



International
Labour
Organization

The background is a collage of three images: a harbor with many small fishing boats, two young girls in white shirts and red scarves making peace signs, and two fishermen in a small boat pulling a large net from the water.

Viet Nam social security legal reform: **AN INTEGRATED FRAMEWORK**



International
Labour
Organization

VIET NAM SOCIAL SECURITY LEGAL REFORM: AN INTEGRATED FRAMEWORK

Professor Marius Olivier*

** Director, International Institute for Social Law and Policy (IISLP); Adjunct-Professor, Faculty of Law, University of Western Australia (UWA), Perth, Australia; Honorary Professor, Faculty of Law, Nelson Mandela University (NMU), Port Elizabeth, South Africa; and Extraordinary Professor, Faculty of Law, North-West University (NWU), Potchefstroom, South Africa*

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publishing (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your count

Viet Nam Social Security Legal Reform: An integrated framework

ISBN: 9789220343135 (Web PDF)

Also available in Vietnamese,

Cải cách pháp luật về An sinh xã hội ở Việt Nam - Khung pháp lý tích hợp

ISBN: 9789220343180 (Web PDF)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Contents

Executive summary	9
Abbreviations	12
1. Purpose of report	13
2. Background.....	14
3. Conceptual and normative framework challenges	16
3.1 Conceptual context	16
3.2 Social security goals and reform objectives.....	22
3.3 Normative framework.....	23
3.3.1 <i>Constitutional context.....</i>	<i>23</i>
3.3.2 <i>International standards</i>	<i>24</i>
3.4 Governance arrangements: The management of social security	28
3.4.1 <i>Guiding principles, international standards and comparative perspectives</i>	<i>28</i>
3.4.2 <i>Good governance considerations.....</i>	<i>29</i>
3.4.3 <i>Current challenges in the Vietnamese governance framework: The need for legislative improvement and recent proposals supporting improvement.....</i>	<i>31</i>
3.4.4 <i>Tripartism and beyond: Consultation, voice and representation</i>	<i>33</i>
3.4.5 <i>Complaints and appeals.....</i>	<i>36</i>
4. Towards an integrated social security system.....	39
4.1 Policy development.....	39
4.2 Institutional coordination.....	42
4.3 Legal fragmentation.....	47
4.3.1 <i>The value of a legal framework</i>	<i>47</i>
4.3.2 <i>Viet Nam: A fragmented and uncoordinated legal framework.....</i>	<i>48</i>
4.3.3 <i>The need for a legal framework that is consolidated and integrated.....</i>	<i>51</i>
4.3.4 <i>Strengthening compliance with the legal framework.....</i>	<i>53</i>
5. The importance of universal and multi-tiered approaches: Viet Nam	56
5.1 Achieving comprehensive social security linked to universal and multi-tiered approaches.....	56
5.2 Social health insurance.....	57
5.3 Multi-tiered pension reform.....	60

6. Extending coverage	64
6.1 Key coverage gaps.....	64
6.1.1 Levels of coverage	64
6.1.2 Legal exclusions and shortcomings	65
6.1.3 Other challenges impacting on coverage.....	70
6.1.4 International standards and constitutional considerations	70
6.1.5 Resolution 28 and the MPSARD vision and objectives	71
6.1.6 Next steps, including in relation to legal and policy reform	73
7. Improving the scope and adequacy of the benefit regime	75
8. Implementing social security legal and institutional reform and system integration.....	80
8.1 Implications of not undertaking integrated and holistic reform of the Vietnamese social security system	80
8.2 Implementing social security reform.....	81
8.2.1 Comparative examples	81
8.2.2 Social protection reform in Viet Nam: Key reform dimensions.....	86
8.2.3 Social security reform in Viet Nam: Institutional framework, mandate and process.....	87
9. Recommendations	91
Sources	96
Appendix I: Stakeholders consulted.....	108
Appendix II: Survey of international approaches to social security administration....	109
Appendix III: Good governance principles: ISSA guidelines	111
Appendix IV: Governance of social security systems: A guide for board members in Africa – ILO publication	116

Boxes

Box 1: The mixed character of modern social security schemes	6
Box 2: Good governance principles relating to social security institutions.....	22
Box 3: Key principles for resolving social security disputes.....	30
Box 4: Key deficiencies in the current social security policy framework in Viet Nam.....	34
Box 5: High-level indicative scope of a social protection policy/strategic framework	36
Box 6: National Social Protection Council (Cambodia).....	41
Box 7: Why social security should be embedded in sound national legislation	42
Box 8: Implementing appropriately calibrated/aligned multi-tiered social security benefits in Viet Nam	54
Box 9: Key lessons from Vietnamese social health insurance	56
Box 10: Key legal and policy reforms need to enhance coverage.....	73
Box 11: Key lessons from social security reform experiences in other jurisdictions.....	83
Box 12: Reform of the Japanese social security system	84
Box 13: Social security policy and legal reform in India	85
Box 14: A comprehensive system of social security for South Africa	86

Tables

Table 1: Key targets of MPSIR and MPSARD	72
---	----

Executive summary

Background

In Viet Nam, the social security system, comprising both contributory and non-contributory elements, has gradually expanded over the years and made remarkable progress. Two recent instruments inform the direction, scope and breadth of the Vietnamese social security system, and in particular its reform: Party Resolution 28 on Social Insurance Policy Reform (2018) and the Master Plan on Social Assistance Reform and Development (MPSARD) (2017), adopted by the Ministry of Labour – Invalids and Social Affairs (MOLISA), that sets out the Government’s ambitions for expanding the country’s social assistance system as well as the social pension. Yet major challenges, which affect the legal framework, remain.

The need for a legal framework that addresses current shortcomings

Social security should be embedded in sound national legislation for important reasons, including effective supervision, the allocation of the required state funding in the case of non-contributory benefits, certainty and predictability, sustainability, accountability and protection against arbitrary decision-making. Shortcomings in the current legal regime include the absence of family benefits in the contributory framework and the limited range of benefits in the voluntary social insurance scheme. The legal system deals with contributory and non-contributory frameworks as two stand-alone frameworks; the current diversity of legal instruments cements the fragmentation. Also, social security risk areas and benefits are scattered across several pieces of legislation, with unhealthy overlaps and inconsistencies in the legal regulation. Social assistance in particular lacks a sufficient rights-based framework of protection, and different legal definitions apply to key concepts, impacting negatively on the personal sphere of application in particular. Social insurance laws may not be properly aligned with labour law provisions. There is, therefore, a need for an appropriate legal framework, possibly in the form of a consolidated law: Key components of the social security system should be reflected in primary and not secondary legislation (as is currently the case with social assistance). The primary legal framework or law should indicate in particular the material and personal scope of coverage; the type and nature, or range, and duration of benefits; the level or amount of benefits; and qualifying conditions. Legal mapping is recommended, as well as systematic revision of regulatory instruments. Compliance challenges experienced in the Vietnamese social security system have to be addressed.

Towards an integrated social security system

Currently, legal developments tend to deal with the different components of the system in siloed fashion. Viet Nam Social Security (VSS) is tasked with implementing a wide range of essentially uncoordinated social security laws, simultaneously reporting to several Government departments and ministries. Legal reform is undertaken in a fragmented manner. Also, outside the area of health coverage, the different social security benefits are administered separately by the corresponding departments within MOLISA. This presents several challenges to the effective development and implementation of social security laws and the coherent management of social security in Viet Nam. It might well be best to set up a coordinating institutional framework to coordinate the social security system. Support for these approaches is found in Resolution 28 of 2018 and Party Resolutions 15 of 2012, 18 of 2017 and 10 of 2018: In relation to social security policy development, they emphasize institutional and operational coordination and legal reform along with the need for review

and revision, with a view to achieving streamlining and uniformity, consistency, coordination and consolidation. There may also be a need for a dedicated policy framework (which could be a specific policy instrument) that provides on an ongoing basis a comprehensive framework and direction, as well as strategic framework, for social security, including social security legal and institutional reform, in Viet Nam – informed by international guidelines and best practice experience worldwide.

Good governance

There are several good governance shortcomings in the legislative and institutional domains. A perusal of the applicable legal provisions reveals that more can be done to strengthen the autonomy of the VSS Board. Evident also is the lack of good governance principles at the level of the Board and VSS itself. A better balance of worker and employer interests in the Board is required, while membership of the Board could be expanded to accommodate other affected groups, in particular informal economy workers and pensioners, as well as experts. The wide discretion to appoint and remove Board members, even those who are not Government representatives, needs to be addressed. It is also necessary to introduce legal provisions that provide for easily-accessible, speedy and effective social security dispute resolution, instead of the current lengthy and cumbersome procedures, into the Vietnamese social security legal framework to expand the availability of social security-dedicated dispute resolution to areas currently not covered (such as voluntary social security, social assistance, employee injury benefits and unemployment insurance benefits), to reconsider referral to a general court of law for final resolution, and to appropriately sensitize VSS clients and beneficiaries of other social security arrangements not managed by the VSS.

The importance of multi-tiered approaches

Social security systems should have as their ultimate goal the extension of social security to everyone. Various countries pursue different ways of achieving such an outcome, usually reflected in a mix of contributory and non-contributory modalities. The envisaged reform of the Law on Social Insurance of 2014 provides a unique opportunity to bring about an appropriately calibrated and aligned multi-tiered social security benefit system in Viet Nam – as also foreseen by Resolution 28. Much can be learned from the experience of the establishment of the social health insurance system in the country. For example, in the area of pensions, a multi-tiered framework could achieve meaningful coverage extension by:

- (i) gradually reducing the eligibility age of the current 80+ year social pension, and simultaneously adjusting the small size of the benefit (already costed by the ILO); and
- (ii) adjusting the VSS pension in relation to the effective inclusion of workers in the informal economy, with a wide range of pension parameters as also foreseen by Resolution 28 as well as the necessary legal adjustments, with appropriate arrangements adopted to effectively address gender gaps.

Extending coverage

While Viet Nam has made considerable progress in extending coverage, significant challenges remain. Legal barriers to coverage include exclusions from the social insurance domain as a result of non-alignment with the 2019 Labour Code's scope of coverage concerning (i) domestic workers (unemployment insurance); (ii) gig economy and supply chain workers; (iii) other workers in multi-party employment relationships; (iv) business household heads, business managers and managers of cooperatives; (v) employees with multiple employers, who may be treated inconsistently; and (vi) certain dependants/survivors. Shortcomings in

social assistance also require attention, given the narrow range of beneficiaries and strict conditions for means-testing and targeting. Several operational challenges also impact on coverage. It is, therefore, recommended that (i) unnecessary restrictions be removed from the legal framework; (ii) consideration be given to simplify the personal scope of application provisions; (iii) coverage be extended to the range of other workers, and other categories of persons in need of social security, indicated above; and (iv) a life cycle approach informs the extension of social assistance to persons in need of social assistance. A gradual approach to achieve extended coverage may be called for.

Improving the scope and adequacy of the benefit regime

The benefits currently available are restricted in range and inadequate in level – in both the contributory and non-contributory domains. As partly foreseen by Resolution 28 and the MPSARD, parametric and other reforms are needed, and may have to be gradually implemented. To preserve the value of the transfers, it is necessary to set a proper base for the value of the various social assistance transfers and to arrange for a realistic and objective indexing option. Furthermore, there is need to improve the adequacy of benefits by letting the full salary, instead of the base salary, of the employee concerned serve as the basis for contribution payments and benefit size.

Implementing social security legal and institutional reform and system integration

Several implications would follow if integrated and holistic reform of Vietnamese social security system is not undertaken. These include (i) continuation of large-scale institutional and legal fragmentation; (ii) the lack of an appropriate legal framework, in conflict with a human rights-based approach, causing uncertainty; (iii) continued system fragmentation despite some attempts to develop a multi-tiered approach; (iv) improper design and regulation and inadequate provisioning, which prejudice certain vulnerable groups in particular; (v) the absence of overall policy direction and objectives; and (vi) weak governance arrangements. Key lessons can be taken from social security reform experiences in other jurisdictions. Bearing in mind these lessons, stakeholder views in Viet Nam, and the political and policy guidance offered by Party Resolutions 28 of 2018, 15 of 2012, 18 of 2017 and 10 of 2018, the following recommendations are made:

- **A powerful and respected institution:** Establish such an institution in Viet Nam to steer the reform process and its implementation – the steering committee utilized for developing Resolution 28 may be particularly appropriate for this purpose.
- **Technical expert body:** Establish an appropriately capacitated technical expert body to undertake the significant evidence-based work required for this purpose, design a range of options and consult with relevant stakeholders. This body could be created within the structure and framework of the steering committee and would have to submit both an interim and final report to the committee.
- **Stakeholder representation and technical expertise:** Pay particular attention to the composition of the steering committee and technical expert body respectively, to ensure sufficient stakeholder representation and (as regards the latter body) sufficient technical expertise.
- **Mandate:** Determine the scope of the mandate of both the steering committee and the technical expert body to reflect the myriad of issues that require to be considered for purposes of the needed comprehensive reform of the Vietnamese social security system.

Abbreviations

ASEAN	Association of Southeast Asian Nations
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ISSA	International Social Security Association
MOLISA	Ministry of Labour – Invalids and Social Affairs
MPSARD	Master Plan on Social Assistance Reform and Development
MPSIR	Master Plan on Social Insurance Reform
NSPS	National Social Protection Strategy (of the Lao People’s Democratic Republic)
OECD	Organisation for Economic Co-operation and Development
SDG	Sustainable Development Goal
UN	United Nations
UNICEF	United Nations Children’s Fund
VSS	Viet Nam Social Security
WSPR	<i>World Social Protection Report 2017–19</i>

01 Purpose of the report

1. This report reflects on key dimensions of social security law reform in Viet Nam from the perspective of an integrated framework. These dimensions include:
 - conceptual and normative framework challenges, with reference to the conceptual context, social security goals and reform objectives, normative framework considerations and governance arrangements for managing social security;
 - reflections on an integrated social security system, with reference to policy development and institutional fragmentation, legal fragmentation, and strengthening of the legal framework;
 - the importance of universal and multi-tiered approaches of relevance to Viet Nam, including the achievement of comprehensive social security linked to universal and multi-tiered approaches;
 - extending coverage, reflecting on key coverage gaps;
 - improving the scope and adequacy of the benefit regime;
 - implementing social security legal and institutional reform and system integration, and a reflection on implications of not undertaking integrated and holistic reform of the Vietnamese social security system; and
 - recommendations on all the subjects above.
2. Building on the technical work of the ILO and certain other agencies in the country in recent years, the report analyses materials provided by the ILO and stakeholders consulted for purposes of this report during the week of 6–10 January 2020 (see Appendix I for the list of stakeholders consulted).



