> It is evident that expanding the coverage of social insurance is one key challenge for social protection in Vietnam.

### 3. Social assistance

Social assistance benefits are often means tested transfers made by government units to households or individuals in order to reduce poverty and vulnerability.<sup>25</sup> They are usually tax financed, not conditional on previous payments of contributions and include benefits in cash or in kind. In Vietnam, social assistance benefits in cash are limited to certain groups, such as orphans and children, unmarried or widowed elderly persons, people aged 80 and over, or persons with disabilities – in each case if they live in poor households and do not have relatives

20 Cp. *The World Bank*, Overview: Social Protection and Labour, <http://go.worldbank.org/VKYM8C15X0> (last accessed 30 November 2013).

21 *Bao Hiem Xa Hoi Viet Nam*, note 12, p. 31; *The World Bank et. al.*, note 13, p. 79, 84, 85, 97.

22 Law on Social Insurance, No: 71/2006/GH11 from 29 June 2006, [http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=4751](http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4751) (last accessed 3 November 2013).

23 *Bao Hiem Xa Hoi Viet Nam*, note 12, p. 32.

24 *International Labour Organisation (ILO)*, note 7.

25 Cp. *The World Bank*, Safety Nets and Transfers, <http://go.worldbank.org/VQNNNYVN20> and <http://go.worldbank.org/SLVVVWMW50> (last accessed 30 November 2013).

who support them.<sup>26</sup> The cash transfer still has a very low coverage: only around 1.8% of the population benefits from the cash and the level of support is very low, being equal to 50% of the minimum living standard.<sup>27</sup> For example, the social pension for people aged 80 and over amounts to 180,000 VND per month (which is equivalent to 8,40 USD per month and person).<sup>28</sup> People who are credited with meritorious service to the country or to the revolution enjoy preferential benefits from 685,000 VND up to 1,748,000 VND per month (which is around 32 to 81 USD per month).<sup>29</sup>

Key channels for further social assistance benefits were the National Targeted Programme for Poverty Reduction (NTP-PR), which targets poor households, and Programme 135, which supports poor communities in ethnic minorities or in mountainous areas.<sup>30</sup> Both programmes have been merged into Government Resolution No. 80/NQ-CP in 2011.<sup>31</sup> This includes increased access to basic social services, increased production capacities, enhanced labour mobility and enhanced infrastructure in the poorest districts. Accordingly, more than 500,000 poor households nationwide received housing assistance (from 2009-2012).<sup>32</sup> Health insurance cards have been provided to 14 million poor persons and 2.5 million poor pupils have had their school fees reduced or waived.<sup>33</sup>

#### 4. Further sources and fields of social protection

There are further fields of social protection in Vietnam, such as child protection, crop insurance, micro-insurance and community-based funds.<sup>34</sup> However, these additional public or

26 Cp. Decree No. 67/2007/ND-CP and Decree No. 13/2010/ND-CP; *The World Bank*, Vietnam – Strengthening the social safety net to address new poverty and vulnerability challenges : a policy note, Washington 2010, p. 10; *The World Bank*, Vietnam: Governance and administration of social assistance – a rapid assessment and options for reform, Washington 2010, p. 3, 4.

27 *Nguyen Thi Lan Huong / Matthias Meissner*, note 14, p. 180.

28 The range for regular social assistance is from 180,000 VND to 540,000 VND.

29 Cp. Decree No. 38/2009/ND-CP from 23 April 2009, <http://thuvienphapluat.vn/archive/Nghi-dinh/Nghi-dinh-38-2009-ND-CP-muc-tro-cap-phu-cap-uu-dai-doi-voi-nguoi-co-cong-voi-cach-mang-vb87521t11.aspx> (last assessed 3 November 2013).

30 *United Nations Development Programme (UNDP)*, note 15, p. 9; *The World Bank et. al.*, note 13, p. 69, 71.

31 *The Government of Vietnam*, Resolution No. 80/NQ-CP from 19 May 2011, [http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=10737](http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10737) (last accessed 4 November 2013).

32 Cp. *MoLISA*, Poverty reduction policy proves effective, <http://english.molisa.gov.vn/news/viewdetail/tabid/339/newsid/58109/seo/Poverty-reduction-policy-proves-effective/language/en-US/Default.aspx> (last accessed 30 November 2013).

33 Data only available for 2011, cp. *General Statistics Office (GSO)*, Press Release: Social and Economic Statistics for 2011, [http://www.gso.gov.vn/default\\_en.aspx?tabid=508&ItemID=12134](http://www.gso.gov.vn/default_en.aspx?tabid=508&ItemID=12134) (last accessed 3 November 2013).

34 *Institute of Labour Science and Social Affairs (ILSSA) / Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*, note 17, p. 12, 14, 45.

private instruments are not yet established on a large scale, but have been tested and implemented as pilot initiatives in selected regions.<sup>35</sup> Because of this, the market for micro- and crop insurances has to be developed further.

### III. The political goals

The policies aimed at placing Vietnam on a new path towards a “socialist-oriented market economy”, as approved by the 11th National Congress of the Communist Party of Vietnam in 2011, highlight the restructuring of the economy and the implementation of a new growth model “in order to ensure rapid but sustainable development”.<sup>36</sup> The key goals of the Socio-Economic Development Strategy (SEDS) are to stabilise the economy, to build an excellent infrastructure, to create a skilled labour force, and to strengthen market-based institutions.<sup>37</sup> By using these measures, Vietnam aims to become a developed and industrialised country by 2020.

With this in mind, Vietnam's Ministry of Labour, Invalids and Social Affairs and the Institute of Labour Science and Social Affairs have developed a comprehensive social protection strategy for the period of 2012 to 2020. Its intention is to achieve the goals of the Constitution and the SEDS by implementing a social protection system for the entire population, following the principles of universality, solidarity, equitability, sustainability and the promotion of individual responsibility.<sup>38</sup>

The Communist Party has adopted this approach in line with the Resolution on *Social Policies for the Period of 2012 – 2020* (Resolution No. 15 from The Fifth Plenum of the 11<sup>th</sup> Central Committee of the Communist Party).<sup>39</sup> Key goals of the Resolution are:

- To enhance the lives of people with national merits, so that by 2015 almost all households of people with national merits have achieved the minimum living standard (equal to or higher than the average standard of the population in their area).
- To achieve social protection for the whole population until 2020, thereby ensuring minimum levels of income, education, housing, clean water and information by means of contributing to the enhancement of incomes; ensuring also better living conditions, social safety and the happiness of the Vietnamese people.

35 Food and Agriculture Organization of the United Nations (FAO), *Agricultural insurance in Asia and the Pacific region*, Bangkok 2011, p. 221, <http://www.fao.org/docrep/015/i2344e/i2344e00.pdf> (last accessed 3 November 2013).

36 *Nguyen Tan Dung*, *New path towards a socialist-oriented market economy*, <http://vietnamnews.vn/anet.vn/Economy220033/new-path-towards-a-socialist-oriented-market-economy.html> (last accessed 5 November 2013).

