

Business and Human Rights in the ASEAN Region

VIETNAM

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Organization of Presentation

1 UN Framework

2 Domestic Legal Framework

3 Law Enforcement

4 Implementation of Int'l Commitments

5 Conclusion

Issues to be covered: Labor, Environment and Land

The UN Framework in Vietnam

- No official statement has been made by the Government, the National Assembly or the Courts regarding the “Protect, Respect and Remedy” Framework and the Guiding Principles on Business and Human Rights

- In two seminars organized by the Vietnam Academy of Social Sciences in 2012, participants discussed a broad range of issues, including the Framework and the Guiding Principles and called for awareness-raising and implementation of the Framework and the Guiding Principles in Vietnam.

Domestic Legal Framework

In Vietnam, the major source of law is written legislations, commonly referred to as “legal normative documents” (2008 Law on Promulgation of Legal Normative Documents)

Legal documents: Constitution; laws; NA resolutions; NASC ordinances and resolutions; President’s orders and decisions; Government decrees; PM decisions; and legal documents of state agencies and People’s Councils and People’s Committees.

There is a periodic review and assessment mechanism of legal documents, according to which those proven wrong or no longer appropriate shall be amended, revised, replaced or abolished.

The body of national law is currently made up of more than 13,000 legal documents, including those that require business enterprises and individuals to avoid causing or contributing to adverse HRs impact through their activities.

Domestic Legal Framework

“State Duty to Protect” in the 1992 Constitution (revised in 2001)

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The Government has the duty to take measures to protect the legitimate rights and interests of citizens and create conditions for them to exercise their rights and fulfill their obligations (Art 112).

*

If people’s rights are violated, they have the right to lodge complaints and denunciations with competent authorities against the violations committed by state organs, social or economic organizations, or individuals (Art 74)

*

All acts violating State interests, citizens’ rights and legitimate interests shall be dealt with severely in time. Those suffering loss and injury shall be entitled to damages for any material harm suffered and his reputation rehabilitated (Art 74)

Examples of Provisions Requiring Business Enterprises to Prevent or Mitigate HR Impacts

Labor: 2012 Labor Code

- Employers are responsible for evaluating, improving and ensuring health and safety conditions and providing health care for the employees (Art 138);
- Employers are responsible for organizing periodic health checks for employees and ensuring that employees working at places exposed to risks shall be provided with detoxification or disinfection measures (Art 152);
- Employers are not allowed to employ a female employee from her seventh month of pregnancy (or sixth month in remote areas) (Art 155).

Environment: 2005 Environmental Law

- Enterprises have to register with local committees written environmental protection commitments (Art 24);
- Project owners are required to submit an elaborate strategic environmental assessment report or environmental impact assessment report which includes opinions of the local Committee and local communities where the project is located (Art 14 & 18);
- After being appraised and approved, EAR must be publicly posted at project sites information for local communities to know, inspect and supervise (Art 32).

Land: 2003 Land Law

- Enterprises' use of land must not be harmful to the legitimate rights and interests of other land users (Art 107);
- Organizations/individuals who use land for business activities must comply with the detailed land-use, urban or rural planning and regulations on environment protection. They must take measures so as not to cause damage to land users in the areas and nearby regions (Art 93).
- Upon the completion of mineral exploration or exploitation, they must return the land strictly in the state prescribed in the land lease contracts (Art 94).

Liabilities for Breaches of Laws

Civil

Under 2005 Civil Code, a legal person that fails to perform/performs improperly his obligation must bear civil liabilities to the other party of the contract (Art 302), including the liabilities to compensate for material and mental damage (Art 307).

Administrative

Under the 2002 Ordinance on Sanctioning Administrative Violations, individuals and organizations committing violations prescribed by law which do not constitute crimes, must be held accountable and face administrative sanctions. i.e., warnings and fines (Art 2). All consequences caused by acts of administrative violation must be remedied by violators (Art 4).

Criminal

Legal persons such as business enterprises do not bear criminal liability. Article 2 of the 1999 Criminal Code (amended in 2009) states that only individuals who commit crimes defined by the Criminal Code shall bear criminal liability. The Criminal Code is expected to be reviewed and amended.