02 Background

3. The social security system in Viet Nam has gradually expanded over the years. The key achievements so far include:¹
 - the retirement conditions for civil servants (1945);
 - the implementation and country-wide extension of social welfare, with particular reference to free health care (1962; 1975);
 - the introduction of health insurance under the Ministry of Health (1992);
 - the ratification of the Labour Code providing among others for social insurance (1994);
 - the establishment of the Vietnam Social Security (VSS) (1995) and merger of National Health Insurance therewith (2002);
 - the adoption of a separate Social Insurance Law (2006), replaced by a new Social Insurance Law in 2014;
 - the stipulation of the functions, tasks, powers and organizational structure of VSS in 2008, and again in 2014 and 2016;
 - the passing of the Health Insurance Law (2008), amended in 2014;
 - the implementation of the unemployment insurance policy (2009).
4. Since 1945, the Vietnamese social security system has seen the establishment and incremental expansion, including in terms of legal reform, of contributory (social insurance) and non-contributory (in particular social assistance) regimes, covering an increasing range of benefit types and affected persons. In 2013, this expansion was underpinned by a constitutional imperative (see below). The expansion included the establishment of a separate institutional framework, the VSS, whose social security mandate has incrementally grown, due in part to the merger of national health insurance and the specification of its organizational structures, powers, tasks and functions.
5. Yet major challenges remain, including in the legal framework. These challenges include the limited coverage and therefore lack of sufficient security of those in the “missing middle”, including many workers in the informal economy; the exclusion of a significant share of the population from social assistance; a fragmented organizational regime (despite some measure of consolidation over the years); and a fragmented legal framework. Also, significant scope exists to extend the social security benefit regime, in both the range of benefits and adequacy of benefits. The report reflects on these and other challenges from a legal perspective.
6. Two recent instruments effectively inform current perspectives on the direction, scope and breadth of the Vietnamese social security system, and in particular its reform. On 23 May 2018, the Party Central Committee approved Resolution 28 on Social Insurance Policy Reform.² This policy instrument envisages the following essential policy reforms:
 - building a multi-tier social security system, including a tier 1 as social pension, tier 2 as contributory social insurance and tier 3 as the supplementary pension insurance;

1 Viet Nam Social Security, “History Development”.

2 Viet Nam, Resolution No. 28-NQ/TW dated 23 May 2018; see also Resolution 125 on Government’s Action Program – Implementation of the Resolution 28-NQ/TW of May 23, 2018 (Viet Nam, Resolution No. 125/NQ-CP).

- amending the regulations on qualifying conditions for the minimum social insurance participation period to let beneficiaries enjoy old-age pensions in a flexible manner (by arranging for a shortened contribution period, introduced in a phased manner), and at the same time adjusting the old-age pension calculation formula according to the principle of contributing-benefiting, equity, equality, sharing and sustainability;
 - expanding compulsory social insurance coverage to other groups of people;
 - strengthening linkages and support between social insurance policies as well as the flexibility of policies to achieve the goal of expanding coverage;
 - reforming policy development and implementation to bolster participants' confidence and enhance their satisfaction in the social insurance system;
 - accelerating the increase in the number of informal sector workers participating in social insurance;
 - modifying and correcting the irrationalities of the current old-age pension insurance scheme to be more flexible in terms of qualifying conditions for pension entitlement and stricter in terms of the social insurance lump-sum entitlement, increasing the actual average retirement age of employees, and making unemployment insurance support available to older workers to support their continued employment;
 - arranging to increase the retirement age in a phased manner;
 - amending the regulations on social insurance contributions, providing a basis for calculating social insurance contributions to expand social insurance coverage;
 - adjusting accrual rates to maximize replacement rates for old-age pension in line with international practices;
 - diversifying the investment portfolios and structure of the social insurance fund with safety, sustainability and effectiveness as guiding principles; and
 - indexing old-age pension with a weaker link to the wage of working persons, changing the manner of adjusting the old-age pension towards the sharing principle.
7. In addition, concerning social assistance, in 2017 the Prime Minister issued a Master Plan on Social Assistance Reform and Development (MPSARD) (before Resolution 28 was formally adopted), which in 2019 was followed by its own action plan.³ The MPSARD sets out the Government's ambitions for expanding the country's social assistance system. This document stresses (i) the need to ensure that social assistance is in line with the level of socio-economic development in the country and (ii) the capacity to mobilize financing (bearing in mind comparative trends), with the aim of progressively approaching a minimum living standard, while giving priority to people with extreme hardship, people living in poverty, and in mountainous, island and ethnic minority areas, and bearing in mind life-cycle demands. It sets increasing targets for consecutive time periods to be achieved for specific categories of vulnerable people, in particular those facing emergency difficulties, children under 36 months, pregnant women from poor and near poor households, and those facing extreme hardship living in mountainous, island and ethnic minority areas. It also emphasizes the continued expansion of groups of elderly people entitled to social transfers.

³ Decision 488 on Approval of "Master plan on social assistance reform and development, in the period 2017–2025 with vision to 2030" (Viet Nam, Decision No. 488/QĐ-TTg of 14 April 2017); see also the *Action Plan for MPSARD Implementation* (2019). The MPSARD was issued by the Government in Decision No. 488/QĐ-TTg dated April 14, 2017 to implement the Resolution No.70/NQ-CP dated November 1, 2012 of the Government promulgating the Government's Action Program to implement the Resolution No. 15-NQ/TW dated June 1, 2012 of the 11th Party Central Committee.

03 Conceptual and normative framework challenges

3.1 Conceptual context

8. **The need for conceptual clarity, agreement and alignment:** The current documentary framework informing the understanding of social security in Viet Nam emphasizes the need for conceptual clarity and agreement among stakeholders and alignment with international standards and common practice. Several stakeholders consulted supported this view.
9. **Social security – addressing social risks from a life cycle perspective:** The notion of social security covers all measures providing benefits, whether in cash or in kind, to secure protection in relation to identifiable social risks and to prevent poverty and vulnerability throughout the life cycle. These risks include the nine “classical” risks, traditionally included in ILO instruments,⁴ but operationally extended to also include poverty and social exclusions.⁵ The extended operational definition of social security, which is also used for this report, thus comprises ten elements:⁶
 - (i) protection in sickness, including medical care;
 - (ii) protection in sickness, including income support in the form of cash sickness benefits;
 - (iii) protection in disability, including income support but also medical care, rehabilitation and long-term care;
 - (iv) protection in old age, including income support and long-term care;
 - (v) protection of survivors in case of death of a family member;
 - (vi) protection in maternity, including medical care and income support maternity benefit;
 - (vii) protection in “responsibility for the maintenance of children”, including the provision in kind to, or in respect of, children of “food, clothing, housing, holidays or domestic help” and of cash income support family benefits;
 - (viii) protection in unemployment, including income support in the form of unemployment benefits and also other labour market policies promoting employment;
 - (ix) protection in the case of employment injury, including medical care, rehabilitation and income support in the form of sickness, and invalidity or survivors’ benefit; and

4 See, in particular, ILO Minimum Standards (Social Security) Convention, 1952 (No. 102).

5 It has at times been argued that these classical policy or risk areas should be extended, given the prevalence of new or developing risk areas (such as climate change) and the need for poor workers in particular to be protected should they lose their means of livelihood/income generation: see Sankaran, K. “The human right to livelihood: Recognizing the right to be human,” *Comparative Labor Law & Policy Journal* 34, No. 1(2012): 81–94, 89–90; Olivier, M. “Climate Change and Social Protection – the Need for an Enhanced Legal Framework”, in *Liber Amicorum in honour of Professor Edwell Kaseke and Dr Matthias Nyenti*, eds M. Olivier, L. Mpedi and E. Kalula (Sun Media, 2020), 29–51, 30–31, 44–45.

6 ILO, *World Social Security Report 2010/11: Providing coverage in times of crisis and beyond*, 2010, 20.

- (x) general protection against poverty and social exclusion through social assistance that provides protection to all residents without sufficient other means of income from work and not covered (or not covered sufficiently) by social security branches listed above.

The globally endorsed notion of national “social protection floors” has been captured in ILO Social Protection Floors Recommendation, 2012 (No. 202). As indicated below, social protection floors are nationally-defined sets of basic social security guarantees that secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion. These guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and basic income security.

10. **Social security – contributory and non-contributory arrangements:** As noted by the ILO, entitlements to social security derive from either the payment of social security contributions for prescribed periods (known as contributory schemes, usually structured as social insurance arrangements), or from non-contributory schemes. Non-contributory schemes include universal schemes for all residents and some categorical or means-tested schemes. Categorical schemes target specific groups or categories of the population (such as the elderly above a certain age), while means-tested schemes target people whose means (usually their assets and/or income) fall below a certain threshold. Means-tested social assistance schemes are therefore meant to support those who experience specific resource limitations. Non-contributory schemes are usually financed through tax or other state revenues.⁷ The Vietnamese social pension arrangement is not a means-tested arrangement, but a pension-tested one: it is available to all persons over 80 years of age (on a universal basis), unless the person concerned is receiving another pension.
11. **Mixed contributory and non-contributory schemes:** Often the social risk areas indicated above are addressed by a mix of contributory and non-contributory arrangements, in particular via a multi-pillar model, as discussed later in this report. Box 1 briefly reflects on this phenomenon.

Box 1

The mixed character of modern social security schemes

“Many social security schemes of the contributory type are presented and described as ‘insurance’ schemes (usually ‘social insurance schemes’), despite being in actual fact of mixed character, with some non-contributory elements to benefits; this allows for a more equitable distribution of benefits, particularly for those with low incomes and short or broken work careers, among others. These non-contributory elements take various forms, being financed either by other contributors (redistribution within the scheme) or by the State.”

Source: ILO, *World Social Security Report 2010/11: Providing coverage in times of crisis and beyond*, 2010, 20; see also ILO, *World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals*, 2017, xxix.

12. **Social protection – a wider concept:** Although social security and social protection are often used interchangeably, the term “social protection” is generally used in institutions across the world with a wider variety of meanings than social security, often encompassing the provision of one or more social services as well, such as housing, education, water and sanitation, food and adequate nutrition. For the European Commission, the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN), housing is included under the social protection notion. Institutions such as the OECD and the World Bank include labour market programmes

⁷ ILO, *World Social Security Report 2010/11*, 14–16.

as part of their understanding of social protection.⁸ In Viet Nam, an earlier attempt at developing a Viet Nam National Social Protection Strategy (2011–20) also subscribed to a wider understanding of social protection. As has been noted, the draft strategy “...clearly considers social protection as an engine of socio-economic growth and development. According to the strategy, the concept of social protection embraces not only social transfers but brings into a consistent and comprehensive framework labour market policies, social insurance policies, health-care policies, social welfare/assistance, poverty reduction programmes and access to public social services.”⁹

13. While the MPSARD often refers to the life cycle approach, an agreed and consistent understanding of this does not appear from the instruments underlying social security in Viet Nam. For example, the key social assistance instrument, Decree 136 of 2013,¹⁰ does not deal with some of the key life cycle risks to which poor people are exposed, such as maternity. On the other hand, it deals elaborately with a range of social (welfare) care services beyond social assistance as normally understood. It would appear that the large-scale legal and institutional fragmentation in the social security system contributes to the need for conceptual clarity, agreement and alignment.
14. **Social security principles and developments:** General, overarching principles¹¹ and specific developments include the role played by solidaristic notions; the importance of prevention and (re)integration as key social security functions; national social protection floors as an expression of achieving sustainable development; social security as a legal and not merely a moral obligation; achieving comprehensive social security via universal and multi-tiered approaches; and the need for coverage extension and inclusion. Recommendation No. 202 also lists a number of key social security principles.¹² Some of these matters are discussed in more detail later in the report.
15. **Solidarity and redistribution:** Solidaristic notions are key to a proper understanding of the operation of social security. This means that society (taxpayers) – through public revenue – provide the means for the rollout of non-contributory benefits, in particular to those who are unable to sufficiently support themselves (as enshrined in social assistance arrangements, also available in Viet Nam), or to ensure coverage of either a specific category (such as old persons entitled to the social pension in Viet Nam) or effectively the whole population on a universal basis (as is the case with social health insurance in Viet Nam). It also means that other groups, in particular workers and employers, invariably through their contributions, pool their risks to provide protection to those workers who may be affected by the risk concerned (such as unemployment or employment injury). Notions of solidarity and redistribution also operate within the framework of informal forms of social security, with reference to kinship-based and mutuality-based forms of support. Resolution 28 and several other social security instruments emphasize the importance of these principles. This is also evident from the way in which social health insurance, and social pensions for persons over 80, have unfolded in Viet Nam. Yet, as reflected on later in the report, significant scope exists to incrementally strengthen solidaristic notions in the Vietnamese social security domain.

8 ILO, *World Social Security Report 2010/11*, 20–21.

9 Bonnet, F., Cichon, M., Galian, C., Marzelkaite, G., and Schmitt, V. *Analysis of the Viet Nam Social Protection Strategy (2011–2020) in the context of Social Protection Floors Objectives: A Rapid Assessment* (ESS Paper No. 32) (ILO, 2012).

10 Decree Providing for Social Support Policies for Social Protection Subjects of 2013 (Viet Nam, Decree No. 136/2013/ND-CP).

11 See, among others, D. Pieters, *Social Security: An Introduction to the Basic Principles* (Kluwer, 2006); J. Berghman, “Basic Concepts of Social Security” in *Social Security in Europe* (Bruylant-Maklu, 1991); J. Berghman, “The resurgence of poverty and the struggle against exclusion: A new challenge for social security?” *International Social Security Review* 50 (1997): 3–21.

12 Indicated in section 3.2 below.

16. **Prevention and (re)integration as key social protection and social security functions:** Social protection, as is the case with the narrower social security concept, fulfils a variety of functions. Traditionally, social protection and in particular social security have been associated with providing compensation and other forms of support once a particular risk – such as a health condition, unemployment or a disabling event – has materialized. However, it is increasingly understood that social protection and/or social security first and foremost has a preventative function: such interventions aim to prevent the risk from materializing (for example, through preventive health care, employment creation, and occupational health and safety). Secondly, social protection and social security have a restorative and (re)integrative function. If a risk has materialized, the primary task is to (re)integrate the affected person or community into society and the labour market (for example, through rehabilitation, assistive devices or job matching). In addition to the preventative, restorative/(re)integrative and compensatory roles, social protection and social security also fulfil a promotional and transformational role – for example, influencing perceptions, values and attitudes, such as compelling those who are able to do so to contribute to their own social security provisioning (through compulsory membership and contributions to retirement or health insurance schemes, for example).
17. **Measures to support prevention and labour market and social (re)integration:** In the Vietnamese social security system, these measures include legal provisions supporting occupational health and safety, strengthening the attachment of older Vietnamese workers to the labour market, skilling and reskilling of workers, and the rehabilitation of injured workers. Yet it is also clear that some of these interventions have mostly been weakly developed in the social security legal and institutional framework and poorly implemented – for example, in relation to measures aimed at labour market integration of unemployed workers and granting employers training support.¹³ Inspection services are still developing. Also, insufficient support is reportedly given to returnee Vietnamese migrant workers, due to paucity of information regarding the Vietnamese job market, the impact of Viet Nam’s household registration system on migrant workers not returning to their place of origin, and the mismatch between their skills acquired overseas and those required by the jobs available in Viet Nam.¹⁴
18. **National social protection floors as an expression of achieving sustainable development:** As indicated in the ILO World Social Protection Report 2017–19, social protection plays a key role in achieving sustainable development, promoting social justice and realizing the human right to social security for all: “Thus, social protection policies are vital elements of national development strategies to reduce poverty and vulnerability across the life cycle and support inclusive and sustainable growth by raising household incomes, fostering productivity and human development, boosting domestic demand, facilitating structural transformation of the economy and promoting decent work.” There is, therefore, a close correlation between social protection and the Sustainable Development Goals (SDGs), adopted in 2015, covering the period until 2030. For example, SDG 1.3 reflects the joint commitment of countries to “implement nationally appropriate social protection systems for all, including floors” for reducing and preventing poverty. As suggested by the World Social Protection Report, this commitment to universalism reaffirms the global agreement on the extension of social security achieved by the Social Protection Floors Recommendation No. 202, adopted in 2012 by the governments and workers’ and employers’ organizations from all countries, including Viet Nam.¹⁵

13 Consultation with Department of Employment, MOLISA, 10 January 2020.

14 Mekong Migration Network, “Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Vietnam”, in *Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants’ Rights*, 2019, 83–120, 117–119.