37 *The World Bank*, *Vietnam Development Report (VDR) 2012: Market Economy for A Middle-income Country*, <http://go.worldbank.org/T6ISJM5QH0> (last accessed 5 November 2013).

38 *Nguyen Thi Lan Huong / Matthias Meissner*, note 14, p. 183.

39 *The Government of Vietnam*, Resolution No. 15-NQ/TW from 1 June 2012, <http://thuvienphapluat.vn/archive/Nghi-quyet-15-NQ-TW-nam-2012-hoi-nghi-lan-thu-nam-Ban-chap-hanh-Trung-uong-vb150877.aspx> (last accessed 5 November 2013).

The planned indicators regarding social protection are ambitious. For example, by 2020:

- The general unemployment rate shall be below 3% and urban unemployment rate shall be below 4%.
- The per capita income of poor households shall increase by 3.5 times that of 2010. The poverty rate shall be reduced by 1.5 – 2% per year and by 4% according to the poverty ratios in each period in districts and communities with high ratios of poor households.
- Approximately 50% of the labour force shall participate in social insurance and 35% of the work force shall make a contribution to the unemployment insurance.
- More than 2,5 million beneficiaries shall receive regular allowances, of which more than 30% shall be elderly people.

These ambitious goals can only be achieved with effective, systematic and comprehensive policies for social protection. Furthermore, the Vietnamese Constitution plays a certain role in this regard as we will see in the following.

## B. Social Protection in the Vietnamese Constitution

The Constitution of the Socialist Republic of Vietnam contains the key guidelines for the state and its citizens. It proclaims to be the fundamental law of the State with supreme legal force.<sup>40</sup> At the same time, it determines that the Communist Party of Vietnam, as the one and only ruling political party in the country, is the major leader of the state and the society, founded on the ideology of Marxism-Leninism and Ho Chi Minh. The new Constitution of 2013 did not change this contradictory approach.<sup>41</sup> As in the past, the policies, strategies and plans will be approved at the Party Congress, which is carried out every five years. The National Assembly, the highest representative body of the people, is the country's primary legislative body – with the duty to adopt the law.<sup>42</sup> The new Constitution of 2013 is nevertheless promising as it proclaims a democratic, law-based state with human rights as well as checks and balances between the institutions.<sup>43</sup> But: only the wording is promising. The inauguration of a new *Constitutional Council* which watches the state bodies and supervises their compliance with the Constitution failed at the end.<sup>44</sup> Subject of supervision should have been, amongst others, provisions or decisions from the National Assembly, The President or the Government. According to the draft Constitution, these actors would have been requested

40 The Constitution of 2013, [http://vietnamlaw.vnnet.vn/Service.asp?CATEGORY\\_ID=9&SUBCATEGORY\\_ID=14&NEWS\\_ID=5823](http://vietnamlaw.vnnet.vn/Service.asp?CATEGORY_ID=9&SUBCATEGORY_ID=14&NEWS_ID=5823) (last assessed 8 March 2014), Art. 119. Remark: The Constitution of 2013 was adopted from the National Assembly on 28 November 2013.

41 The Constitution of 2013, note 40, Art. 4.

42 The Constitution of 2013, note 40, Art. 6, Art. 69 et. seq.

43 The Constitution of 2013, note 40, Art. 1, Art. 2, Art. 3, Art. 14 et. seq.

44 The draft Constitution of 2013, <http://baodientu.chinhphu.vn/Home/Chinh-thuc-cong-bo-Du-thao-sua-doi-Hien-phap-1992/2013/158230.vgp> (last assessed 3 December 2013), Art. 120; *Tran Huu Trang*, Der Verfassungsrat – eine neue Institution im Entwurf der Verfassungsänderung, [http://www.thomas-schmitz-hanoi.vn/Downloads/DAAD-Workshop\\_Verfassungsreform\\_Tran-Huu-Trang.pdf](http://www.thomas-schmitz-hanoi.vn/Downloads/DAAD-Workshop_Verfassungsreform_Tran-Huu-Trang.pdf) (last accessed 4 November 2013).



from the *Constitutional Council* to annul unconstitutional provisions or decisions. But it was not intended to assign the competence to annul unconstitutional provisions or decisions immediately. Because of this, the *Constitutional Council* was not designed as a constitutional court. Its competence appeared similar to the authority of the standing committee or the legal committee of the National Assembly.<sup>45</sup> Nevertheless, the idea of a new *Constitutional Council* was an important step forward towards the promised law-based state with checks and balances between the institutions.

### *I. Social protection in the Constitution of 1992, amended in 2001*

Already the Constitution of 1992, amended in 2001, contained provisions regarding social protection. Among the former were provisions for the well-being and prosperity of the people, as well as an equitable society and a fostering education system.<sup>46</sup> The latter provisions included work, education and health care.<sup>47</sup> The Constitution made the State responsible for providing social insurance to public employees and “other salary-earners”.<sup>48</sup> In addition, it encouraged the State to make provisions concerning “other forms of social insurance” for the workers.<sup>49</sup> This opened the door for further social insurance schemes beyond compulsory social insurance, e.g. via community risk funds or micro-insurances.<sup>50</sup> It is worth noting that assistance from the State was intended only for specific groups – in particular war invalids, persons or families with national merits, the elderly, persons with disabilities, or orphans without family support.<sup>51</sup> There was no general provision for assistance of people in need. It was in this manner that the Constitution envisaged the path of social protection in Vietnam.

The Constitution of 1992, amended in 2001, acknowledged the important role of the family and the inter-generational support.<sup>52</sup> Furthermore, mass organisations played a crucial role in the overall architecture of the State. Accordingly, the *Vietnam Fatherland Front* was appointed as the political allied organisation and voluntary union of political organisations, social-political organisations, social organisations and representative individuals of social strata and classes, of ethnic groups, of religions and of Vietnamese people residing

45 *Tran Huu Trang*, note 44.

46 The Constitution of 1992 (as amended in 2001), Art. Art. 3, 16, 31, 35, <http://www.na.gov.vn/htx/English/C1479/#8uOykQQcWT9N>; <http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf> (last accessed 3 November 2013).

47 The Constitution of 1992, note 46, Art. 31, 35, 55, 59, 61.

48 The Constitution of 1992, note 46, Art. 56.

49 The Constitution of 1992, note 46, Art. 56.

50 These additional instruments are not yet established on a large scale, but have been tested and implemented as pilot initiatives in selected regions; cp. *FAO*, note 35; see below D. I. Technical Cooperation.