Examples of Administrative Sanctions Imposed on Violations

Labor: Decree 47/2010/ND-CP

- A fine of up to VND 10,000,000 shall be imposed on employers failing to install equipment to ensure labor safety Art 18);
- Fines shall be imposed on employers failing to provide compensation for employees involving dangerous elements or pay compensations to those suffering occupational accidents/diseases (Art 19);
- Fines shall be imposed on employers discriminating against employees join trade unions (Art 15).

Environment: Decree 117/2009/ND-CP

- A fine of between VND 200,000,000-300,000,000 shall be imposed for not submitting EIA reports for approval (Art 8);
- A fine of between VND 80,000,000-120,000,000 shall be imposed for not applying measures to remedy environmental pollution (Art 15);
- Fines shall be imposed for failing to on the completion of environmental protection measures under the approved schemes (Art 9).

Land: Decree 105/2009/ND-CP

- Acts of degrading land quality, polluting land re subject to a fine of between VND 500,000-500,000,000 (Art 9);
- Acts of encroaching upon or appropriating land within the safety protection corridors of works, land within urban areas, land with historical-cultural vestiges, scenic places protected by provincial People's Committees are subject to a fine of between VND 2,000,000-500,000,000 (Art 9).

Steps taken to Enforce Laws and Prevent and Redress Business-related HR Violations

1

Vietnam does not have a NHRI or a state agency specifically tasked with the responsibility to prevent and redress business-related HR violations.

2

Instead, different agencies are responsible for different issues related to BHR: labor rights (MOLISA), land rights (MONRE), environment (MONRE).

3

These agencies do their job by (i) raising awareness about the laws; (ii) drafting documents guiding law implementation; (iii) managing, directing, monitoring, inspecting and reviewing the implementation of laws at the central and local levels.

Non-binding Measures to Foster Corporate Cultures Respectful of HR



Labor

- MOLISA – VCCI Awards on Corporate Social Responsibilities in the Footwear and Textiles Industry.
- Annual national Corporate Social Responsibility Awards to honor enterprises with greatest contributions in the two areas of environment and labor.



Environment

- Enterprises conducting environmental protection activities such as manufacturing environmentally friendly products, applying environmentally friendly technologies, etc. are eligible for enterprise income tax incentives.
- Expenses for activities to raise public awareness about environment shall be accounted for as production costs.



- Environmental Protection Awards are presented biennially to individuals, organizations/ enterprises with outstanding records in environmental protection.
- Hot-lines are established for enterprises and people to contact MONRE about land rights issues.
- Brochures, CDs and CD-ROMs on Land Law.

Enforcement

Labor

- A system of labor inspectorates has been established. 2,394,000 cases of violations have been handled with the fine amount of VND 18,000 billion.
- Number of labor inspectorates, however, remains limited (300 inspectorates). Currently, labor inspectorates could inspect merely 3.4% of the total number of enterprises.


Environment

- In 2009-2011, MONRE inspectorates conducted inspections in 1,703 enterprises and industrial zones, imposing a total amount of fines at VND 59.837 billion.
- There have been cases where local authorities failed to adopt and implement local regulations on EP or timely detect and address serious damage to the environment caused by business activities.

Land

- From 2005 to 2010, MONRE sent working missions to 64 provinces, 160 districts, 159 communes, 500 enterprises, meeting with more than 20,000 people to monitor the implementation of the Land Law.
- In 2009-2011, nearly 2,000 complaints and denunciations, involving mostly land clearance and land return, were submitted to Government Inspectorate.
- Large number of complaints about land rights violations reveals problems in land law enforcement.