15 ILO, *World Social Protection Report 2017–19*, xxix.

19. **Significant gaps in the social security legal and institutional framework:** While substantial progress has been made to introduce and strengthen elements of a social protection floor in Viet Nam, significant gaps in the social security legal and institutional framework still exist, as highlighted in the rest of this report. These gaps also flow from the absence of an updated and explicit policy framework that informs the social security legal framework and provides clear guidance concerning the achievement of comprehensive social security in order to meet the objectives and targets set out in the SDGs. These gaps further follow from the fact that large sections of the population are still excluded in law and practice from meaningful forms of social security support (see the discussion on coverage later in the report). Among others, as noted by UNICEF in relation to social security for children in Viet Nam: “However, the current social protection system is fragmented, with limited coverage and an inadequate range of benefits neither progressive nor child sensitive. As a result, the system is unable to address the multiple disadvantages, risks and vulnerabilities affecting children’s well-being.”¹⁶
20. **Social security as a legal and not merely a moral obligation:** There is a legal and not merely a moral obligation on governments to provide social security, with a corresponding human rights-based entitlement thereto on the part of affected individuals.¹⁷ However, it is also widely appreciated that achieving comprehensive social security requires an incremental approach, often reflected in the (legal) notion of progressive realization. Even so, it is expected of governments to set goal-oriented measurable and achievable goalposts to signify progress.
21. **Universally endorsed international instruments and standards:** The human rights-based basis of social security is informed by a range of universally endorsed international instruments and standards, as indicated below. The human rights basis of social security implies the need to follow a rights-based approach to social security. Described differently by various authors, in essence the notion of a rights-based approach in relation to social security implies:¹⁸
- Social security should be considered as a right and entitlement and not just a matter of charity. As noted in a recent ILO publication, “[R]ights-based social security ... means... in broad terms, the guarantee of benefits as rights”; citizens should therefore be able/enabled to claim and enforce their entitlement to social security.¹⁹
 - There is an obligation on States to recognize, guarantee and protect social security.
 - Certain core obligations and minimum standards may be expected in assessing the compliance with the obligation to provide social security, in particular in relation to vulnerable groups.
 - There is a deliberate focus on mechanisms to keep those who design and deliver social security accountable and to involve those affected by and benefitting from social security interventions.

16 UNICEF, “Viet Nam: Social Protection”.

17 In this regard, a 2017 UNICEF study highlights the role of social protection (in this sense inclusive of social security) as a key interface between States and citizens. It emphasizes the need to shift the design and implementation of social protection away from discretionary and technocratic forms, to forms which stimulate vulnerable citizens to make justice-based claims for their rights and demand accountability for the realization of those rights. It puts forward a conceptual framework for social protection with three modalities through which citizens can be engaged: as shapers and makers; as users and choosers; and as passive consumers. See R. A. Sabates-Wheeler et al., *Linking Social Rights and Active Citizenship for the Most Vulnerable: The role of rights and accountability in the ‘making’ and ‘shaping’ of social protection* (Innocenti Working Paper WP-2017-14) (UNICEF, 2017).

18 C. M. Fombad, “An overview of the constitutional framework of the right to social security with special reference to South Africa,” *African journal of international and comparative law* 21, No. 1 (2013): 1–31, 6; A. Pino and N. Confalonieri, “National social protection policies in West Africa: A comparative analysis,” *International Social Security Review* 67 (2014): 3–4.

19 This implies, among others, that citizens should be able/enabled to claim and enforce their entitlement. See ILO, *Universal social protection for human dignity, social justice and sustainable development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*, International Labour Conference, 108th Session, 2019, para. 162.

22. Support for such a rights-based perspective can be found in the provisions of the sections 34 and 38 of the Constitution of Viet Nam, as indicated below. However, such an approach is less evident at the statutory level. The key legal instrument providing for social assistance in Viet Nam, Decree No. 136 on Social Support Policies for Social Protection Subjects of 2013, does not grant individuals a legally enforceable entitlement to social assistance; in fact, the Decree notes that the “policy shall be changed depending on the economic conditions of the country and minimum residential standards living from time to time” (Article 3(2)). The Law on Social Insurance of 2014 confirms that, in particular as far as voluntary social insurance is concerned, there is a rights-based entitlement to a Government subsidy. Article 14(1) of the Decree Detailing a Number of Articles of the Law on Social Insurance regarding Voluntary Social Insurance of 2015 provides for an entitlement, to the extent that it stipulates that “Voluntary social insurance participants are entitled to the State’s support of premiums in percentage (%) of monthly social insurance premiums based on the poverty line in rural areas”.
23. In view of the principled discussion above concerning a rights-based approach, as well as the recognition of social security as a human right, both at the international level and in the Constitution of Viet Nam, it is recommended that the statutory framework, pertaining to in particular social assistance in Viet Nam, confirm that individuals in Viet Nam are entitled to social assistance and to social insurance, where relevant, as of right. This will ensure the provision of predictable and transparent benefits to the people who need them and who, in the event of social insurance, may have contributed thereto.
24. **Achieving comprehensive social security via universal and multi-tiered approaches:** There is an evident tendency to achieve comprehensive social security through universal and multi-tiered approaches, involving not only public contributory and tax financed mechanisms, but also private and mixed public-private interventions. The rise in universal cash transfers and the establishment of universal (health) insurance programmes in several countries bear testimony to this phenomenon. While many countries have already achieved universal protection, more efforts are needed to extend coverage and ensure adequate benefits. Multi-tiered approaches reflect an understanding of the importance thereof to address social security risks through a well-coordinated, well-calibrated and well-integrated constellation of non-contributory provisioning (usually at the bottom level) and contributory provisioning (usually in the form of public or national schemes, for example as a second tier), but also occupational-based and private arrangements (for example, as third and/or fourth tiers).
25. As is discussed in more detail later in this report, Viet Nam has made notable progress in the area of universal approaches (for example, in relation to social health insurance and social pensions for persons aged 80 and above), but much more could be done. Also, multi-tiered approaches, though advocated for in Resolution 28, are still underdeveloped in social security in Viet Nam.
26. Recent attempts to achieve more comprehensive coverage have seen large-scale interventions in developing countries to extend social security to workers in the informal economy and their dependants. Vast numbers of previously excluded workers have now been included in social security schemes, which usually reflect the realities of the contributory capacity of these workers and their specific social security needs – emphasizing the need to adopt tailor-made approaches to ensure participation by informal workers.²⁰

20 For a recent reflection on developments in this regard, see ILO, *Extending social security to workers in the informal economy: Lessons from international experience*, 2019, and M. Olivier, “Social security protection for informal economy workers: Developing world perspectives” in *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers*, eds Mies Westerfeld and Marius Olivier (Edward Elgar Publishing Ltd, 2019), 2-29.

27. While there has been some attempts in Viet Nam to enhance social security coverage of informal workers, the interventions thus far have proved to be insufficient, as by far the vast majority of workers in the informal economy and informal workers remain uncovered. As discussed in a separate report,²¹ Viet Nam could benefit from the world-wide experience of nuanced and dedicated approaches and interventions to achieve more comprehensive coverage of these workers.

3.2 Social security goals and reform objectives

28. **International standards reflect global consensus regarding the objectives of social security:** These objectives, often seen as essential principles of social security, are reflected in several ILO instruments, notably two overarching instruments. The first instrument, often referred to as the “mother” social security Convention of the ILO, is the ILO Minimum Standards (Social Security) Convention, 1952 (No. 102). It has been suggested that to date, Convention No. 102 is the only international treaty with a systemic vision of social security. It is grounded in a set of core financing, governance and administration principles that include:
- responsibility of the State;
 - rights defined by law;
 - minimum levels of protection for both contributory and non-contributory schemes;
 - collective financing and financial sustainability;
 - participatory management; and
 - transparency and compliance mechanisms.
29. Also, Convention No. 102 further sets out the minimum levels of protection to be guaranteed in relation to coverage, adequacy of benefits, conditions for entitlement and duration with respect to a set of nine social risks often referred to as the branches of national social security systems. These include medical care and benefits provided in case of sickness, unemployment, old age, employment injury, family responsibilities, maternity, invalidity and death of the breadwinner.²²
30. The second overarching ILO instrument is the ILO Social Protection Floors Recommendation, 2012 (No. 202). Social protection floors are nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion. These guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and basic income security.
31. According to the Recommendation, the following guarantees should be provided to all residents and all children, as defined in national laws and regulations, and subject to existing international obligations:
- access to essential health care, including maternity care;
 - basic income security for children, providing access to nutrition, education, care and any other necessary goods and services;
 - basic income security for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and

21 M. Olivier, *Extending social security to informal economy workers and informal employees in Viet Nam* (ILO, 2020).

22 ILO, “ILO Social Security Standards: Learn, Ratify and Apply”, *Social Protection Spotlight*, 20 September 2020.

- basic income security for older persons.
32. **Further objectives informing also the process of social security reform:** To the six above-mentioned objectives or principles embedded in Convention 102 can also be added the following objectives or principles, essentially enshrined in paragraph 3 of Recommendation No. 202, which should simultaneously help to inform the objectives to be obtained through a reform process:
- universality of protection, based on social solidarity;
 - entitlement to benefits prescribed by national law;
 - adequacy and predictability of benefits;
 - non-discrimination, gender equality and responsiveness to special needs;
 - social inclusion, including of persons in the informal economy;
 - respect for the rights and dignity of people covered by the social security guarantees;
 - progressive realization, including by setting targets and time frames;
 - solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interests among those who finance and benefit from social security schemes;
 - transparent, accountable and sound financial management and administration;
 - financial, fiscal and economic sustainability with due regard to social justice and equity;
 - consideration of diversity of methods and approaches, including of financing mechanisms and delivery systems;
 - coherence with social, economic and employment policies, to which should be added alignment with the rest of the legal system;
 - coherence across institutions responsible for delivery of social protection;
 - high-quality public services that enhance the delivery of social protection systems;
 - efficiency and accessibility of complaint and appeal procedures;
 - regular monitoring of implementation, and periodic evaluation;
 - full respect for collective bargaining and freedom of association; and
 - tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.

3.3 Normative framework

3.3.1 Constitutional context

33. Article 59(2) of the Constitution of the Socialist Republic of Viet Nam (2013) stipulates that the State “shall create equal opportunities for the citizen to enjoy social welfare, develop a system of social security, exercise a policy assisting old people, disabled, poor people, and people with other difficult circumstances.” Article 58 contains provisions regarding, among others, universal health care and protection for mothers, children, and the family:

1. The State shall make investment in the development of the protection and care of the people's health, exercise health insurance for entire people, and exercise a priority policy of health care for highlanders, national minorities, islanders, and people living in extremely difficult economic and social conditions.
 2. It is the responsibility of the State, society, the family and the citizen to ensure care and protection for mothers and children and to carry into effect the family planning.
34. **Important constitutional guarantees accrue to individuals:** The right to social insurance and an entitlement to health care and protection are afforded to citizens. Article 34 of the Constitution stipulates that "The citizen has the right to social insurance", while Article 38(1) provides that "The citizen is entitled to health care and protection, equal in the use of medical services, and has the duty to practice regulations with regards to prophylactics, and medical examination and treatment."
35. The above-mentioned rights are extended on the basis of equality of treatment. Article 16 stipulates "1. All citizens are equal before the law" and "2. No one shall be discriminated in his or her political, civic, economic, cultural, and social life."
36. **Limited coverage as a significant shortcoming:** Of particular importance is the constitutional principle and objective that all citizens should benefit from the social security system, on the basis of equality. This objective will only be achieved if both the contributory and non-contributory components of the Vietnamese social security system have been extended, in law and in practice, to effectively reach all citizens. As has already been alluded to and discussed in more detail later in the report, this is currently not the case.

3.3.2 International standards

37. **Importance and role of international standards:** The role and place of international law in the legal system of Viet Nam is a critical consideration for any discussion on the reform of the Vietnamese social security system. In this regard, the Constitution of the Socialist Republic of Viet Nam (2013) stresses the importance of international law and adherence to international commitments. Article 12 of the Constitution contains an undertaking to conform to the Charter of the United Nations and international treaties in which Viet Nam is a member. Furthermore, Article 98(5) makes it clear that it is the Prime Minister's responsibility to direct the negotiation and conclusion of international treaties and, importantly, to "organise the implementation of international treaties in which the Socialist Republic of Viet Nam is a member."
38. **Other ratified UN instruments which should assist in addressing significant gaps in the Vietnamese social security system:** Although Viet Nam has not ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, the country did ratify the following UN instruments, which have important implications for its social security obligations contained in these instruments, in relation to current shortcomings:²³
- **The UN International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, ratified by Viet Nam in 1982:** Viet Nam is therefore bound by the provisions of that instrument related to the right to social security and associated fields, such as the right to health.²⁴

23 United Nations Office of the High Commissioner for Human Rights, "Status of Ratification Interactive Dashboard", accessed 1 May 2021. <https://indicators.ohchr.org/>

24 See Articles 9 and 12 of the Covenant, respectively.

- **UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, ratified by Viet Nam in 1981:** This Convention contains important provisions in relation to maternity protection.
 - **UN Convention on the Rights of the Child (CRC), 1989, ratified by Viet Nam in 1990:** According to Article 26, “Every child has the right to benefit from social security, including social insurance, and the state should take the necessary measures to achieve the full realisation of this right in accordance with national law”, making it clear that “The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child”.
 - **UN Convention on the Rights of Persons with Disabilities (CRPD), 2006, ratified by Viet Nam in 2015:** This Convention contains pertinent provisions on social security and an adequate standard of living for persons with disabilities (Article 28) and the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation. This implies, among others, promoting vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities – matters of particular importance for workers who have been exposed to an occupational injury or disease.
39. Of particular importance is also the adoption by the UN Committee on Economic, Social and Cultural Rights of UN General Comment No. 19 on the right to social security²⁵ enshrined in article 9 of the ICESCR. General Comment No. 19 contains principles which are important for the understanding of the scope and content of the right to social security. Its salient provisions and principles, several of which are particularly relevant to the intended social insurance law reform in Viet Nam, are:
- (a) The General Comment confirms that a country’s social security system should provide for the coverage of the nine principal branches of social security enshrined in ILO Minimum Standards (Social Security) Convention, 1952 (No. 102) (see below), and clarifies that the right to social security as enshrined in the ICESCR should not be narrowly defined, should ensure minimum enjoyment and encompasses the right to access and maintain benefits, whether in cash or in kind, from:
 - (i) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age or death of a family member;
 - (ii) unaffordable access to health care; and
 - (iii) insufficient family support, particularly children and adult dependants.
 - (b) Three types of State obligations are emphasized, namely to respect,²⁶ protect²⁷ and fulfil,²⁸ an approach which has been followed by the Constitutions of many countries.

25 UN Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 19: The right to social security* (Art. 9 of the Covenant), E/C.12/GC/19, 4 February 2008 (2008) (E/C12/GC/19 of 4 February 2008).

26 That is, the obligation to refrain from interfering directly or indirectly with the enjoyment of the right to social security, thereby protecting, *inter alia*, in principle the private provision of social security. See para. 44.

27 That is, the obligation in terms of which state parties are required to prevent third parties from interfering in any way with the enjoyment of the right to social security. See paras 45–46.

28 That is, the obligation to provide (the right to) social security where individuals or groups are unable, for reasons beyond their control, to realize that right themselves. See paras 47–51.