51 The Constitution of 1992, note 46, Art. 67.

52 The Constitution of 1992, note 46, Art. 64.

abroad.<sup>53</sup> The *Vietnam Confederation of Trade Unions* was placed as the socio-political organisation of the working class and working people, as well as further economic and social organisations.<sup>54</sup>

## II. *The public discussion in line with the new Constitution of 2013*

The Constitution of 1992 has been subject to increased public discussion in Vietnam in the past few years.<sup>55</sup> In spring 2013, the Constitutional Amendment Drafting Committee began a broad public discussion and hearings. According to the national radio broadcaster *Voice of Vietnam*, more than 26 million public opinions on the draft amendments to the 1992 Constitution were collected and over 28,000 conferences and seminars on the issues were held until May 2013.<sup>56</sup> Broad public feedback was fed into the discussion of the National Assembly in this manner. Even reform-oriented intellectuals commented that “the constitution-making process in Vietnam now tends to be more open and participatory than in earlier eras”.<sup>57</sup> In line with this, public discussion concerning the role of the State, the Communist party and the restriction of human rights by means of Art. 15 No. 2 of the draft Constitution of 2013 (now Art. 14 No. 2, cp. Annex 1) has started and still goes on.<sup>58</sup>

53 The Constitution of 1992, note 46, Art. 9.

54 The Constitution of 1992, note 46, Art. 10.

55 *Nguyen Thi Huong*, Pursuing Constitutional Dialogue within Socialist Vietnam: The 2010 Debate, *Australian Journal of Asian Law* 13 (2012), p. 1.

56 *Voice of Vietnam (VoV)*, NA discusses draft constitutional amendments, <http://english.vov.vn/Politics/Domestic/NA-discusses-draft-constitutional-amendments/260795.vov> (last accessed 28 September 2013).

57 *Bui Ngoc Son*, Petition 72: The Struggle for Constitutional Reforms in Vietnam, <http://www.iccnecblog.com/2013/03/petition-72-the-struggle-for-constitutional-reforms-in-vietnam/> (last accessed 28 September 2013).

58 *Brad Adams* and *Human Rights Watch*, Vietnam: Amended Constitution a Missed Opportunity on Rights, <http://www.hrw.org/news/2013/12/02/vietnam-amended-constitution-missed-opportunity-rights> (last accessed 10 December 2013); *Nguyen Pham Muoi*, New Vietnam Constitution Cements Party Dominance, <http://blogs.wsj.com/economics/2013/11/29/vietnam-passes-amended-constitution-confirming-communist-party-leadership/> (last accessed 10 December 2013); *Voice of Vietnam (VoV)*, note 56; *Bui Ngoc Son*, note 57; *Viet Tan*, A Referendum on Vietnam’s Constitution or the Communist Party?, <http://www.viettan.org/A-Referendum-on-Vietnam-s.html> (last accessed 28 September 2013); *Le Nhung*, Draft Constitution modified significantly, <http://english.vietnamnet.vn/fms/government/71660/draft-constitution-modified-significantly.html> (last accessed 4 September 2013); *Hirschberg*, Vietnam Crony Communists Resist Constitution Backlash, <http://www.bloomberg.com/news/2013-04-07/vietnam-crony-communists-resist-constitution-backlash.html> (last accessed 4 September 2013); *Tran Van Vinh*, Menschenrechte und Bodenrecht im Entwurf der Verfassungsänderung, [http://www.thomas-schmitz-hanoi.vn/Downloads/DAAD-Workshop\\_Verfassungsgsreform\\_Trان-Van-Vinh.pdf](http://www.thomas-schmitz-hanoi.vn/Downloads/DAAD-Workshop_Verfassungsgsreform_Trان-Van-Vinh.pdf) (last accessed 4 November 2013); *Unicef*, [http://www.unicef.org/vietnam/media\\_20800.html](http://www.unicef.org/vietnam/media_20800.html) (last accessed 4 November 2013); *American Chamber of Commerce*, <http://www.amchamvietnam.com/wp-content/uploads/2013/04/130331-AmCham-Position-Paper-on-Draft-Constitution-FINAL.pdf> (last accessed 4 November 2013).

It is worth noting that a group of 72 senior scholars led by a constitutional law scholar and former Minister of Justice submitted a controversial petition to the Constitutional Amendment Drafting Committee in early 2013. This petition was known as Petition 72. It contained “radical proposals which dramatically challenge the substantial characters of the Vietnamese socialist constitutional order, particularly the leadership of the Communist Party, the principle of unity of power, and the state ownership of land”.<sup>59</sup> It suggested, for example, a competitive political system of different parties. This petition, as well as further online campaigns, collected some thousand signatures. In contrast, National Assembly Chairman claimed that 20 million comments had been collected, mostly supporting the draft from the Constitutional Amendment Drafting Committee.<sup>60</sup> So the destiny of Petition 72 was predetermined; wrestled from millions of supporters of the draft Constitution 2013 and justified with the principles of democratic decision making. But constitutional “law scholars and other reformists in this socialist nation now talk in the language of liberal constitutionalism. These are the beginning of the flickering hope of constitutional government in Vietnam”.<sup>61</sup> Nevertheless, at the very end of the amendment process, the draft was changed so that the inauguration of a *Constitutional Council* failed. According to the agenda, the new Constitution of 2013 was adopted from the National Assembly in October 2013. Finally, 98 percent of the members of the National Assembly voted for the government-sponsored draft – 90 percent of them are members of the Communist Party.<sup>62</sup> It seems that the new constitution is not a peoples’ constitution – it is rather an expression of the Communist Party and their latest policy decision.

### *III. Social protection in the new Constitution of 2013*

There are also general social protection provisions in the new Constitution of 2013, such as the well-being and prosperity of the people, an equitable society and a progressive education system (see below, annex 1). Interestingly, regarding social protection, the new Constitution of 2013 goes far beyond the former Constitution and its wording as it provides citizens, for the first time in the Constitutional history, the “right to social security”.<sup>63</sup> This is a real breakthrough. The broad provision of social security to all citizens is however immediately limited. According to Art. 59, the State shall create “equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support elderly people, people with disabilities, poor people, and other disadvantaged people.” This can be understood as a limitation and as a focus on certain vulnerable groups. As in the past, there is also a focus on families who are credited with national merits. In practice, it will depend on how the right to social security is understood in the society, in the Communist Party and in the National

59 *Bui Ngoc Son*, note 57.

60 *Viet Tan*, note 58.

61 *Bui Ngoc Son*, note 57.

62 *Brad Adams* and *Human Rights Watch*, note 58.

63 The Constitution of 2013, note 40, Art. 34.

Assembly. At this stage, it can be stated that the new constitutional right to social security may act as a driver for further social security efforts, social security policies and social security legislation in Vietnam. Furthermore, the new Constitution of 2013 proclaims a law-based state with enhanced checks and balances between the institutions. But in contrast, the inauguration of the new *Constitutional Council* failed at the end. Furthermore, the basic structures in Vietnam, in particular the role of the Communist Party and the mass organisations did not change in the new Constitution of 2013.<sup>64</sup> Because of this, it will be a long process until the law-based state and the right to social protection is really implemented sufficiently in Vietnam. This requires further reforms, in particular regarding the social insurance, which is subject of the following chapter.

### C. The reform of social insurance law in Vietnam

At first sight, the social insurance system in Vietnam, which is financed as a pay-as-you-go (PAYG) system, seems to meet favourable conditions. The Vietnamese population is still very young at 28 years on average, and life expectancy is relatively low at 70 years for men and 75 years for women.<sup>65</sup> It is, rather, the structural deficits which endanger the sustainability of the entire system. The reason for this is to be found not only in the shortcomings of the existing law, but more specifically in the deficits in implementing the law, as will be pointed out in this chapter. In the following, the existing social insurance law (I.), the draft social insurance law (II.) and the related future challenges (III.) will be highlighted.