Implementation of International Commitments



Multilateral
HR treaties



ILO Conventions



Bilateral
treaties

Implementation of International Commitments

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A

Status of treaties

B

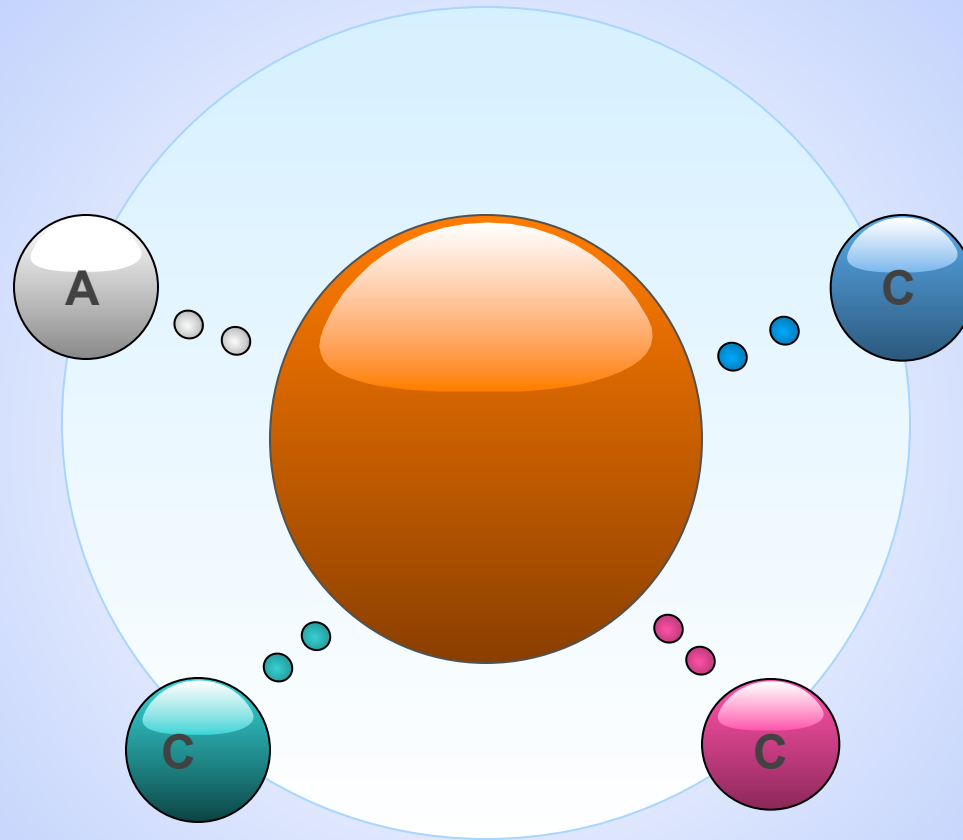
Direct application

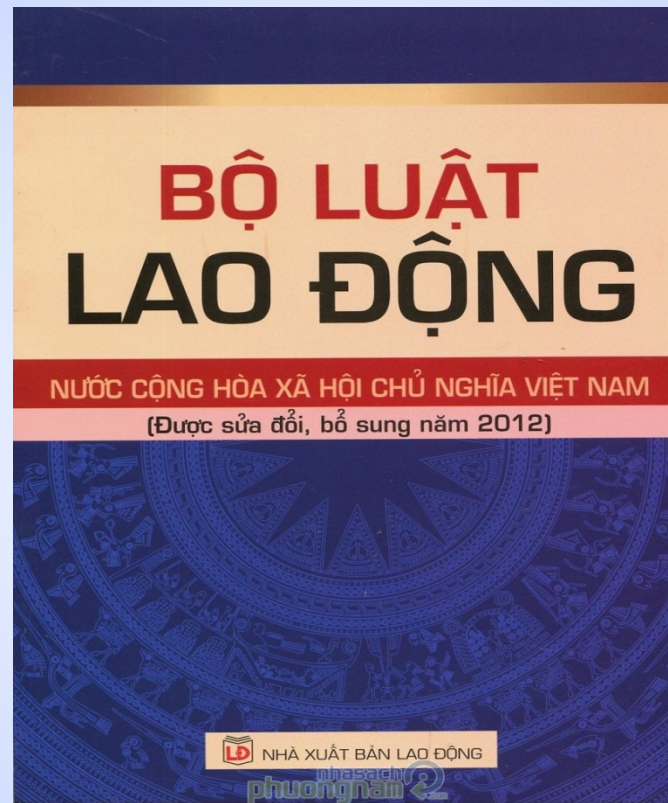
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Implementation plan,
implementation report

D

Challenges





Thank you!

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