- (c) In essence, social security as a human right has an evolving and universal nature characterized, in the words of General Comment No 19, by its availability,²⁹ adequacy³⁰ and accessibility.³¹
- (d) The General Comment highlights the position of several special categories of persons and suggests special measures to be adopted, in addition to the principle of non-discrimination and equality, and in particular gender equality. These categories include workers inadequately protected by social security (part-time, casual, self-employed and homeworkers), informal economy workers, indigenous peoples and minority groups, non-nationals and internally displaced persons and internal migrants.
- (e) Several obligations are imposed on state parties, including certain obligations with immediate effect (in particular in respect of removal of discrimination), the setting of appropriate policy and financial priorities in law and implementation and the operation of the presumption that retrogressive measures are prohibited, as well as the core obligation to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant”
40. Except for the Maritime Labour Convention, 2006, as amended (MLC, 2006) Viet Nam has not ratified any social security-specific ILO Conventions, including up-to-date social security Conventions.³² These include core social security Conventions covering the different branches of social security. However, the Resolution containing the Government’s Action Programme to implement (Party) Resolution 28³³ foresees the ratification of some of the ILO social security Conventions in accordance with a plan to be developed. The Government of Viet Nam has specified the following social security branches of the MLC, 2006, as being applicable to the country: medical care, old-age benefits and employment injury benefits.
41. **Alignment with ILO standards would require certain reforms to the social security system of Viet Nam:** The two key ILO instruments indicated above (Convention No. 102 and Recommendation No. 202) have overall significance as regards specific social security risk areas, as well as the social security context of certain categories of vulnerable people, including migrant workers and workers in the informal economy. The position of these two categories is discussed in two separate reports.³⁴ For now, the following areas of non-compliance with, in particular, Convention No. 102 should be indicated:³⁵
- **The current invalidity (disability) benefit regime:** Convention No. 102 requires a periodic payment equal to 40 per cent of the former earnings of insured persons. However, the Vietnamese social security system provides for allowances not related

29 A system composed of one or more schemes should be available and in place to ensure benefits are provided for the relevant social risks and contingencies: para. 11. See also paras 12–21.

30 Para. 22 provides: “Benefits, whether in cash or in kind, must be adequate in amount and duration”.

31 Core issues associated with accessibility are commented on in paras 23–28: inclusive coverage, eligibility, affordability, beneficiary participation, physical access and relationship with other rights.

32 See ILO, “Ratifications for Viet Nam”, NORMLEX database, accessed 01 May 2021 (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004) and ILO, “Up-to-date Conventions and Protocols not ratified by Viet Nam”, NORMLEX database, accessed 01 May 2021 (https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103004).

33 Resolution 125 on Government’s Action Program – Implementation of the Resolution 28-NQ/TW of May 23, 2018 (Resolution No. 125/NQ-CP).

34 Olivier, *Extending social security to informal economy workers*; M. Olivier, *Extending social protection to Vietnamese workers abroad* (ILO, 2020).

35 In relation to the first two matters, see B. Ramírez López, I. Tsuruga and N.M.S. Cunha, *Challenges and recommendations on the institutional and legislative framework to realize Resolution 28 in Viet Nam* (ILO, 2018), 4.

to previous earnings and for the majority of benefits to be paid as a lump sum.³⁶

- **The child or family benefit regime:** While the State provides several child benefits, these are only available to narrowly defined groups that form a very small part of the population: “To date, Viet Nam has not established a conventional child or family benefit which is available to all, and thus does not comply with this provision of C102 or the newer Recommendation No. 202”.
 - **Unemployment insurance:** Some provisions in the Law on Employment of 2013, regulating unemployment insurance, do not comply with the standards set in ILO Convention No. 102, with particular reference to the waiting period of seven days.³⁷
 - **Employment injury benefit arrangements:** Bearing in mind the provisions of both the Law on Social Insurance and the Law on Occupational Safety and Hygiene of 2015,³⁸ the areas of non-compliance with ILO Convention No. 102 include the non-payment of a benefit if the decrease in work capacity is less than 5 per cent; and the payment of a mere lump sum (with no periodical payments) in the event of a work capacity decreases between 5 per cent and 30 per cent as well as in the event of death benefits payable to a survivor.
 - **Sickness benefit period:** The period foreseen in Article 18 of the Law on Social Insurance is in several cases lower than the minimum prescribed by ILO Convention No. 102.
 - **Maternity medical benefits co-payments:** The requirement in the Law on Health Insurance of 2008 for co-payments as regards maternity medical benefits conflicts with the provisions of ILO Convention No. 102.³⁹
 - **Old age benefits:** Lump sum withdrawals and the absence of an available reduced pension after a period of 15 years of employment or contributions (see the Law on Social Insurance) are not aligned with ILO Convention No. 102.
42. **The provisions of bilateral (and multilateral) social security agreements have important consequences for workers covered by the agreements, and for the law reform process:** Viet Nam has been negotiating bilateral social security agreements with a number of countries, and Resolution 28 foresees the accelerated negotiation and conclusion of such agreements.⁴⁰ These agreements have important consequences for

36 See Articles 16, 17, and 18 of Viet Nam, Decree 28/2012/ND-CP; Article 4.1 of Viet Nam, Decree 136/2013/ND-CP.

37 A much longer waiting period seems to be envisaged by the Law on Employment: Article 49(4) of that law stipulates as one of the qualifying conditions the worker must (subject to some exceptions) have been unable to find employment after 15 days from the date of submitting the application for benefits; Article 46(2) and (3) provides that a decision on the payment of unemployment insurance benefits will be made within 20 days from the date of receiving the completed application, and that payment of the benefits will occur within five days from the date of the decision.

38 Law on Occupational Safety and Hygiene of 2015 (Viet Nam, Law No. 84/2015/QH13).

39 No provision is made in ILO Convention No. 102 for any co-payment with regards to maternity medical benefits. In fact, even the much older Maternity Protection Convention, 1919 (No. 3) stipulates that the pregnant woman is entitled to free attendance by a doctor or qualified midwife (Article 3; see ILO, Report V(1): Maternity protection at work: *Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, International Labour Conference, 87th Session, 1999. However, it could be expected of pregnant women to make use of public health services in this regard. Article 49 of ILO Convention No. 102 stipulates, “The institutions or Government departments administering the maternity medical benefit shall, by such means as may be deemed appropriate, encourage the women protected to avail themselves of the general health services placed at their disposal by the public authorities or by other bodies recognised by the public authorities.”

40 “Foreign workers to pay social insurance,” Viet Nam News, 3 November 2018.

the social security position of foreign workers in Viet Nam, and for Vietnamese migrant workers abroad, who may be covered by such agreements. They also hold important implications for the governing legislation in Viet Nam. These matters are discussed in more detail in a separate report.⁴¹

3.4 Governance arrangements: The management of social security

43. This part of the report reflects on several dimensions of the governance framework, in particular from a legal perspective. The areas covered in this part concern:
- international standards and comparative perspectives;
 - good governance considerations;
 - current challenges in the governance framework and the need for legislative improvement;
 - tripartism and beyond, consultation, voice and representation; and
 - complaints and appeals.

3.4.1 Guiding principles, international standards and comparative perspectives

44. **The need for a regulatory framework ensuring good governance:** An appropriate regulatory framework informing good governance of social security schemes can put a fence around these institutions and protect them from external or internal perils,⁴² while the absence of such a framework could affect the credibility of the social security institutions and, importantly, potentially also the adequacy of benefit levels as well as the fiscal strength and sustainability of the social security funds available to pay for such benefits. Also, the effective governance of a social security scheme is an essential prerequisite for enhancing the coverage and effectiveness of social security. As noted by the ILO, “Efficient governance can make a lasting difference. No system of social protection can achieve its objectives without good governance – and a pivotal element of good governance is financial governance”.⁴³
45. **International standards requiring good governance of social security schemes:** The international standards framework confirms that it is the duty of States – through government – to establish appropriate institutional frameworks for providing and delivering social security. According to Article 72(2) of ILO Convention No. 102, “The Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of the Convention.” Article 71(3) of the same Convention stipulates: “The Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention, and shall take all measures required for this purpose”.
46. As discussed below, governments have to ensure that the administration of social security reflects principles of good governance and proper administration, and that affected stakeholders are involved, in particular social partners on the basis of the

41 Olivier, Extending social protection to Vietnamese workers abroad.

42 L. Barbone and L.B. Sanchez, “Pensions and Social Security in Sub Saharan Africa – Issues and Options”, paper, Social Security in Africa: New Realities, Thirteenth African Regional Conference, Accra, 6–9 July 1999; also International Social Security Association (ISSA), Social Security Documentation, African Series No. 21, Abidjan, 1999; and World Bank Africa Region Working Paper Series No. 4, 1999, 31.

43 ILO, Governance of Social Security Systems: A Guide for Board Members in Africa, 2010, vii.

principles associated with tripartism. Subject to these standards and principles, neither international instruments/standards nor comparative experiences suggest that a particular model of social security provisioning and delivery should apply. Much depends on the particular context of the country concerned, and what national stakeholders believe would provide the best framework for the country. Appendix II⁴⁴ contains an overview of comparative approaches to social security administration, compiled on the basis of *Social Security Programs Throughout the World*.⁴⁵

3.4.2 Good governance considerations

47. **Universally applicable international standards and principles:** Worldwide, principles of good governance have now been introduced in social security schemes and programmes, and are supported by institutions such as the ILO, the World Bank and International Social Security Association (ISSA). Good governance principles can be gleaned from several sources and have been set out above. As indicated above, the overall standard is laid down by Article 72(2) of ILO Convention No. 102. Two further sources are of particular assistance with regards to more detailed principles of good governance in the social security domain. The first source is the ISSA Guidelines on Good Governance of 2013,⁴⁶ which contains guidelines on (a) good governance guidelines for the board and management; and (b) nine specific areas in social security administration.⁴⁷ A detailed list of comprehensive guidelines is in Appendix III to this report, and provides helpful guidance for embedding good governance principles into social security governance and administration. The second source is an ILO document providing guidance to social security board members regarding governance of social security systems in Africa.⁴⁸ The key issues/areas covered by this document are highlighted in Appendix IV to this report; the detailed issues and concrete discussion thereof can be gleaned from the report itself.
48. According to an earlier World Bank paper by L. Barbone and L.B. Sanchez,⁴⁹ government interference is one of the challenges which inhibits good governance. Another challenge relates to absent or insufficient constraints and controls on the exercise of powers and functions by governing structures and management of social security institutions. Box 2 summarizes Barbone and Sanchez's principles of good governance as they relate to supervising and managing social security institutions.

44 See Appendix I: Survey of International Approaches to Social Security Administration.

45 These reports are a joint effort of the Social Security Administration (SSA) of the United States of America and the International Social Security Association (ISSA).

46 ISSA, *Guidelines on Good Governance*, 2013.

47 The guidelines are organized in two parts:

Part A deals with Good Governance Guidelines for the Board and Management.

Part B contains Guidelines for Specific Areas in Social Security Administration, and addresses nine specific areas that are of common concern to social security institutions.

- It begins with three cross-cutting topics in programme administration: strategic planning, operational risk management and internal audit of operations.
- In the area of financial sustainability, it deals with the topic of actuarial soundness.
- As far as the area of sound investments is concerned, the topic is enforcing the prudent person principle.
- The area of member coverage, contributions, member benefits and services covers prevention and control of corruption and fraud in contributions and benefits; and service standards for members and beneficiaries.
- The area of resource management covers human resources policies; development, retention and succession; and investments in information and communications technology infrastructure.

48 ILO, *Governance of Social Security Systems*.

49 Barbone and Sanchez.

Box 2

Good governance principles relating to social security institutions

As indicated by Barbone and Sanchez, there is a need to:

- limit State or government involvement or direction in the management of funds and investment decisions, among others;
- redefine the role and composition of the managing boards providing administrative and legal autonomy, define clear responsibilities, and introduce oversight and control mechanisms;
- introduce proper regulatory frameworks to guarantee that resources are well managed and that the State is kept at arms' length;
- set up mechanisms to monitor performance;
- enforce financial controls;
- obtain professional and specialized management; and
- ensure that tailor-made training programmes (induction) are in place.

Source: L. Barbone and L.B. Sanchez, "Pensions and Social Security in Sub Saharan Africa – Issues and Options". Paper presented at Social Security in Africa: New Realities, Thirteenth African Regional Conference, Accra, 6–9 July 1999; also International Social Security Association (ISSA) Social Security Documentation, African Series No. 21, Abidjan, 1999; and World Bank Africa Region Working Paper Series No. 4, 1999, 31.

49. Barbone and Sanchez also refer to additional matters that illustrate a lack of proper governance. Although aimed at the African environment, their remarks reflect problems that are experienced all over the world. These matters include credibility problems associated with poor governance, high administrative costs partly attributable to the system of incentives under which administrators are working, and problems with the quality of the services delivered (in particular, the lack of adequate record-keeping).⁵⁰
50. It is suggested that the most recent ILO Recommendations which are relevant for this discussion, the Social Protection Floors Recommendation, 2012 (No. 202) and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), contain valuable principles and guidelines in relation to the powers and functions that should be ascribed to governing structures of social security institutions, also in the Viet Nam context. A high-level analysis of these instruments suggests that the following should inherently form part of the functions and powers exercised by the representative institutions:
- policy development and review,⁵¹ in a range of areas, including extension modalities;
 - implementation of programmes; and
 - monitoring and evaluation, including in relation to compliance with relevant international standards.
51. According to these Recommendations, the mentioned stakeholder representatives should be involved in engagement or consultation on a comprehensive range of matters:
- the establishment and review of the levels of social security guarantees (para. 8(d) of Recommendation No. 202) (the policy and technical frameworks);

50 Barbone and Sanchez, 15.

51 See also para. 27 of the guiding principles of (the older) ILO Income Security Recommendation, 1944 (No. 67), which states, "The administration of social insurance should be unified or co-ordinated within a general system of social security services, and contributors should, through their organisations, be represented on the bodies which determine or advise upon administrative policy and propose legislation or frame regulations."

- monitoring progress in implementing social protection floors and achieving other objectives of national social security extension strategies (para. 19 of Recommendation No. 202);
- identification of the nature and extent of the informal economy, and its relationship to the formal economy (para. 6 of Recommendation No. 204);
- the establishment of social protection floors, where they do not exist, and the extension of social security coverage (para. 11 of Recommendation No. 204);
- promoting the implementation of a comprehensive employment policy framework, based on tripartite consultations, that may include among others, social protection and related schemes (para. 15(d) of Recommendation No. 204);
- designing, implementing and evaluating policies and programmes of relevance to the informal economy (para. 34 of Recommendation No. 204);
- implementing the provisions of Recommendation No. 204, also via policies and programmes, national laws and regulations (para. 38 of Recommendation No. 204); and
- Regular review of effectiveness of policies and measures to facilitate the transition to the formal economy (para. 39 of Recommendation No. 204).

3.4.3 Current challenges in the Vietnamese governance framework: The need for legislative improvement and recent proposals supporting improvement

52. Two recent World Bank assessments highlighted several matters of critical concern regarding the governance of VSS.⁵² The rest of this section deals with these and other concerns, essentially from the perspective of an analysis of the underlying legal instruments. The legal instruments include the Law on Social Insurance and the 2016 Decree Prescribing the Functions, Duties, Powers and Organisational Structure of the VSS,⁵³ as well as the recent draft proposal for a new Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity.⁵⁴ The concerns raised would require in almost all instances legislative changes, in addition to changes in actions taken by the relevant stakeholders.
53. A detailed matching of the current governance arrangements embedded in the Law on Social Insurance and the 2016 Decree Prescribing the Functions, Duties, Powers and Organisational Structure of the VSS reveals several shortcomings in the legislative and institutional domains. For example, a perusal of the provisions of the Law on Social Insurance leaves the clear impression that, firstly, a logical distinction between the functions/powers of Government and the Board of VSS is often not made and, secondly, that more can be done to enhance the autonomy of the Board. Yet the recent draft proposal for a new Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity contains significant improvements in the VSS governance domain, even if it does not address all the concerns raised below.