#### I. Vietnamese Social Insurance Law

The Vietnamese Social Insurance law of 2006 is targeted, amongst others, at employers, employees and the social security administration.<sup>66</sup> It has three areas of application, namely compulsory social insurance, voluntary insurance and unemployment insurance.<sup>67</sup>

##### 1. Areas of application

###### a) Compulsory social insurance

In terms of legislative design, the scope of application of compulsory social insurance is broad. Not only are businesses obliged to contribute towards compulsory social insurance; so too are

64 The Constitution of 2013, note 40, Art. 4, Art. 9 et. seq.

65 *Central Intelligence Agency*, The World Factbook – Vietnam, <http://cia-world-fact-book.findthedata.org/v/1023/Vietnam> (last accessed 3 November 2013); *International Labour Organisation (ILO)*, Actuarial valuation of the public pension scheme of the Vietnam Social Security Fund, Hanoi 2013, p. 1.

66 Law on Social Insurance, note 22, Art. 1.

67 Law on Social Insurance, note 22, Art. 2 No. 1.

households, cooperatives, individual business households, and cooperative business groups, as well as other units and individuals who offer employment and pay wages.<sup>68</sup>

Compulsory social insurance is a broad employee's insurance, regardless of the institutional sector in which the worker is employed. In contradiction to its broad design, however, the prevalence in the practicality of compulsory social insurance is very limited. Less than 20% of the workers are covered by the scheme (see above, A.I.). One reason for this is that the personal area of application of compulsory social insurance narrows down its group of participants: It is targeted at the formally employed. The people covered are, for example, employees with a contract of three months and more, government officials, civil servants, employees of the National Defence and Public Security, military officers and soldiers.<sup>69</sup> It is a fact that a formal labour contract is not the norm, but rather an exception in Vietnam. Furthermore, labour inspection is weak. There are only around 130 inspectors supervising the myriad companies and business units countrywide. Labour inspection is a huge challenge as it comprises, amongst others, work safety, social security commitments, contributions, and contracts. Because of this, the existing sanctions and penalties, for example in the case of contribution evasion, only exist in theory.<sup>70</sup> Experience from developed countries clearly indicates that a functioning social insurance system depends on effective monitoring and appropriate deterrence via inspections and sanctions.

#### b) Voluntary insurance

Regarding its design, voluntary insurance is a subordinated category of insurance, as it is targeted at Vietnamese citizens of working age who are not covered by compulsory social insurance.<sup>71</sup> Voluntary social insurance thus poses an additional instrument of social insurance, for example for unpaid family workers, for the self-employed and for the short-term employed. Its impact is very small (see above, A. II.), which is why its design was discussed comprehensively in terms of access and attractiveness (cp. C. II. 2.).

#### c) Unemployment insurance

Unemployment insurance is addressed to the formally employed Vietnamese citizens either working under a labour contract of indefinite terms or of 12 to 36 months' duration, in cases where the employer employs 10 or more workers.<sup>72</sup>

68 Law on Social Insurance, note 22, Art. 2 No. 2.

69 Law on Social Insurance, note 22, Art. 2.

70 Cp. Law on Social Insurance, note 22, Art. 132-138.

71 Law on Social Insurance, note 22, Art. 2 No. 5, Art. 69.

72 Law on Social Insurance, note 22, Art. 2 No. 3, 4, Art. 80.

## 2. Eligibility criteria and benefits

### a) Compulsory social insurance

Compulsory social insurance covers five risks, namely illness, maternity leave, work accidents (and occupational disease), old age and survivorship. In the case of illness, employees receive up to 75% of their salary for between thirty days and seventy days, depending on their former contributions and their working conditions.<sup>73</sup> Should their children become ill, employees can also receive the benefits.<sup>74</sup> Maternity allowance amounts to 100% of the average monthly salary for up to six months.<sup>75</sup> Furthermore, a lump-sum allowance is provided for each child; this is equivalent to two months of the minimum salary.<sup>76</sup> With the compulsory social insurance, labourers suffering from a work accident or occupational disease enjoy several benefits, provisions and services such as a monthly allowance (between 30% and 100% of the minimum salary), a lump-sum allowance, required equipment (for example orthopaedic devices), an additional allowance, and paid leave.<sup>77</sup> Regarding old age pensions, the average retirement age is 60 years for men and 55 years for women. In certain dangerous occupations it is 50 to 54 years for men and 45 to 50 years for women.<sup>78</sup> In contrast to the law, the effective retirement age is around 53 years.<sup>79</sup> One fulfils the eligibility criteria if one has paid social insurance premiums for a full twenty years or more.<sup>80</sup> After 30 years of contributions (25 years for women) one achieves a replacement rate of 75% of their reference salary.<sup>81</sup> The ladder is calculated on the basis of the last five to ten years (in public sector) and the full working life in the private sector. One furthermore receives an additional lump-sum allowance after 30 years of contributions. The full contribution is currently 22%; employees bearing 8%. With the present public pension scheme and its low retirement age, especially for females, with its special early retirement arrangements for some groups of the population and with its high replacement rates, it is projected that the reserves of the fund will be depleted by the year 2034.<sup>82</sup> In the survivorship regime, one can claim a funeral allowance, a monthly survivorship allowance (from 50 to 70% of the minimum salary for each relative) or a lump-sum survivorship allowance.<sup>83</sup>

73 Law on Social Insurance, note 22, Art. 23, 25.

74 Law on Social Insurance, note 22, Art. 24.

75 Law on Social Insurance, note 22, Art. 29-33, 35.

76 Law on Social Insurance, note 22, Art. 34.

77 Law on Social Insurance, note 22, Art. 38-48.

78 Law on Social Insurance, note 22, Art. 50.

79 *Thuy Dung*, Higher retirement age needed for social insurance fund balance, <http://english.thesaigontimes.vn/Home/business/vietnam-economy/23029/> (last accessed 4 November 2013).

80 Law on Social Insurance, note 22, Art. 50.

81 Law on Social Insurance, note 22, Art. 52.

82 *International Labour Organisation (ILO)*, note 65, page ix, 23.

83 Law on Social Insurance, note 22, Art. 63-68.

## b) Voluntary insurance

Voluntary social insurance does not provide a comprehensive package of benefits. While compulsory social insurance covers five different risks, voluntary insurance only acknowledges two, namely old age and survivorship.<sup>84</sup> Furthermore, the insured persons have to bear the entire contribution. Its design does not appear attractive for its target audience, as the eligibility criteria for a regular pension may pose a barrier for social insurance participation. It comprises 20 years of contributions, as in the compulsory scheme. The retirement age is 60 years for men and 55 years for women. There are no exemptions for people in certain dangerous occupations. In contrast to compulsory social insurance for the public sector, the reference salary is calculated on the basis of the full working life. Similarly to compulsory insurance, after 30 years of contributions (25 years for women) the citizens achieve a replacement rate of 75%. They additionally receive a lump-sum allowance in the case that they have paid social insurance contributions for more than 30 years. A lump-sum allowance is also targeted at persons who do not fulfil their 20 years of contributions (instead of a monthly retirement pension, cp. Art. 73). Regarding survivorship, they can claim a funeral allowance and a survivorship allowance.<sup>85</sup> In the last few years, voluntary insurance has been discussed broadly from the point of view of access, inequalities and disincentives.<sup>86</sup>

## c) Unemployment insurance

Unemployed persons are entitled to unemployment insurance, amongst others, in the case that they have paid unemployment insurance premiums for a full twelve months or more within the twenty-four months before they became unemployed.<sup>87</sup> The monthly unemployment allowance is equivalent to 60% of the average monthly salary of six consecutive months before unemployment.<sup>88</sup> According to the period in which the premiums have been paid, the benefit will be paid from between three and twelve months.<sup>89</sup> Further benefits are vocational training support, job-seeking support, and health insurance.<sup>90</sup>

84 Law on Social Insurance, note 22, Art. 69-76 and Art. 77-79.

85 Law on Social Insurance, note 22, Art. 77, 78.

86 *Nguyen Thi Lan Huong, Luu Quan Tuan, Matthias Meissner, Bui Sy Tuan, Dang Do Quyen, Nguyen Hai Yen*, Social Protection for the Informal Sector and the Informally Employed, University of Bochum, Institute of Development Research and Development Policy, IEE Working Paper 199, 2013 p. 11, 16, 31, 57 (with further sources).

87 Law on Social Insurance, note 22, Art. 81.

88 Law on Social Insurance, note 22, Art. 82 No. 1.

89 Law on Social Insurance, note 22, Art. 82 No. 2.

90 Law on Social Insurance, note 22, Art. 83-85.

### 3. Frauds and sanctions

Chapter X comprises of forbidden acts such as non-payment or delayed payment of contributions and the falsification of documents.<sup>91</sup> The threatened penalties, sanctions and compensations are however not dealt with in detail. They depend “on the nature and severity”<sup>92</sup> of the violations; thus losing their deterrent impact and causing legal uncertainty. The small number of labour inspectors (see above, C.I.1.a) furthermore indicates that there is not yet any form of regular and operative labour inspection in place in Vietnam.

## II. *The draft Social Insurance law*

In the last years, different approaches and proposals for social insurance reform were discussed from the point of view of its coverage and its benefits.<sup>93</sup> The draft Social Insurance law from 2013 provides several changes regarding the compulsory social insurance, social insurance benefits and social insurance administration. The coverage of the social insurance system and the financial sustainability of the social insurance funds play a key role. The current draft Social Insurance law aims to meet these challenges.<sup>94</sup>

### 1. Area of application

On the one hand, the draft Social Insurance law broadens the subjects of application for compulsory social insurance, as it includes managers of companies or cooperatives, persons with household or family businesses, and trainees in certain institutions.<sup>95</sup> It is in this manner that the scope of compulsory social insurance and its financial base will increase. On the other hand, household employees shall be excluded from the Social Insurance law and also the area of unemployment insurance will be separated.

91 Law on Social Insurance, note 22, Art. 134-138.

92 Law on Social Insurance, note 22, Art. 138 No. 2.

93 Cp. *Nguyen Thi Lan Huong et. al.*, note 86, p. 12-14 (with further sources); *Paulette Castel and Minna Hahn Tong*, Vietnam: Developing a modern pension system – Current challenges and options for future reform, The World Bank, Washington D.C. 2012, p. 21-28, 29, 30; *Florence Bonnet, Michael Cichon, Carlos Galian, Gintare Mazelkaite, Valérie Schmitt*, Analysis of the Vietnam National Social Protection Strategy (2011-2020) in the context of Social Protection Floor objectives – A rapid assessment, ESS Paper No. 32, International Labour Office (ed.), ESS Extension of Social Security, Geneva 2012, p. 43; *Paulette Castel, Thanh Cong Gian*, Vietnam: Informality and social and health insurance issues, Vietnam’s Socio-Economic Development Review, Vietnam Institute of Economics – Vietnam Academy of Social Sciences, Hanoi 2010; *Paulette Castel*, Fiscal space for social protection policies in Viet Nam, in: Bauer and Thant (eds.), Poverty and Sustainable Development in Asia, Impacts and Responses to the Global Economic Crisis, Asian Development Bank 2010, p. 299, 309, 315.

94 The draft Law on Social Insurance of 2013, [http://duthaoonline.quochoi.vn/DuThao/Lists/DT\\_DU\\_THAO\\_LUAT/View\\_Detail.aspx?ItemID=771&LanID=772&TabIndex=1](http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DU_THAO_LUAT/View_Detail.aspx?ItemID=771&LanID=772&TabIndex=1) (last accessed 5 November 2013).

95 The draft Law on Social Insurance of 2013, note 94, Art. 2.



## 2. Retirement Age

The draft Social Insurance law maintains the requirement of 20 years of contributions as an eligibility criteria for an old age pension. From 2016 onwards, however, the retirement age in compulsory social insurance will be increased step by step until 62 for both men and women. Every 3 years the retirement age will be increased by one year.<sup>96</sup> This does not apply for privileged groups such as soldiers, personnel of the Peoples' Army or the police, who can claim the retirement pension from the age of 50 to 55 (men) or 45 to 50 (women) depending on their work conditions.<sup>97</sup>

## 3. Retirement pension

From 2016 onwards, the highest pension of 75% of the average monthly salary will be achieved step by step by up to 5 years later.<sup>98</sup> Thereafter, it will be achieved after 35 years of contributions for both men and women. As in the current situation, long-term insured persons receive an additional lump-sum allowance.

## 4. Design of voluntary social insurance

Also voluntary insurance was discussed in the last years and it was in particular the requirement of 20 years of contributions for a retirement pension that was identified as a negative incentive.<sup>99</sup> In spite of this, the draft Social Insurance law maintains the existing design of voluntary social insurance. As is currently the case, it will continue covering only two risks, namely old age and survivorship. There is also no change in the requirement of 20 years of contributions for a retirement pension. But the retirement age will be increased from 2020 onwards for one year every three years until the retirement age of 62 years is achieved for both men and women.<sup>100</sup> In the future, the replacement rate of 75% of the average monthly salary will be reached after 35 years of contributions for both men and women; long-term insured persons will receive an additional lump-sum allowance.<sup>101</sup>

96 The draft Law on Social Insurance of 2013, note 94, Art. 50 No. 2.

97 The draft Law on Social Insurance of 2013, note 94, Art. 50.

98 The draft Law on Social Insurance of 2013, note 94, Art. 52.

99 *Nguyen Thi Lan Huong et. al.*, note 86, p. 11, 29, 31 (with further sources); *Institute of Labour Science and Social Affairs*, Labour and Social Trends in Vietnam 2001-2011, Hanoi 2012; *Paulette Castel, Thanh Cong Gian*, Vietnam: Informality and social and health insurance issues, Vietnam's Socio-Economic Development Review, Vietnam Institute of Economics – Vietnam Academy of Social Sciences, Hanoi 2010.