52 World Bank, *Report on Governance and Related Issues of Vietnam Social Security (VSS)*, 2018; M. Kidd, *Vietnam Social Security (VSS): Review of Governance Structures and Processes* (World Bank, November 2019).

53 Viet Nam, Decree Prescribing the Functions, Duties, Powers and Organisational Structure of Viet Nam Social Security, Decree No. 01/2016/NC-CP of 5 January 2016.

54 Viet Nam, Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity (Draft Proposal, 2020); see also MOLISA Webinar on Improving Operating Capacity of the Board of Commissioners of Viet Nam Social Security International Experience and Recommendations for Viet Nam: Proposal for Defining the Functions, Tasks and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity (2020).

54. **There should be a clear division of functions and powers between Government and the VSS Board:** Good governance principles require a clear and logical distinction between the functions and powers of the Government and the Board respectively, which should be reflected in the legal provisions. In particular, the Government should have powers of policy-making, legislative proposals, regulation-setting (provided that the autonomy of the Board is not unduly compromised) and ultimate oversight or supervision. The control over and direction given to the VSS should ideally vest in the Board, and not the Government. Ultimately, of course, the Board remains answerable to the Government and Parliament. In both Article 3(1) of the 2016 Decree Prescribing the Functions, Duties, Powers and Organisational Structure of the VSS and Article 1 of the draft proposal for a new Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity, provisions indicate that the Board is to “assist the Government and the Prime Minister in directing and supervising activities of Viet Nam Social Security”.
55. **Enhance the autonomy of the Board:** In terms of the current legislative provisions, the Board lacks the autonomy required in terms of good governance standards. For example, Article 2 of the 2016 Decree indicates that the VSS is “under the management” of three ministries for diverse purposes: MOLISA in terms of social and unemployment insurance, and the Ministry of Health and Ministry of Finance in terms of health insurance and financial measures (Article 1(2) of the Decree). Also, the MOLISA Minister is given wide powers to further regulate certain other matters contained in the legislative provisions, apparently without any limit being indicated.⁵⁵ Overall, the MOLISA Minister is given the responsibility of directing, guiding and organizing the implementation of policies and laws on social insurance.⁵⁶ Furthermore, if the VSS operates under the direction of the Board, one would expect the legislation to indicate that the VSS reports to the Board, and through the Board to the Government, and not to the Government directly.
56. **Governance shortcomings at the level of the Board and the VSS:** Equally concerning is the lack of good governance principles at the level of the Board and the VSS itself. In addition to some issues already indicated above, the following matters can in particular be highlighted:⁵⁷
- No provision is made for Board committees to operate and be accountable. Worldwide, the establishment of subcommittees on, for example, investment and human resources, is seen as a necessary element of good governance of social security institutions. It is in particular at the level of such committees that good use could be made of independent experts, which is not at all provided for in the legislation.
 - Absent from the legislative framework are other provisions which are crucial for ensuring good governance as far as the Board, and more broadly the VSS, are concerned. One would expect the relevant legislation to clearly provide for liability on the part of Board members, but also when (legal) indemnity will apply (such as in the event of decisions taken in good faith), and the mandatory disclosure of

55 According to Article 39(3) of the Law on Social Insurance, the MOLISA minister has the power to stipulate in detail the conditions and period of enjoyment and levels of allowances applicable to beneficiaries of sickness and maternity benefits respectively. In terms of Article 59(4) of the same law, the MOLISA Minister must stipulate in detail the time for pension enjoyment of workers who are Vietnamese citizens; a similar provision is contained in Article 76(2) in relation to beneficiaries under the voluntary social security scheme.

56 Article 9(5) of the Law on Social Insurance.

57 See also the two recent World Bank assessments referred to above in this regard.

conflicts of interest on the part of Board members and staff of the VSS. While the draft proposal for a new Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity contains important provisions on the responsibilities of Board members,⁵⁸ also before the law, to implement resolutions of the Board, there is still a need to further specify the legal liability of Board members.

- Important good governance principles relating to the financial affairs of the VSS are lacking in the legislative realm, such as the need to have and operate a reserve fund, how to manage surpluses and shortfalls, regular auditing and actuarial reviews, caps on administrative expenses, and the development and approval of and adherence to a guiding investment policy.⁵⁹

57. **Significant provisions supporting good governance contained in the draft proposal for a new draft decree:** Important provisions that aim at specifying, clarifying and supporting good governance principles in relation to the VSS Board and also the VSS management, are contained in the proposed Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity, specifically, provisions pertaining to:⁶⁰

- **Specifying the role and responsibilities of the Chairperson of the Board**, in particular regarding: (i) the overall responsibility of the Chairperson to the Government and the Prime Minister, including reporting; (ii) recommending the elaboration, amendment and supplementing of regimes, policies and laws on social insurance, unemployment insurance, health insurance and the VSS development strategy; (iii) requesting from the Prime Minister the appointment or dismissal of the Director-General and Deputy Directors-General; and (iv) the promulgation of the Operational Regulation as well as the Coordination Regulation;
- **Specifying additional duties of Board members (Commissioners)**, in particular regarding: (i) a strategy plan for coverage expansion; (ii) a plan and road map for applying information technology to the management of VSS' operations; (iii) approval of the three-year estimated budget of revenues and expenditures; (iv) hiring the advice of investment institutions; and (v) various investment decisions; and
- **Specifying the responsibility of Board members, the VSS Director-General and department directors** to the Chairperson of the Board and before the law.

3.4.4 Tripartism and beyond: Consultation, voice and representation

58. **International guidelines:** In the ILO's seminal 2011 publication *Social Security and the Rule of Law*, the ILO Committee of Experts on the Application of Conventions and Recommendations⁶¹ reflected on the history and virtue of tripartism in the following terms:

58 See Article 9(5) of the proposed law.

59 Apparently, an investment strategy has been adopted. However, as has been noted, it needs significant improvement, focusing on the long-run objective to fund benefits and adopting a more diversified asset allocation: see World Bank, *Report on Governance*. Also, an independent external fund manager could support the principle of prudent financial governance.

60 See Articles 4–9 of the proposed law.

61 ILO, *Social Security and the Rule of Law: General Survey concerning social security instruments in light of the 2008 Declaration of Justice for a Fair Globalization*, 2011, 215, para. 535.

Convention No. 102 ensures the participation of the representatives of the persons protected in the management of social security, alongside the representatives of employers and of the public authorities (Article 72(1)). Article 3 of Convention No. 168 stipulates the necessity to implement its provisions concerning employment promotion and protection against unemployment in consultation and cooperation with the organizations of employers and workers. Such consultation and cooperation should aim, in particular, as suggested in Paragraph 5(b) of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), “at ensuring that the competent public authorities seek the views, advice and assistance of employers’ and workers’ organisations in an appropriate manner, in respect of such matters as:

- (i) the preparation and implementation of laws and regulations affecting their interests;
- (ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and
- (iii) the elaboration and implementation of plans of economic and social development.”

59. ILO Recommendation No. 202 on National Floors of Social Protection stipulates as follows, as regards the importance of tripartism (see para. 3(r)):

Recognizing the overall and primary responsibility of the State in giving effect to this Recommendation, Members should apply the following principles:

...(r) tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.

60. Also, as a country that ratified the ILO Tripartite Consultation (International Labour Standards) Convention (No. 144) in 2008,⁶² Viet Nam has expressed its support for the principle of tripartism. In practice however, tripartism in the social security domain is not sufficiently reflected in the governance framework provided for in the Law on Social Insurance, and may be in need of further strengthening in Viet Nam’s social security system.

61. **Legislative shortcomings in relation to the composition of the Board and the appointment and dismissal of its members:** Article 94 of the Law on Social Insurance, as is the case with the provisions of Article 3 of the Decree Prescribing the Functions, Duties, Power and Organizational Structure of Viet Nam Social Security of 2016, regulates the composition, appointment and dismissal of the members of the Management Board of the VSS. Regarding its composition, it appears that seven of the 11 members of the Board represent Government ministries, one represents employers, and three represent workers in establishments, farms and cooperatives. It is suggested that the composition of the Board can be improved to reflect a better balance of worker and employer interests.⁶³ This matter is even more prominent as a result of envisaged changes to the composition of the Board: The draft proposal for a new Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity foresees in Article 2 two additional ministerial appointments, in addition to a representative of the State Bank of Viet Nam.

62 See ILO, “Ratifications for Viet Nam”.

63 In this regard, it is important to bear in mind the fact that in 2019 Viet Nam ratified ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which paves the way for independent unions to be considered for purposes of tripartite interventions in the social security domain.

62. Also, it may be necessary to expand Board membership to allow representation of other affected groups, in particular in view of the envisaged extension of social security to informal economy workers. Another category that may deserve representation on the Board concerns retirees and pensioners. It has increasingly become commonplace to allow pensioners as a special category on the governing boards of social security institutions that oversee benefit arrangements affecting these persons. Pensioners have for this purpose organized themselves in representative groups.⁶⁴ Finally, much can be gained to also allow independent experts as Board members, as explained above. It is suggested that the current regulatory provisions be revisited to bring about this change.
63. Regarding appointment and dismissal, members of the Board “shall be appointed, relieved from duty and dismissed by the Prime Minister.”⁶⁵ It is submitted that this gives an unnecessarily wide discretion to the Government to appoint and remove Board members, including representatives of the social partners. This also impacts negatively on the Board’s independence. The correct approach in good governance terms is to let the Prime Minister formally appoint the member(s) indicated by the social partners, if they comply with stipulated appointment conditions, and to reserve dismissal of such members only for cases where the member concerned no longer qualifies to be a member. One of the implications of such an approach is that the Law on Social Insurance and the indicated Decree need to stipulate in clear terms appointment and dismissal criteria, which should bind the Prime Minister in the exercise of the power to appoint or dismiss. Typically, in other systems, a criminal sentence, or insolvency on the part of the member, or being of unsound mind, could disqualify members from appointment, or serve as a ground for termination. The draft proposal for a new Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity does not deal with this matter – although it does provide that, as indicated above, that the Chairperson of the Board may request from the Prime Minister the appointment or dismissal of the Director-General and Deputy Directors-General from their position (Article 8).
64. **Consultation with other representative stakeholders, in particular in the informal economy:** Of particular importance for the envisaged (further) extension of social security to informal economy workers in Viet Nam, ILO Social Protection Floors Recommendation, 2012 (No. 202) consistently uses the formula of “tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned”, when dealing with the issue of representation.⁶⁶ The more recent ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) has amended the formula to refer to “consultation with the most representative employers’ and workers’ organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy”.⁶⁷

64 See C. Gillion, J. Turner, C. Bailey and D. Latulippe, *Social Security Pensions: Development and Reform* (ILO, 2000), 226-227.

65 Article 94(3) of the Law on Social Insurance

66 See paragraphs 3(r), 8(d) and 10.

67 See in particular paragraphs 6, 11, 34, 38 and 39 of Recommendation No. 204.

3.4.5 Complaints and appeals

65. **Effective resolution of social security disputes is a key component of good governance:** The sound, easily-accessible, speedy and effective resolution of social security complaints is an important component and expression of good governance. Transparency will be served, and access to justice ensured.
66. **International standards and guidelines:** There are several ILO Conventions and Recommendations which are helpful in the search for appropriate standards for social security adjudication. Some of the ILO instruments where these standards are reflected include:
- Social Security (Minimum Standards) Convention, 1952 (No. 102);
 - Employment Injury Benefits Convention, 1964 (No. 121);
 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128);
 - Medical Care and Sickness Benefits Convention, 1969 (No. 130);
 - Maritime Labour Convention, 2006, as amended (MLC, 2006) (indeed ratified by Viet Nam);
 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);
 - Medical Care Recommendation, 1944 (No. 69);
 - Income Security Recommendation, 1944 (No. 67); and
 - National Floors of Social Protection Recommendation, 2012 (No. 202).
67. Article 70(1) of ILO Convention No. 102 emphasizes the right of appeal in case of refusal of the benefit or complaint as to its quality or quantity.⁶⁸ ILO Recommendation No. 202 of 2012 on National Floors of Social Protection emphasizes as one of the core principles of a social protection floor the efficiency and accessibility of complaint and appeal procedures.⁶⁹ Paragraph 7 of the same Recommendation summarizes the key context of this obligation: "Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant."

Paragraph 3(o) of ILO National Floors of Social Protection Recommendation, 2012 (No. 202) requires Member States to ensure efficiency and accessibility of complaint and appeal procedures. In fact, paragraph 7 of the Recommendation states that national laws and regulations should specify impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures. Access to complaint and appeal procedures should be free of charge to the applicant.

The most recent ILO instrument in this regard, ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) reiterates that "Members should put in place efficient and accessible complaint and appeal procedures."⁷⁰

68. **Key principles informing the sound and effective resolution of social security disputes:** The principles emanating from the above-mentioned ILO and other international instruments affecting several areas of social security dispute resolution, are summarized in box 3.

68 Convention No. 102.

69 ILO National Floors of Social Protection Recommendation, 2012 (No. 202), para. 3(o).

70 ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) , para. 29.

Box 3

Key principles for resolving social security disputes

The key principles informing the sound and effective resolution of social security disputes are to:

- Establish complementary reviews and appeals procedures, which follow each other in sequence, bearing in mind the need to ensure independence of, in particular, the final decision-taking (or appeal) institution: There should be institutional and structural separation between the complaints (review) and appeals procedures.
- Establish and grant access to independent and impartial courts or tribunals.
- Adhere to due process principles:
 - provide reasonable time limits for the lodgement of reviews (complaints) and appeals;
 - guarantee expeditious (rapid) resolution of disputes and simple procedures and simple proceedings at no charge to the applicant;
 - enforce procedural guarantees to ensure a fair hearing and procedural equality;
 - guarantee appearance, representation and legal assistance; and
 - provide effective (enforceable) remedies.

Sources: M. Olivier, "Social security adjudication in the light of international standards: The need for reform in Southern Africa", *International Journal of Social Security and Workers Compensation* 3, No. 1(2011): 29–54, 42–52 for a more detailed discussion. See in particular ILO, *Social Security and the Rule of Law: General Survey concerning social security instruments in light of the 2008 Declaration of Justice for a Fair Globalization*, 2011, paras 403–438, as well as ILO, *Universal social protection for human dignity, social justice and sustainable development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*, International Labour Conference, 108th Session, 2019, paras 177–189 for a discussion of these principles, and comparative experiences in a range of countries.