100 The draft Law on Social Insurance of 2013, note 94, Art. 68.

101 The draft Law on Social Insurance of 2013, note 94, Art. 69, 70.

## 5. Frauds and sanctions

The draft Social Insurance law clearly mentions illegal actions, such as the evasion of social security contributions, the manipulation of documents or the delayed payment of contributions.<sup>102</sup> It furthermore threatens with administrative penalties, the claim for compensation and criminal prosecution.<sup>103</sup> As the draft law, however, does not substantiate the threat of penalty or punishment, the law itself will not provoke its deterrent force; thus showing very clearly that the legal provisions in the draft Social Insurance law to be insufficient. The major challenge is the institution of a regular and operative labour inspection in Vietnam.

### *III. Future challenges*

The future challenges of the overall social insurance system in Vietnam are manifold. This includes, on the one hand, the access to social insurance and the financial sustainability of the system. On the other hand, both the trust and acceptance of the people, of companies and of the institutions must be won. Finally, the appropriate law design and law implementation, for example by means of effective labour inspection, still needs to be addressed.

#### 1. Access to social insurance

The requirement of a labour contract of around three months, namely the door opener to compulsory social insurance, needs to be seen in connection with further formal requirements from the Labour Code (LC).<sup>104</sup> According to this code, a labour contract is to be signed in a written document with a specific content.<sup>105</sup> In the case of temporary work with a duration of less than 3 months, the relevant labour contract may be agreed to verbally.<sup>106</sup> There are also certain exceptions for employees working in the agriculture, forestry, fishery and salt industries.<sup>107</sup> The formal requirements of the Social Insurance law and the Labour Code may pose a hurdle in the drawing up and signing of a labour contract. In this manner, the formal requirements may exclude employers and employees from the compulsory social insurance.

102 The draft Law on Social Insurance of 2013, note 94, Art. 16.

103 The draft Law on Social Insurance of 2013, note 94, Art. 117.

104 Labour Code, Law No. 10/2012/QH13, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/9165/0/106402/F-1475261172/VNM91650%20Eng.pdf> (last accessed 5 November 2013).

105 Labour Code, note 104, Art. 16, 23: The labour contract must include the following contents: a) The name and address of the employer or the legal representative; b) The full name, date of birth, gender, residence, ID number or other legal papers of the employee; c) The work and work location; d) The labour contract term; the salary, method of salary payment, salary payment term, allowance and other additional payments; e) The grade increase, salary increase regime; g) The working hours, break time; h) The labour protection equipment for the employee; i) Social insurance and medical insurance; k) The vocational training and improvement courses.

106 Labour Code, note 104, Art. 16 No. 2.

107 Labour Code, note 104, Art. 23 No. 3.

Due to the huge number of informal sector workers or informally employed persons, the legal system needs to provide incentives and solutions for formalisation. A first step towards this could be to extend the existing exceptions from the formal requirements also to informal sector workers, or to provide them with simple examples of labour contracts.

## 2. Equality

The exclusion from compulsory social insurance can be seen as the discrimination of workers without a formal labour contract and short-term or seasonal workers. It seems that the long-term and formally employed are privileged in further fields: Employees in compulsory social insurance are not only eligible for illness benefits, maternity leave benefits, employment injury and occupational disease benefits, old age benefits and survivor's benefits.<sup>108</sup> They additionally benefit from further extra-provisions such as child care benefits (to look after a sick child, Art. 24), health rehabilitation after sick-leave (Art. 26) or after giving birth (Art. 37) and helper benefits (Art. 46). In contradiction, employees in voluntary social insurance are only eligible for old-age benefits and survivor's benefits.<sup>109</sup> Because of this, we discover a multiple-discrimination of workers without a formal labour contract and short-term or seasonal workers.

## 3. Financial sustainability

The financial sustainability of the social insurance funds can only be achieved if the income and the expenditure are balanced in the long-term. With fewer young workers in the future and a generous pension formula, the pension fund will be in jeopardy unless urgent measures are introduced in the reform.<sup>110</sup> For this, further steps are necessary. The draft Social Insurance law is one first step in this regard and yet remains insufficient. In order to ensure the long-term solvency of the social security fund, it is recommended that the retirement age should be gradually increased to 65 for both men and women.<sup>111</sup> Due to the imbalance of benefits between civil servants and private-sector workers, the civil servants' reference period for the calculation of wages should be prolonged to the working-life average (instead of the last ten years average). The private-sector reference wage should be calculated by using the revaloured wages in line with the average wage increase instead of going by current inflation.<sup>112</sup>

## 4. Trust and acceptance

The existing addition of the periods of coverage from the compulsory and voluntary scheme is a reasonable provision for workers who switch from the formal to the informal sector or

108 Law on Social Insurance, note 22, Art. 4 No. 1.

109 Law on Social Insurance, note 22, Art. 4 No. 2.

110 *International Labour Organisation (ILO)*, note 7.

111 *International Labour Organisation (ILO)*, note 65, p. 28.

112 *International Labour Organisation (ILO)*, note 65, p. 28.

vice versa. It needs to be stated, however, that the minimum period of coverage of 20 years of contributions for a regular pension most likely excludes people in the informal and agricultural sector from both social insurance participation and from regular benefits. Many of them do not have long-term employment or a regular income and are dependent on unpaid, short-term or seasonal work. A minimum period of coverage of 10 or rather 5 years of contributions for a regular pension would open up the opportunity to fulfil these criteria even if their entire working life consists of unpaid family work and short-term or seasonal paid work. For this, however, also employment under a labour contract with a time duration of less than three months would need to be acknowledged.

## 5. Law design and law implementation

The analysis of the Vietnamese Social Insurance law shows that there are two main areas for state intervention in order to improve the coverage and the acceptance of the social insurance system: On the one hand, this consists of effective legal provisions, such as provisions that attract people to join the schemes (incentives), provisions for equal access to compulsory social insurance as well as provisions for the equal design of both compulsory and voluntary insurance. In this regard, a further revision of Social Insurance law seems to be needed. On the other hand, it comprises effective labour inspection and the monitoring of employers with the objective of integrating uninsured employees into the compulsory social insurance.

The Social Insurance law clearly states that the government is in charge of encouraging people and in creating favourable conditions for agencies, organisations and individuals to join social insurance.<sup>113</sup> It is the mutual task of the state, the trade unions, and the employer's organisations to disseminate information regarding the Social Insurance law.<sup>114</sup> It remains without question that it requires mutual efforts to raise the acceptance of social insurance and to achieve a broad coverage of social insurance schemes including informal workers and the informally employed. Because of this, all involved stakeholders, for example from the state, the trade unions, and the employer's organisations should strive for a broad social insurance implementation. What is the role of development cooperation in this regard? The next chapter will shed light on this.

## D. The contribution of institutions of German development cooperation

Social protection is regarded as the key element of any strategy aimed at combating structural poverty, which is why it is an overall objective of the German institutions of development cooperation engaged in Vietnam.<sup>115</sup> The German strategy is to help develop and build up

113 Law on Social Insurance, note 22, Art. 6 No. 1.

114 Law on Social Insurance, note 22, Art. 7 No. 4, Art. 11 No. 2 b), Art. 12 No. 2 a.

115 *The Federal Ministry for Economic Cooperation and Development (BMZ)*, Issues – Social protection, [http://www.bmz.de/en/what\\_we\\_do/issues/soziale\\_sicherung/index.html](http://www.bmz.de/en/what_we_do/issues/soziale_sicherung/index.html) (last accessed 5 November 2013).

broad, inclusive and sustainable social protection systems in order to protect all parts of the population, especially the poor, against all relevant risks.<sup>116</sup> At an international level the German Federal Ministry for Economic Cooperation and Development cooperates with international organisations such as the International Labour Organisation, the Organisation for Economic Co-operation and Development, the World Health Organisation, the European Union and the World Bank.<sup>117</sup> Furthermore, the bilateral development cooperation's approach of promoting social protection principally involves policy dialogue, advisory services delivered by experts, training for local experts and financial inputs. In 2012, the measures Germany implemented in the area of social protection received a total of some 150 million euros in funding (worldwide).

In Vietnam, German institutions contribute to social protection and health mainly via technical cooperation (I.) and human capacity development (II.). Furthermore, political foundations play a certain role in the political and social dialogue (III.).

### *I. Technical cooperation*

By means of technical cooperation, the German Government agency GIZ cooperates, amongst others, with the *Ministry of Labour, Invalids and Social Affairs* (MoLISA) and its *Institute for Labour Science and Social Affairs* (ILSSA). In line with the project *Support for Poverty Reduction*, local partners in poor provinces (Dak Lak, Hoa Binh and Thanh Hoa) were supported in order to develop approaches for local economic development, social protection, and local poverty monitoring.<sup>118</sup> Furthermore, the project focused on the reform of the social protection system and the efficient implementation of national poverty reduction programmes in the poorest districts. The project was carried out through GIZ (on behalf of the German Federal Ministry for Economic Cooperation and Development) from 2006-2012. The currently running follow-up project *Advice on social protection* aims to improve the development and implementation of a holistic and coherent social protection system.<sup>119</sup> It is focused on capacity development for evidence-based policy design and the modernisation of the social assistance system. The ladder entails, for example, the implementation of alternative social cash transfer payment models (via post offices) and micro insurances for poor people (via communal social risk funds).

116 *The Federal Ministry for Economic Cooperation and Development (BMZ)*, Sector Strategy on Social Protection, Strategies 190, Bonn 2009 p. 4, [http://www.bmz.de/en/publications/type\\_of\\_publication/strategies/konzept190.pdf](http://www.bmz.de/en/publications/type_of_publication/strategies/konzept190.pdf) (last accessed 5 November 2013).

117 *The Federal Ministry for Economic Cooperation and Development (BMZ)*, Social protection – The German contribution: Policy dialogue, advisory services, financial support, [http://www.bmz.de/en/what\\_we\\_do/issues/soziale\\_sicherung/deutsches\\_engagement/index.html](http://www.bmz.de/en/what_we_do/issues/soziale_sicherung/deutsches_engagement/index.html) (last accessed 5 November 2013).

118 *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*, Support for Poverty Reduction, <http://www.giz.de/themen/en/18211.htm> (last accessed 24 October 2013).

119 *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*, Advice on social protection, <http://www.giz.de/en/worldwide/18577.html> (last accessed 5 November 2013).

## II. *Human Capacity Development*

There are various human capacity development instruments deployed by German institutions in Vietnam, including further training or professional support (via integrated experts or development workers). Of these, the *International Leadership Training* (ILT) Social Security plays a key role.<sup>120</sup> The training programme is targeted at young professionals from social security sectors in Vietnam, Indonesia, the Philippines and Cambodia (e.g. ministries, institutions and carriers from the social security sector). The modularised training with a duration of up to 12 months consists of theoretical, practical as well as online training phases regarding the design and implementation of sustainable social protection systems. Furthermore, management, steering and governance skills are covered. One very important pillar in this specific training programme is the three to four months practical training phase within a company, institution or organisation. Until now, more than 100 participants have attended the ILT Social Security and/or the additional blended e-learning course “*Pension Systems in Southeast Asia*”. BMZ just commissioned a follow-up programme for the period 2014 to 2016. In line with a strong regional approach, with partner institutions from Vietnam, Indonesia, the Philippines, Cambodia and Lao, young professionals will be trained theoretically and practically (with a focus on social protection and public sector management). The training phases will be carried out in Germany and in the region and will also include flexible e-learning modules.

## III. *Political foundations*

The German political foundations play an important role in the social dialogue in Vietnam. Regarding the development of the social protection system in general, as well as the enhancement of social protection for informal sector workers, *Hanns-Seidel-Stiftung* cooperates with MoLISA and ILSSA.<sup>121</sup> By means of conferences, research projects, publications and study trips, both theoretical and practical knowledge is provided to key stakeholders in the political and social dialogue. The *Friedrich-Ebert-Stiftung* carries out similar activities focused on occupational health and safety, collective bargaining mechanisms and tripartism, amongst others.<sup>122</sup> Through seminars, the *Konrad-Adenauer-Stiftung* has contributed to the understanding of the concept of social market economy.<sup>123</sup> The *Rosa-Luxemburg-Stiftung* on the other hand works, amongst others, on the fields of social justice, on administrative law reform

120 *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*, Global Campus 21, ILT Social Security, <https://gc21.giz.de/ibt/gc21/area=portal/style=myso/paint=myso/en/usr/modules/gc21/w-s-FLEXportal-socialsecurity/info/ibt/programm.sxhtml> (last accessed 5 November 2013).

121 *Hanns-Seidel-Stiftung*, Our work in Vietnam, <http://www.hss.de/southeastasia/en/vietnam.html> (last accessed 5 November 2013).

122 *Friedrich-Ebert-Stiftung*, Social Policy and Labour Rights, <http://www.hss.de/southeastasia/en/vietnam.html> (last accessed 5 November 2013).

123 *Konrad-Adenauer-Stiftung*, About Us, <http://www.kas.de/vietnam/en/about/Foundation> (last accessed 5 November 2013).

and on improved living conditions for people living in precarious circumstances.<sup>124</sup> The political foundations work with stakeholders from public, from private and from the civil-society sector. It is in this manner that they contribute towards the development of an inclusive and sustainable social protection system in Vietnam.