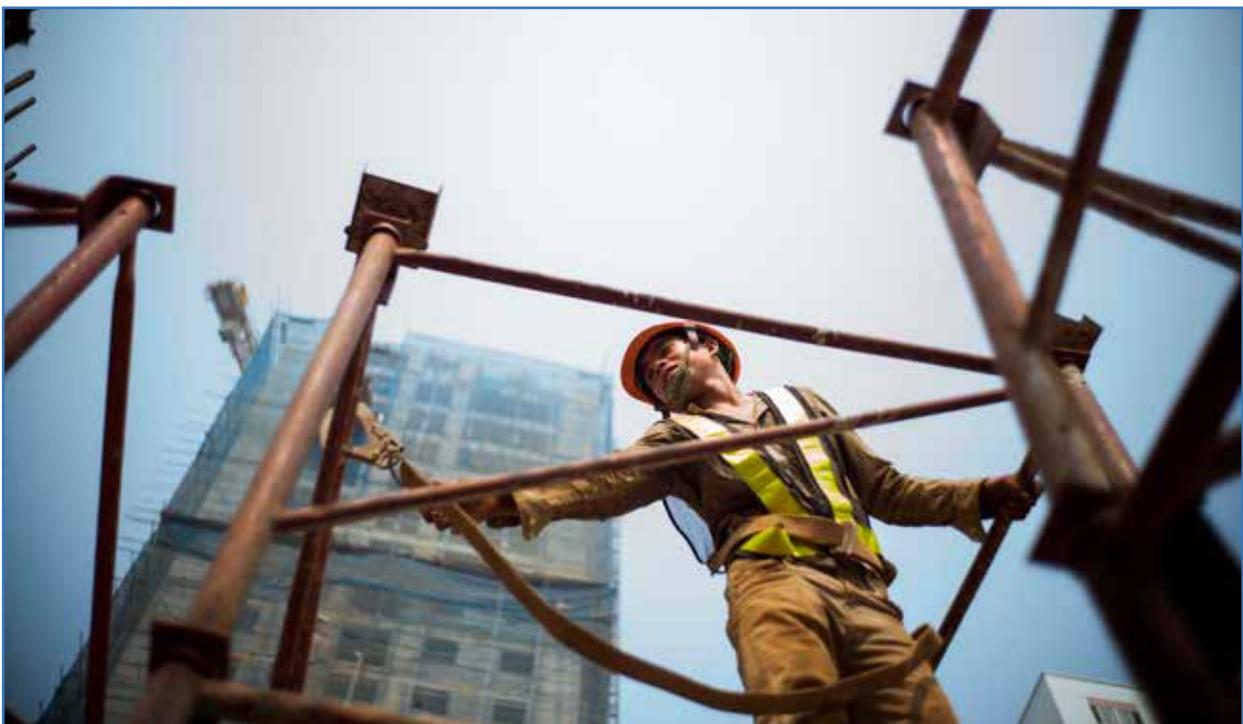
69. **The regulation of complaints and appeal in the Vietnamese social security environment:** For purposes of the social security areas covered by the Law on Social Insurance (but not for purposes of social security areas covered by other legislation, such as employee injury benefits and unemployment insurance benefits), a dual dispute resolution route is foreseen as regards social insurance-related decisions: referral of the dispute for internal review by the institution that took the original decision, followed by approaching a court of law in the event of an unsuccessful outcome (with the possible in intermediate step of referral of the dispute to a provincial-level state management agency).⁷¹ It is further stated that the provisions of the Law on Complaints and Denunciations of 2004 are applicable.⁷²
70. **Few appeals reported by the VSS:** A recent World Bank report remarks that no appeals had been received in the previous fiscal year, and only one appeal had been received three years previously. The report remarks that the extremely low, almost non-existent rate of appeals is a significant concern, and hard to believe, considering the 10.8 million beneficiary payments made in the last fiscal year.⁷³ This is a matter that requires further investigation, and highlights the importance of ensuring that the dispute resolution process is known to VSS clients, and in fact to all social security clients (including beneficiaries under the Vietnamese social assistance system), and complies with universally adopted sound social security dispute resolution principles indicated above – a matter to which we turn next.

71 See Articles 118 and 119 of the *Law on Social Insurance*.

72 Viet Nam, Law on Complaints and Denunciations No 09/1998/QH10 of 2 December 1998, read with the Law Amending and Supplementing a Number of Articles of the Complaints and Denunciations No. 26/2004/QH11 of 15 June 2004.

73 M. Kidd, *Vietnam Social Security*, 21.

71. **Significant scope exists to improve the Vietnamese social security complaints and appeals system:** An analysis of the provisions of the Law on Social Insurance and the Law on Complaints and Denunciations reveals that much can be learned from internationally accepted standards, guidelines and principles to improve the Vietnamese social security dispute resolution system. The indicated procedures in these laws, to the extent that they are provided for, are cumbersome and lengthy. During consultations in January 2020, some of the stakeholders indicated that the provisions are not easy to implement and that many VSS clients are not aware of them. There is, therefore, a need to introduce legal provisions that provide for easily accessible, speedy and effective social security dispute resolution into the Vietnamese social security legal framework, and to do so in the social security legislation specifically. Arrangements should be made to ensure that VSS clients are appropriately sensitized in this regard.
72. **The need to ensure a consistent approach to dispute resolution for all social security risk areas:** No dedicated social security dispute resolution provisions are contained in the regulatory instruments pertaining to the voluntary social security scheme, the Vietnamese social assistance system, employee injury benefits arrangements, and unemployment insurance benefits. This should be rectified – preferably by introducing appropriate provisions into a consolidated social security legal instrument or into each of the said laws, should a consolidated law not be adopted.
73. **Referral to a court of law needs to be revisited:** While the nature of the dispute resolution route indicated in the Law on Social Insurance may be aligned with the international standards indicated above, it is submitted that referral to a court of law may have to be reconsidered in view of the requirement of “simple, rapid, accessible and inexpensive complaint and appeal procedures” – considering the costly and often protracted nature of normal court of law proceedings. Consideration should be given to either ensure such flexible dispute settlement procedures at the level of courts of law, or to provide for a new adjudicating institution that could finally deal with all social security-related disputes (emanating from the whole spectrum of social security sources) in a way envisaged by the quoted standards, and to provide for this in the enabling legislation.



04 Towards an integrated social security system

74. Chapter 4 of this report reflects on the need for social security conceptual clarification, alignment and consolidation in Viet Nam. This chapter focuses on policy (and system), institutional and legal fragmentation in Vietnamese social security, calling for integration and coordination across a diverse set of dimensions.

4.1 Policy development

75. **Policy perspectives emanating from national social policy documents:** Two key national social policy documents, which both were terminated in 2020, reflect on the evaluation of the social security system and give some guidance regarding policy direction:

- **The Five-Year Socio-Economic Development Plan 2016–2020** notes both progress made and existing inconsistencies, overlaps and inefficiencies, suggesting that social security was “not up to par” at the inception of the period. It emphasizes the need, among others, to improve the governance of social security. It identifies social security as a priority area, to be enhanced in accordance with the country’s economic development, and sets extended coverage as a specific objective.⁷⁴
- **Vietnam’s Socio-Economic Development Strategy for the Period of 2011–2020** formulates a diversified and increasingly widened and effective social security system as a goal to be achieved.

76. **Resolution 28 and the Master Plan on Social Assistance Reform and Development (MPSARD) – an ambitious yet still incomplete policy framework:** (Party) Resolution 28 on Social Insurance Policy Reform⁷⁵ sets an ambitious framework for policy direction and reform. In addition, a Prime Ministerial Decision essentially focuses on the non-contributory framework of social security: the MPSARD, which sets out the Government’s ambitions for expanding the country’s social assistance system.⁷⁶ Chapter 4 of this report indicates the key policy areas affected by these two instruments. Viet Nam has made significant progress over the years to improve the social security system, and these instruments are the clearest examples of explicit social security policy direction in Viet Nam. Nevertheless, despite the importance of Resolution 28 and the MPSARD to developing social security, in several respects Resolution 28 and the MPSARD fall short of providing adequate direction and a sufficient policy framework for social security in Viet Nam. Key deficiencies, some of which are also reflected on in more detail elsewhere in the report, are outlined in box 4.

74 Socialist Republic of Vietnam, *The Five-Year Socio-Economic Development Plan 2016–2020, 2016 (National Assembly Resolution on the 5-Year Socio-Economic Development Plan of 2016–2020, Resolution No. 142/2016/QH13)*.

75 Viet Nam, Resolution 28 on Social Insurance Policy Reform (Resolution No. 28-NQ/TW dated May 23rd, 2018; see also Viet Nam, Resolution 125 on Government’s Action Program – Implementation of the Resolution 28-NQ/TW of May 23, 2018 (Resolution No. 125/NQ-CP).

76 Viet Nam, Decision 488 on Approval of “Master plan on social assistance reform and development, in the period 2017-2025 with vision to 2030” (Decision No. 488/QD-TTg of 14 April 2017); see also the Action Plan for MPSARD Implementation (2019).

Box 4

Key deficiencies in the current social security policy framework in Viet Nam

- **Vision, mission and goals:** Resolution 28 contains welcome indications on these matters. However, more explicit strategic direction concerning these is still missing, including on the pathway to a comprehensive social security system in Viet Nam.
- **A multi-tiered approach to social security provisioning and coverage:** While Resolution 28 supports a multi-tiered approach to social security in Viet Nam, further direction is needed as to how the different tiers relate to each other and will be able, taken together, to provide comprehensive social security to the Vietnamese population. As explained further in Chapter 5, in general terms and based on worldwide experience, the non-contributory/tax-financed (in particular, social assistance) component constitutes the first tier; the contributory component (which could involve contributions paid by the State as well, also in the form of subsidized contributions) the second tier; and supplementary contributions on a voluntary basis the third tier.
- **Social assistance:** In the area of non-contributory transfers, in particular social assistance in the traditional sense, neither Resolution 28 nor the MPSARD provides sufficient policy direction and adequate concrete arrangements to deal effectively with the range of serious shortcomings indicated in a 2016 UNDP/MOLISA report¹ – with specific reference to the limited social assistance investment made in Viet Nam, the minimal impact and low coverage of the social assistance system, and the low value of social assistance transfers. The UNDP/MOLISA report concludes that the social assistance system in Viet Nam is not fit for purpose for a middle-income country and that good reasons exist for Viet Nam expanding its social assistance system, by formulating long-term social assistance goals and introducing a range of reforms to establish a sound basis for an effective lifecycle social assistance transfer system, in particular for older persons, children and persons with disabilities. Furthermore, as noted elsewhere in this report, there are challenges with the social assistance conceptual framework. In addition, the social assistance system lacks a proper legal foundation and does not comply with the basic tenets of a social security rights-based approach.
- **Informal economy workers and informal employees:** Despite the worldwide evidence that, at least in the absence of substantial government subsidies and/or other significant incentives, voluntary contributory schemes are unlikely to attract a sizeable percentage of informal economy workers, Resolution 28 still regards voluntary social security as the key to coverage extension for these workers. This matter is further discussed in a separate report.²
- **Other vulnerable categories of persons:** An integrated approach towards incrementally extending significant social security to other specific vulnerable groups who experience coverage and other challenges, in particular children, those with disabilities and Vietnamese overseas workers, is only partially evident in Resolution 28.
- **Policy, institutional and legal fragmentation:** Resolution 28 does not deal with the need to achieve policy, institutional and legal coordination to any significant extent.
- **Governance arrangements:** Areas of good governance discussed in Chapter 3 of this report are essentially not addressed in Resolution 28.
- **Coverage gaps:** While much is said in Resolution 28 in relation to closing coverage gaps, significant challenges still remain, as discussed in Chapter 6 of this report.
- **Funding and implementation arrangements:** These matters are only partially addressed in Resolution 28 including, among others, a reflection on the range of financial resources to facilitate social security provisioning and extension, and suitable monitoring and evaluation arrangements.

¹S. Kidd et al., *Social assistance in Viet Nam: Review and Proposals for Reform* (UNDP/Development Pathways/MOLISA, 2016). ²Olivier, *Extending social security to informal economy workers and informal employees in Viet Nam* (ILO, 2020).

77. **There is, therefore, need for a policy instrument that provides a comprehensive framework and direction for social security in Viet Nam:** From the above, it is clear that a document or instrument that provides medium- and longer-term policy direction as well as a strategic framework for the further unfolding of social security in Viet Nam is required, bearing in mind also that 2020 was the termination date of national social policy documents of relevance to social security, as indicated above. There is indeed much to be learned from international guidelines and comparative examples, including in the Association of Southeast Asian Nations (ASEAN), in achieving this objective. The report deals with these issues below, but not – for now – with the question of how to proceed to bring about more immediate reforms to the social security system. Given the nature of the challenges and shortcomings facing the Viet Nam social security system, this issue requires not only dedicated and progressive interventions, but also important short-term and more urgent interventions. Chapter 8 addresses this issue and considers implementing social security legal and institutional reforms and system integration.

78. **International guidelines confirming the importance of national policies and strategies:** A recent ILO survey observes that effective strategic policy frameworks are essential for extending social security coverage through contributory, non-contributory and other mechanisms, through the development of comprehensive and universal social security schemes. The document summarizes the various purposes served by an integrated policy framework:

...the high levels of fragmentation that frequently characterize social policy interventions require greater harmonization and coordination through the development of strategic policy frameworks in pursuit of overarching national objectives. The process of developing strategic social protection policy frameworks is not only a means, but also becomes an end in itself with a view to building comprehensive and coordinated social security systems, including social protection floors, and ensuring mutual support and coherence with other public policy objectives. These are key instruments in bringing together the interests of all stakeholders, coordinating action and designing effective policy responses with a view to closing existing gaps and addressing the needs and challenges faced by each society. When organized and structured in an inclusive and participatory manner, such processes encourage the discussion of all the challenges faced in the national context, and foster the development of innovative and consensual solutions.⁷⁷

79. **ILO Social Protection Floors Recommendation, 2012 (No. 202)** therefore requires of countries to “formulate and implement national social security extension strategies, based on national consultations through effective social dialogue and social participation”; these policies and strategies should aim to secure at least basic social security guarantees throughout the life cycle for all in need of protection, but also seek to provide higher levels of protection to as many people as possible (Paragraph 13(1)). As regards informal economy workers, the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) requires countries to adopt integrated social policy frameworks to address, among others, the establishment of social protection floors where they do not exist and the extension of social security coverage.

80. **Social protection policies and strategic frameworks are increasingly being established:** Worldwide, and in particular in countries of the global South, social protection policies and strategic frameworks have increasingly been formulated to give purpose and structure to the development of social protection and in particular social security in countries. In ASEAN, for example, Cambodia adopted a National Social Protection Policy Framework 2016–2025 in 2017 and the Lao People’s Democratic

77 ILO, Universal social protection for human dignity, para. 564.

Republic a National Social Protection Strategy in 2020, while the Philippines approved the Social Protection Operational Framework and Strategy in 2012.⁷⁸ Malaysia is in the process of drafting a National Social Protection Policy.⁷⁹

81. **Indicative high-level content of a social protection policy/strategic framework:** In freshly designing an overarching national social protection policy and/or strategic framework for Viet Nam, there is no fixed scope for what a social protection policy or strategic framework should entail. Nevertheless, involving a range of interested stakeholders, the indicative range of areas in box 5, informed by an evidence-based approach, are usually covered in such an instrument.

Box 5

High-level indicative scope of a social protection policy/strategic framework

A social protection policy instrument would typically cover the following dimensions:

- background (including, among others, the socio-economic and demographic context, conceptual framework, national and international legal framework);
- mission, vision, objectives and guiding principles informing the policy and its execution;
- current social security system and challenges;
- policy measures in relation to key policy/social risk areas, in particular social assistance, social security/insurance and health coverage;
- social security measures for vulnerable groups;
- coordination and integration;
- institutional framework;
- implementation; and
- financing.

4.2 Institutional coordination

82. **Social security system coordination informs the need for institutional coordination:** At the heart of the need for institutional coordination of social security is the underlying need to enhance social security system coordination. This brings to the fore the importance of internal coherence between the various components of the social security system, as well as the need for national policies and legal frameworks to provide effective coordination mechanisms that guarantee internal coherence and a systemic approach, in addition to providing for inter-sectoral policy coherence, links with the wider social protection system and coordination with other policies (such as employment, business enterprise and tax policies (external coherence)). Concrete examples of system coordination include:

- **Synchronizing contributory and non-contributory benefits**, for example, carefully aligning these within the framework of a multi-tiered approach (see Chapter 5 of this report) or, as in Japan, through legally requiring that the public assistance system provide support or assistance only after the available assets or benefits guaranteed through the contributory scheme have been used;⁸⁰

78 C. Ong and C. Peyron Bista, *The state of social protection in ASEAN at the dawn of integration* (ILO, 2015) 47–48. See also Lao People's Democratic Republic, *National Social Protection Strategy, 2020*.

79 "Govt a National Social Protection Policy", *Malay Mail*, 12 December 2019; University of Malaya, Social Security Research Centre, *Building Inclusive Societies – Aging: Inclusivity; Agenda for the Elderly: Management of Social Transformation (MOST) UNESCO Senior Officials Meeting*, 20 March 2017.

80 ILO, *Universal social protection for human dignity*, para. 655.

- **Linking social cash transfers with social health insurance, and improving coordination and the exchange of data** between the various components of the social security system (as in Indonesia)⁸¹ provide yet further examples of system coordination;⁸²
- **ASEAN countries** in particular have witnessed the consolidation of a myriad of related but distinct schemes under one national social security system (for example, in Indonesia, the Lao People’s Republic and Myanmar) or national health system (Indonesia, the Lao People’s Republic, Thailand and Viet Nam).⁸³

83. **From an institutional perspective, Viet Nam could consider a more integrated and synchronized social security framework:** Except for the area of health coverage, which falls under the Ministry of Health, the different social security benefits are administered separately by the corresponding departments within MOLISA, particularly the departments of employment, of work safety, of social assistance, and of social security.⁸⁴ In addition, the Directorate of Overseas Labour is concerned with the protection of Vietnamese overseas migrant workers.

84. **Several stakeholders** consulted for this report expressed concern about the lack of institutional coordination in Viet Nam and its impact. Policy and even legal developments tend to deal with the different components of the system in silo fashion. For example, the envisaged reform of Decree 136 seemingly focuses only on the role of social assistance in providing support to the neediest, with little indication of an attempt to synchronize the nature and level of non-contributory support with the contributory part of the system.

85. Also, there seem to be examples of confusion about the principally policy oversight of the relevant Government departments and the VSS, which administers large parts of the social security system. For example, under the Law on Employment of 2013, the MOLISA Department of Employment has to consider and approve the unemployment insurance benefit to be paid, leaving the implementation of the decision to the VSS.

86. Furthermore, the lack of institutional and legal integration has made administering the system more complex. The VSS is tasked with implementing a wide range of essentially uncoordinated social security laws and simultaneously reporting to several Government departments and ministries.

87. **The principled case for institutional coordination has consistently been emphasized by international organisations:** A recent ILO General Survey comments:⁸⁵

The Committee cannot overemphasize the importance of establishing coordination mechanisms, including through national legislation, to guarantee systemic coherence between the mandates and activities of the (often) numerous authorities responsible for the implementation of the various social protection schemes and programmes. Such coordination has been seen to reduce fragmentation and enhance transparency, efficiency and cost-effectiveness by reducing duplication, improving access to schemes and benefits and raising awareness of the system. The Committee notes that, in addition to coordinating contributory and non-contributory schemes, the coordination and

81 In Indonesia, the database for cash transfers is also used for health insurance; there is in fact one registry, managed at the Vice-president (Cabinet) level and used for different purposes.

82 ILO, *Universal social protection for human dignity*, para. 657; Ong and Peyron Bista, 48–49.

83 Ong and Peyron Bista, 48.

84 Socialist Republic of Viet Nam, MOLISA, “Ministry of Labour – Invalids and Social Affairs”.

85 ILO, *Universal social protection for human dignity*, para. 661.

strengthening of existing delivery mechanisms is also of the utmost importance for the effective expansion of coverage and in ensuring that schemes are close to their intended beneficiaries. Delivery mechanisms at the local level should be part of a coordinated policy framework as a means of effectively reaching all the intended target groups. In a context characterized by scarce resources and fiscal pressure, effective coordination mechanisms are essential to ensure that the available resources are allocated in the most effective way, and particularly to guarantee the protection of the most vulnerable members of society.

88. **There is an evident need to facilitate and enhance institutional coordination and consolidation in Viet Nam:** It is clear that measures need to be introduced to address the institutional fragmentation affecting social security policy-making, provisioning and administration in Viet Nam. Support for this also appears from overarching political and policy direction enshrined in high-level guiding documents and instruments in Viet Nam, as indicated below. It may be to the advantage of integrated social security policy-making and administration, and more generally the ongoing development of social security in Viet Nam, to consider:
- firstly, establishing a consolidated structure at the apex level, entrusted with providing ongoing supervision and policy guidance, and facilitating integrated and coordinated interventions; and
 - secondly, ensuring coordination among institutions currently tasked with political and policy oversight.
89. **Rationalization of current political and policy oversight institutions:** Except for the area of health, all the involved departments and laws remain under the overall framework of MOLISA, which should be a significant advantage if the Government decides to facilitate the implementation of Resolution 28 through a more ambitious institutional and governance reform. It may be helpful to consider the further rationalization of institutional arrangements, such as the management of social assistance, separating the management of “regular transfers” (or allowances) and the other functions of the MOLISA Department of Social Assistance (such as care services and emergency assistance), thereby ensuring the consolidation of income-support benefits under one institutional umbrella.⁸⁶ This is a matter which, from a conceptual point of view, is also discussed in Chapter 3 of this report.
90. **Pursuing operational coordination, supported by an integrated database system:** A definite advantage of institutional coordination is that it might help to facility operational coordination as well. Worldwide experience gives support to this. It has been reported that increasingly, “single window services” or “one-stop-shops” are being established at the local level to reduce fragmentation and reach the target population at reduced cost, while also having the effect of requiring intragovernmental cooperation and empowering local authorities: “such approaches have been successfully implemented in Brazil, India, Mongolia, South Africa, Tajikistan and other countries, and are particularly important in facilitating access to social protection for rural populations.”⁸⁷ For this to operate optimally, database systems need to be integrated.

86 S. Kidd et al., *Social assistance in Viet Nam: Review and Proposals for Reform* (UNDP, Development Pathways and MOLISA, 2016), 12.

87 See ILO, *Universal social protection for human dignity*, para. 660 for further details and examples. See also ILO, *Maternity cash benefits for workers in the informal economy*, 2016, 6.

91. **Establishing a consolidated, centralized coordinating structure – the international experience:** It has increasingly become commonplace for countries to establish an overarching, apex institution tasked with, among others, ensuring social security system and institutional coordination and oversight. One of the major advantages of adopting such an approach is that, while ultimate political responsibility, control and supervision of the social security system still lies with the government, an institution with the necessary technical expertise, and representing the interests of all major stakeholders, is able to give direction and support to the social security system. Government, as the principal stakeholder, usually makes up a substantial part of the composition of such an apex institution.
92. Worldwide, examples of apex coordinating structures abound, including in several ASEAN countries. In Indonesia, the National Social Security Council, as foreseen in the National Social Security Law of 2004, plays a central role in formulating social security policies, harmonizing the implementation of the National Social Security System, monitoring and evaluating social security programmes and supporting the voluntary integration of hundreds of existing, local health insurance programmes under the new National Health Insurance System.⁸⁸ In Malaysia, the Malaysian Social Protection Council was established in 2016 and tasked with formulating a Social Protection Policy and rationalizing existing and new social protection programmes. Four committees had been set up, led by relevant ministries and departments.⁸⁹ The National Social Protection Strategy (NSPS) of Lao People’s Democratic Republic (2020) foresees the establishment of a National Social Protection Committee, which will be responsible for the general implementation of the NSPS; the coordination of the various implementing bodies; the coordination with development partners; the monitoring and evaluation of the NSPS implementation; and the assessment of the overall situation of social protection in the country. In Cambodia, the National Social Protection Policy Framework 2016–2025 (2017) foresees the establishment of a National Social Protection Council as the key actor responsible for the overall coordination and steering of the development of various social protection strategies and policies, as box 6 details.

88 Ong and Peyron Bista, 49.

89 “Govt drafting National Social Protection Policy”, *Malay Mail*, 12 December 2019; University of Malaya, Social Security Research Centre, *Building Inclusive Societies – Aging: Inclusivity; Agenda for the Elderly: Management of Social Transformation (MOST) UNESCO Senior Officials Meeting*, 20 March 2017.

Box 6

National Social Protection Council (Cambodia)

The National Social Protection Policy Framework 2016–2025 (2017) foresees the establishment of a National Social Protection Council. The policy framework reflects on:

- **Rationale:** According to the policy framework, the separate processes of setting up social protection policies in various ministries and institutions indicate the lack of a unified coordination mechanism, leading to inconsistencies, gaps and overlaps.
- **Composition:** The Council will be composed of high-ranking representatives from relevant ministries and institutions.
- **Responsibilities:** The Council will (1) coordinate policy drafting on the social protection system; (2) monitor and evaluate the progress and effectiveness of the social protection policy implementation; and (3) connect and harmonize the social assistance system with the social security system.
- **Operations and good governance:** The Council should have a Secretariat and should set up specialized committees to promote operational efficiency. The operation of the Council will be based on the principles of good governance.

Source: Cambodia, *National Social Protection Policy Framework 2016–2025*, 2017, para. 4.

93. **Consider the importance of high-level political and policy documents in Viet Nam in respect of social security policy development, institutional coordination and legal reform:** There is a need to consider important political and policy guidance in documents in relation to social protection generally and social security specifically, as well as the policy development and institutional coordination reflections above and legal reform. (Party) Resolution 15 of 2012 on Some Key Issues on Social Policies,⁹⁰ covering the period 2012–2020, emphasizes the need, among others, to ensure social protection for the whole population. It also highlights systematic legal system, mechanisms and policies reform to reflect uniformity. (Party) Resolution 18 of 2017 on Some Issues on Continue Innovation, Organization of the Political Policy System towards Efficient and Effective Operation⁹¹ contains important principles on institutional coordination and efficiency. It stresses the need for consolidation to avoid duplication. While it sets as an objective the reduction of intermediaries, but not the establishment of new intermediaries, it also supports administrative reforms, and the need to explore new models of organization structure to achieve streamlining and uniformity. It requires the Government, ministries and branches to continually renovate, consolidate and reorganize organizational structures and to achieve functional consolidation. The implementing (Government) Resolution 10 of 2018 on Promulgating the Government’s Program of Action for Implementing Resolution No. 18-NQ/TW⁹² emphasizes the task of among other ministries and ministerial-level agencies to review laws to be amended, supplemented or promulgated and to review, arrange and streamline organizational structures, with a view to substantially reducing the number of departments and offices.

90 Viet Nam, Resolution No. 15-NQ/TW dated 1 June 2012 of the Fifth Plenum of the XII Central Committee on Some Key Issues on Social Policies in the Period 2012-2020

91 Viet Nam, Resolution No. 18-NQ/TW dated 25 October 2017 of the Sixth Conference of the Second Central Executive Committee XII on Some Issues on Continue Innovation, Organization of the Political Policy System towards Efficient and Effective Operation.

92 Viet Nam, Resolution No. 10/NQ-CP dated 3 May 2018 on Promulgating the Government’s Program of Action for Implementing Resolution No. 18-NQ/TW.

4.3 Legal fragmentation

4.3.1 The value of a legal framework

94. **International guidance:** In a recent report, the ILO stresses that there are important reasons for ensuring that social security is embedded in sound national legislation, including effective supervision, the allocation of the required state funding in the case of non-contributory benefits, certainty and predictability, sustainability, accountability, and protection against arbitrary decision-making, as box 7 indicates. Also, aims and objectives of the social security system are clarified in a coherent legal framework and, importantly, linkages between the various components of the system can be made clear.

Box 7

Why social security should be embedded in sound national legislation

The rationale for providing a legal framework for social security in national legislation is indicated in ILO General Survey concerning the Social Protection Floors Recommendation:

“ ... a clear legal framework allows for more effective supervision by the State, based on a long-term strategy, as it generally requires public monitoring of the financial sustainability of schemes and, in the case of non-contributory benefits, the allocation of the necessary resources from the state budget. A legislative basis therefore ensures the continuity of rights and entitlements over time, contributes to the predictability and sustainability of the social security system and the accountability of the institutions responsible for its governance, and acts as a safeguard against arbitrary governance. A clear and coherent legal framework also facilitates the progressive formulation of overarching aims and objectives for the social security system and the development of linkages between its various components (including contributory and non-contributory schemes, and benefits in cash and in kind). The effective implementation of the law in practice is equally important for the achievement of these objectives.”

Source: See ILO, *Universal social protection for human dignity, social justice and sustainable development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*, International Labour Conference, 108th Session, 2019, para. 173; see also ILO, *World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals, 2017, 5*.

95. Also, the ILO Social Protection Floors Recommendation, 2012 (No. 202) states that basic social security guarantees need to be established by law (para. 7). It stipulates that national laws and regulations should specify the range, qualifying conditions, and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaints and appeal procedures should also be specified. Access to complaints and appeal procedures should be free of charge to the applicant. Lastly, systems should be in place to enhance compliance with national legal frameworks (para. 7).
96. A legal framework for non-contributory, including universal and social assistance benefits, therefore fulfils important purposes. Not only does it give the State a clear and legal mandate to provide social security benefits, but it also expresses the principle that social security is a human right and a rights-based approach to social security, discussed in Chapter 3 of this report. Furthermore, such a legal framework gives beneficiaries, namely poor and vulnerable people, clarity regarding:
- the specific benefits that may be available to them;
 - the criteria they have to meet in order to qualify for such benefits;
 - the procedures that need to be followed in order to access these benefits;

- a constant mandate to access public funds for social assistance programmes; and
 - complaints and appeal mechanisms available to them, should they be dissatisfied by a decision of the relevant institution in charge of paying social assistance benefits.
97. In fact, as has been noted, “the codification of social rights is the indispensable foundation for any social protection system. The individual’s right to protection against risks must be the object of appropriate legislation and mechanisms are needed to ensure effective application of this protective legal framework.”⁹³

4.3.2 Viet Nam: A fragmented and uncoordinated legal framework

98. According to Article 4 of the Law on Social Insurance of 2014, compulsory social insurance covers the following benefits/risks:

- sickness;
- maternity;
- labour accident and occupational disease;
- retirement; and
- survivorship allowance.

99. According to Article 4, voluntary social insurance covers the following benefit categories:

- retirement; and
- survivor allowance.

100. Furthermore, with regard to health insurance, according to article 12(1)(a) of the Health Insurance Law of 2008, as amended in 2014, employees on indefinite contracts or contracts of at least a full three months’ duration, as well as salaried business managers and officials and civil servants (collectively referred to as “employees”) are covered by the law. Also, Chapter VI of the Law on Employment of 2013 provides for unemployment insurance.

101. Social assistance is said to be applicable for distinct Vietnamese groups – people who belong to disadvantaged groups including the poor; people living in remote, mountainous and ethnic minority areas; workers in rural areas and the informal economy; unemployed workers; the disabled; children; old-age and sick people; and those affected by natural calamities and other force majeure risks.⁹⁴

102. Important shortcomings in the compulsory and non-compulsory social security domains need to be noted.

- Firstly, the contributory framework does not provide for family benefits (including child benefits) and disability benefits.
- Secondly, voluntary social insurance only covers two long-term benefits – old age and survivorship – which may not address the priority needs of informal (economy) workers.
- Thirdly, the contributory and non-contributory frameworks are dealt with and seen as two alone-standing frameworks, with no clear attempt to develop an integrated social security response to social risks, for example through multi-tiered arrangements – as discussed above.

93 Pino and Confalonieri, 136; see also 132. Pino and Confalonieri further remark that protective legislation also addresses power imbalances which create or maintain vulnerability for individuals or marginalized groups, mainly through anti-discriminatory measures.