## E. Outlook

As an emerging economy with increasing integration into world trade, Vietnam will be increasingly exposed to global economic downturns and external economic shocks. Furthermore, the country's overall socio-economic development and changes in family structures will yield new risks, such as those facing migrant workers who do not live with their parents or families. In the future, the overall social protection system will have to target these new risks and new groups. Accordingly, there are many reform and revision processes currently running in Vietnam. The highlighted new Constitution and the revision of the Social Insurance Law is a fractional amount of these processes. It can be stated that Vietnam is on the way towards a law-based state with a law-based social insurance system. Huge parts of the social protection system are nevertheless not yet based on laws. The overall social protection system is still determined by programmes, decrees, orders and decisions. This is a huge challenge for the development of a law-based state. Furthermore, the understanding of the laws, in particular the social protection terms, varies largely on all levels (horizontally) and also between the institutions from a central to a local level (vertically). Finally, the role of the Communist Party and the mass organisations in Vietnam did not change in the new Constitution. Because of this, it will be a long process until a law-based state is implemented in Vietnam.

Further revision of Social Insurance law seems to be needed, in particular provisions that attract people to join the schemes (via incentives), provisions for equal access to compulsory social insurance and provisions for its financial sustainability. Finally, the appropriate law implementation, for example by means of effective labour inspection with the objective of integrating uninsured employees into the compulsory social insurance, still needs to be addressed. The preferential treatment of people with national merits, which is also stated in the new Constitution of 2013, is one characteristic element of social protection in Vietnam. The special honour of people who have contributed to their country or to the revolution should not be denied. However, benefits for people with national merits remain much higher than common social assistance benefits. This can be discussed from the point of view of equality in Vietnam. It could be justified with the certain need of veterans, war invalids or people who contributed to the revolution. On the other hand, the system of preferential treatment can also be abused in order to privilege people who lived close to the Party and the State. It would be more equitable to tie social assistance benefits to the personal needs of the respective person.

124 *Rosa-Luxemburg-Stiftung*, Rosa Luxemburg Stiftung Hanoi Office, [http://www.rosalux.vn/index.php?option=com\\_content&view=article&id=66&Itemid=97&lang=en](http://www.rosalux.vn/index.php?option=com_content&view=article&id=66&Itemid=97&lang=en) (last accessed 5 November 2013).

Such a system would give the opportunity of acknowledging certain needs of war invalids, but also to others with certain social assistance needs.

The new constitutional right to social security is a real breakthrough. It may act as a driver for further social security efforts, for social security policies and for social security legislation in Vietnam. It remains to be seen in practice whether this provision will be filled with life or if it will be just poetry. The ambitious development goals of the Communist Party, in particular regarding the social policies mentioned in Resolution No. 15, will require further economic, social, administrative and legal reforms from the central to the local level. It is the public governance, the law implementation and the public administration which needs to be improved in order to increase social insurance coverage, in order to collect social security contributions from employers and employees, and in order to collect taxes from all wealthy citizens; as any social protection system can only redistribute what was generated and already paid.

*Annex 1 Synopsis with selected legal provisions for social protection from the point of view of the Vietnamese Constitution of 1992 and the Constitution of 2013<sup>125</sup>*

| <b>Article from the Constitution of 1992<br/>(amended in 2001)</b> |   | <b>Article from the new<br/>Constitution of 2013</b> |  |
|--|---|--|--|
| 3  | “The state ensures and constantly fosters the people’s rights in all spheres, realises the targets of building a prosperous life for its people, (...) and an equitable, (...) society”<br>“ensuring the well-being, (...) of all citizens as well as conditions for their all-round development” | 3  | The State shall guarantee and promote the People’s right to mastery; recognize, respect, protect and guarantee human rights and citizens’ rights; and pursue the goal of a prosperous people and a strong, democratic, equitable and civilized country, in which all people enjoy an abundant, free and happy life and are given conditions for their comprehensive development. |

125 The highlighted Articles from the Constitution of 1992 (amended in 2001) are citations from the official English translation of the Vietnamese Constitution, cp. The Constitution of 1992, note 46. The Articles from the new Constitution of 2013 are from Vietnam Law & Legal Forum, a division of Vietnam News Agency (not an official translation), cp. The Constitution of 2013, note 40.



| Article from the Constitution of 1992 (amended in 2001) |  | Article from the new Constitution of 2013 |   |
|---|--|---|---|
| 50  | “human rights in all respects, political, civic, economic, cultural and social are respected, (...)”   | 14  | 1. In the Socialist Republic of Vietnam, human rights and citizens’ rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law.<br>2. Human rights and citizens’ rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being. |
| 56  | “The state determines the work time and provisions regarding salary, rest and social insurance for public employees and other salary-earners; encourages other forms of social insurance for the workers.” | 34  | “Citizens have the right to social security.”   |
| 58  | “Citizens have the right to ownership of lawful income, (...), housing (...)”  | 32  | 1. Everyone has the right to ownership of his or her lawful income, savings, housing, chattels, means of production and capital contributions to enterprises or other economic entities (...).  |
| 59  | “Education is right and obligation of citizens.”<br>“Primary education is to be compulsory and free of charge.”  | 61  | 1. To develop education is a top national policy that aims to increase public intellectual standards, develop human resources, and nurture talented people (...).   |
| 61  | “Citizens are entitled to health care.”  | 38  | 1. Everyone has the right to health protection and care, and to equality in the use of medical services, (...).   |
| 64  | “The State protects marriage and the family.”<br>“The family is the nucleus of society.”<br>“Children have an obligation to respect and care for their grand-parents and parents.”                         | 36  | 2. The State shall protect marriage and the family, and protect the interests of mothers and children.  |

| Article from the Constitution of 1992<br>(amended in 2001) |  | Article from the new<br>Constitution of 2013 |   |
|--|--|--|---|
| 40<br>,<br>65<br>,<br>66                                   | <p>“The State, society, the family and all citizens have the obligation to give protection and care to mothers and children and to implement the population and family planning programme.”</p> <p>“The State, society and the family are responsible for the protection, care and education of children.”</p> <p>“The State, society and family create favourable conditions for the studies, work and recreation of young people and for the development of their intellectual faculties and physical fitness (...).”</p>                                  | 37   | <p>1. Children shall be protected, cared for and educated by the State, family and society; children may participate in child-related issues. Harassing, persecuting, maltreating, abandoning or abusing children, exploiting child labor or other acts that violate children’s rights are prohibited.</p> <p>2. Young people shall be provided by the State, family and society with the conditions for learning, working, entertaining themselves, and developing their physiques and minds, and be educated in morality, national traditions and civic consciousness; and shall take the lead in the cause of creative labor and national defense (...).</p> |
| 67   | <p>“The State grants preferential treatment to war invalids, sick soldiers and families of fallen combatants, creates conditions for the rehabilitation of disabled soldiers' working ability, to help them find employment suited to their health conditions and lead a stable life. Persons or families who have rendered services to the country shall be commended and rewarded and shall receive proper attention.”</p> <p>“Old people, disabled persons and orphans with no family support are entitled to assistance from the State and society.”</p> | 59   | <p>1. The State and society shall honor, commend, reward, and implement preferential treatment policies to, people who have rendered meritorious service to the country.</p> <p>2. The State shall create equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support elderly people, people with disabilities, poor people, and other disadvantaged people.</p> <p>3. The State shall adopt housing development policies and create the conditions for everyone to have his or her own home.</p>   |