94 P. Houg, “Laws and policies for providing social insurance to non-citizens working in Vietnam”, draft report submitted to the ILO (unpublished), 20.

103. The present fragmentation is cemented in the current diversity of legal instruments. This has created anomalies and inconsistencies, at times leaving major gaps in coverage. Retirement coverage in Viet Nam illustrates this conclusion. Considering the provisions of the Labour Code of 2019, the Law on Social Insurance of 2014 and the Law on the Elderly of 2009, it is clear that a large number of older people are effectively excluded from receiving social security old age benefits. They are those above the age of 60 (in the case of men) or 65 (in the case of women), who may have contributed to VSS and are entitled to a higher retirement pension, and those 80 years and above, who may not qualify for a VSS pension⁹⁵. As a recent ILO report notes:⁹⁶

The existence of different legislations creates inconsistency in the implementation of social security benefits. For instance, those who have contributed to the VSS for at least 20 years can receive a higher value social insurance pension at retirement age – currently set at 60 years for men and 55 for women by the Labour Code. Everyone who does not qualify for a VSS pension is eligible for a social pension, however, only at the age of 80 as established independently by the Elderly Law. This leaves the majority of the population with no access to income security for a period of 20 to 25 years.⁹⁷ Such design gaps are a symptom of the fragmentation in policy structures, in this case between the Labour Code, the Social Insurance Law and the Elderly Law, and are precisely the kind of weaknesses that well implemented multi-tiered systems are meant to address.

104. While all of the social security benefits, except for medical care, fall under MOLISA's policy mandate, the social security risk areas and benefits remain scattered across several pieces of legislation. In particular, social assistance is provided for in Decree 136. Also, certain core social insurance benefits are contained in other, separate laws. For example, unemployment insurance and employment injury are currently regulated under the Law on Employment of 2013 and the Law on Occupational Safety and Hygiene of 2015 respectively. They are also administered separately by the corresponding departments within MOLISA. This presents several challenges to the effective and coherent management of social security in Viet Nam.⁹⁸

105. Even as far as particular social risk areas are concerned, there are unhealthy overlaps and at times inconsistencies in the legal regulation. For example, employee injury benefit arrangements are contained in both the Law on Occupational Safety and Hygiene of 2015 (Articles 41–62) and the Law on Social Insurance (Articles 42–52), with a confusing range of largely overlapping and at times inconsistent provisions. Also, the position of Vietnamese overseas workers is captured in several laws, including the Law on Social Insurance, the Law on Occupational Safety and Hygiene of 2015 (Article 67) and the Law on Vietnamese Workers Working Abroad under Contract of 2006.

106. This state of affairs contributes to significant overlaps, gaps and inconsistencies in the legal domain. In particular, social assistance is not subject to the rights-based oriented regulation evident from the provisions of the Law on Social Insurance, as indicated above. In fact, social assistance is not regulated by an instrument adopted by Parliament, but by a lower-level legal instrument – a Government Decree – and does not enshrine a legal entitlement to social assistance. More broadly speaking, the legislative ethos that applies to the benefits covered under the Law on Social Insurance may not be relevant to contributory benefits provided for in other laws. Also, matters which require uniform treatment, such as complaints and appeals, are not consistently regulated – in

95 as of 2020.

96 Ramírez López, Tsuruga and Cunha, 3.

97 It should be added that older persons between the ages of 60 and 79 who live alone in a poor household are entitled to a means-tested benefit. However, as indicated elsewhere in this report, this still leaves a large number of older people outside the sphere of protection.

98 Ramírez López, Tsuruga and Cunha, 3.

fact, in some instances, such as social assistance, a dedicated complaints and appeals mechanism is not provided for. In addition, the consistent administration of social security by different departments of MOLISA may be impacted, for example as a result of the different review calendars applicable to the respective legal frameworks.

107. Furthermore, as different legal definitions apply to key concepts, the personal sphere of application may vary, implying that some workers and their dependants may qualify for benefits under one or more of the laws, but not under another. As has been indicated,

While benefits regulated under the Social Insurance Law and the Law on Occupational Safety and Hygiene are available to all workers with a labour contract of 1 month or longer, unemployment benefits are only available to workers with contracts of at least 3 months. This is because the 2014 reform of the Social Insurance Law could be incorporated by the 2015 revision of the Law on Occupational Safety and Hygiene, but the Employment Law has not been reviewed since 2013. As a result, workers whose contracts are extended on a short-term basis might be covered by most benefits, they will not be able to access unemployment benefits.⁹⁹

108. The preceding paragraphs and chapter 3 and 4 of the report have highlighted several inconsistencies, gaps and overlaps in the social security legal system – including in relation to governance arrangements and the scope of the social security contributory and non-contributory regimes in Viet Nam. Other key examples include the following.

- (a) Significant differences exist in the scope of employees covered by the various social insurance laws, compared with the provisions of the 2019 Labour Code. For example, the Law on Social Insurance requires a contract duration of at least one month and the Law on Employment a contract duration of three months; the Labour Code contains no such restriction.
- (b) Domestic workers are excluded from the scope of the Law on Employment, but not the Law on Social Insurance.
- (c) Those involved in several forms of non-standard work are excluded from coverage, unless they work in the context of an employment relationship, in particular affecting many gig workers, supply chain workers, those engaged in the informal economy, and those involved in multi-party employment relationships.
- (d) Also, particular non-employee categories, namely business household heads, business managers and managers of cooperatives, are in need of social security coverage.
- (e) Inconsistent treatment of multi-employer situations – in some cases only the first employer has to contribute to social insurance; otherwise, all employers have to contribute.
- (f) The retirement age indicated in the Labour Code and the Law on Social Insurance is not synchronized.
- (g) Foreign workers in Viet Nam are excluded from the voluntary social insurance scheme, while currently Vietnamese workers abroad are excluded from the compulsory social security scheme.¹⁰⁰
- (h) Maternity as a life cycle risk is currently excluded from the social assistance domain.

99 Ramírez López, Tsuruga and Cunha, 3.

100 *Foreign workers in Viet Nam* working with work permits of practice certificates or practice licences, coverage is extended under the compulsory scheme (Article 2(2) of the Law on Social Insurance (2014)). However, (all) foreign workers are excluded from the voluntary social insurance scheme, as persons covered by the voluntary scheme must be Vietnamese citizens (Article 2(4)). Vietnamese workers abroad, although currently excluded, may in future be expected to participate in the compulsory scheme in terms of new draft legislation – as indicated in the separate report by the consultant submitted to the ILO.

- (i) Currently, no provision is made for a reduced pension calculated on the basis of a shortened contribution period (in particular in relation to compulsory social insurance).
- (j) Critical social assistance areas are not covered by Decree 136: suspension, cancellation and lapsing of benefit; review of and increased/reduced benefit payment; protection of the individual against abuse; and enforcement and inspection.

109. Also, in this regard, social insurance laws may not be appropriately aligned with labour law provisions and health law provisions. This may detrimentally impact the scope of social security provisioning of particularly vulnerable workers. For example, unlike the position before, the 2019 Labour Code now provides for workers covered by verbal employment contract in respect of employment of less than one month's duration to be included by the Labour Code in most instances;¹⁰¹ however, they are excluded from the sphere of application of the Law on Social Insurance. Also, with regard to health insurance, as indicated above, in accordance with the provisions of the Health Insurance Law of 2008, as amended in 2014, employees on contracts of less than three months' duration, are not covered by this law – again a clear inconsistency with the sphere of application of the Law on Social Insurance is indicated.

110. Considerations such as those outlined above stress the need to have a uniform, consolidated legal framework to regulate, and administer the social security system consistently, equitably and effectively. It has been suggested that “at a minimum level, it is advisable that key design parameters such as personal scope,¹⁰² insurable earnings,¹⁰³ and value references¹⁰⁴ should be established in a principal legal document so that they may be coherently designed, monitored and reviewed when necessary. A more comprehensive approach would be to pursue the expansion of the Social Insurance Law into an overarching Social Security Law.”¹⁰⁵ These matters should be appropriately aligned and, ideally, be captured in a single legal framework.

111. In particular, as indicated earlier, achieving the objective of a multi-tiered system as foreseen by Regulation 28, should be supported by a consolidated legal framework, whether in separate but aligned laws or a single consolidated law, encompassing all benefit types, from both a social insurance and social assistance perspective. Otherwise, coverage gaps may take a long time to close.

4.3.3 The need for a legal framework that is consolidated and integrated

112. **The need for an appropriate legal framework/instrument:** The different components of social security in Viet Nam should all be captured in a legal framework, possibly in a consolidated law, which reflects the requirements of a rights-based approach (see Chapter 3 above). The key reform dimensions, including the institutional framework, mandate and process required to drive and inform the reform, as well as key lessons from social security reform experiences in other jurisdictions, are set out in Chapter 8 of this report. Even in countries of the global South, social assistance is increasingly embedded in national legislation – as was recently remarked, in the African context, “Countries in Africa are increasingly enacting national laws in line with the constitutional

101 Labour Code No. 45/2019/QH14.

102 Eligibility arising from nature of labour contract and age, where applicable.

103 The base upon which contribution premiums and benefits are calculated, in Viet Nam a portion of total earnings.

104 Monetary references used to express constant values such as definitions of base salaries, and insurable earnings.

105 Ramírez López, Tsuruga and Cunha, 3. References in the original have been retained and incorporated in the footnotes immediately above.

provisions covering social assistance.”¹⁰⁶ Of course, it may be necessary to develop such an integrative, coordinating legal framework progressively, as it may take some time to shape the contours of the overall statutory social security framework.¹⁰⁷

- 113. The legal framework pertaining to key social security dimensions and substantive parametric elements should be reflected in law(s) adopted by parliament, and not in secondary legislation:** This is an important principle. A recent ILO document explains:

While recognizing the need for delegated or secondary legislation, which offers greater flexibility in its adoption and future modification, the Committee considers that, wherever a legal framework for social protection is predominantly comprised of delegated or secondary legislation, the system is more likely to be affected by changes of government, with the risk of undermining and perhaps forfeiting the necessary long-term vision and sustainability. Conversely, statutory provisions offer greater guarantees in terms of rights and obligations, participation, legal security and certainty. The Committee further considers it preferable, subject to the relevant constitutional requirements, not to confine the legislative dimension of social protection solely to framework laws, with the substantive parametric elements being left to the regulatory level.¹⁰⁸

- 114. The legal framework/law should reflect integrated and aligned approaches:**

One of the key issues is the need to ensure that the legislative framework for social assistance should fit within the broader picture of the social security and the broader social protection system of a country. All too often, social assistance schemes and their underlying statutory instruments are developed piecemeal, without consideration of the rest of the system – as is seemingly the case in Viet Nam, as explained earlier in this report. Ideally, therefore, the emphasis should be on having an overarching legal framework in place indicating where and how the different components of the system fit together, and what the role and place of social assistance is within this system. Some attempts to do this appear in the social security legal frameworks of several other countries. For example, the Indonesian Law Concerning the National Social Security System (Law 40 of 2004) – as is the case with the subsequent Law on the Implementing Agency of Social Security (Law 24 of 2011) – has been described as creating “a peculiar combination of social assistance and social security,”¹⁰⁹ especially in health coverage, given the integrated healthcare system comprising contributory and non-contributory elements, thereby extending coverage to both workers and those who cannot afford to contribute. Other countries, also in the global South, have also done so.¹¹⁰

- 115. Basic social security guarantees should be established by law.** National laws and regulations should specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks.

106 UNDP, *The State of Social Assistance in Africa*, 2018, 65.

107 ILO, *Universal social protection for human dignity*, paras 611, 614.

108 ILO, *Universal social protection for human dignity*, para. 614.

109 Y. Guérard, *The New Indonesian National Social Security Law*, 2005, 5.

110 See, for example, the Mozambican Law on Social Protection of 2007, which makes overall provision for the different components of the social protection system in Mozambique, as well as the Social Protection Code, 2016 of Gabon (a general social security law, containing the classic nine ILO contingencies, indicating how both social insurance and social assistance mechanisms have to be used to achieve universal coverage).

116. **Key issues to be contained in overarching Vietnamese legal framework/law:** In accordance with Paragraph 7 of Recommendation No. 202 on National Social Protection Floors, national laws and regulations should specify basic social security guarantees. Apart from impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures, the following needs to be specified:¹¹¹
- (a) **The material scope of coverage:** the risk or contingency covered, or the circumstances under which a person can obtain a benefit.
 - (b) **The personal scope of coverage:** who is covered, in respect of which benefits. In some cases, the scope of coverage is defined broadly, but entitlements are restricted to those who meet certain conditions; in other cases, the scope of coverage is defined by specifying the personal attributes of those who are intended to qualify for coverage.
 - (c) **The type and nature, or range, and duration of the benefits** available to the persons covered in the event of a contingency, risk or situation covered by the law and for which protection is afforded. Such benefits, in accordance with Paragraph 9(2) of the Recommendation, 'may include child and family benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, survivors' benefits, unemployment benefits and employment guarantees, and employment injury benefits as well as any other social benefits in cash or in kind.'
 - (d) **The level or amount of the benefits to be provided:** what will a person receive, in cash or in kind, if they are entitled to a benefit.
 - (e) **The qualifying conditions,** also referred to as conditions of entitlement or eligibility criteria, that have to be met to qualify for a benefit, which should be formulated clearly, with the necessary definitions.
117. **The need for a systematic revision of regulatory instruments:** Bearing in mind the considerations expressed above, it is necessary to develop a framework for systematically revising all relevant social security regulatory instruments, on the basis of policy directions expressed in overarching policy-setting instruments, including Resolution 28 on Social Insurance Policy Reform and any other overarching national social protection policy, strategy or plan of action that may be developed. This report deals with these matters, from the perspective of the social security system personal and material scope of coverage and social security governance arrangements, and also suggests pathways to achieve this.

4.3.4 Strengthening compliance with the legal framework¹¹²

118. **International standards and practice concerning enhancing compliance:** It is common for national social security legislation to establish specific measures to ensure compliance with the legal obligations of the parties concerned. ILO Social Protection Floors Recommendation No. 202 of 2012 confirms that "systems should be in place that enhance compliance with national legal frameworks".
119. **Enforcement mechanisms,** and principally inspection and monitoring systems, supported by sufficiently dissuasive penalties, constitute the core of ensuring compliance. As indicated in a recent ILO world-wide survey:¹¹³

111 ILO. 2019. *Universal social protection for human dignity, social justice and sustainable development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*. International Labour Conference. 108th Session, 69–70.

112 For this part, reliance has in particular been placed on ILO, *Universal social protection for human dignity*, paras 190–196.

113 ILO, *Universal social protection for human dignity*, para. 191.

On-site inspections and the auditing of employers' documents are important tools in ensuring compliance with social security legislation. Inspections may be undertaken by the labour inspection system, the social security system itself, or both systems, or through an integrated system. Institutions undertaking inspections may have the competence to register undeclared employees.

120. Compliance challenges experienced in the Vietnamese social security system:

Several problems have been reported in, firstly, the Vietnamese inspection system and, secondly, the failure on the part of employers to declare and register employees and, in particular, to comply with their obligations to pay over premiums or contributions. As regards the inspection system, it has been reported that,

Compliance with the law is particularly low in the construction sector, partly due to the employers' lack of information about their social security rights and responsibilities. In Viet Nam, inspections in the construction sector are only undertaken in enterprises rather than on construction sites due to limited capacities. The scope of inspections is limited to the payment of contributions for registered (full-time) employees and neglects other more prevalent methods of evading social insurance payments in the sector, such as non-registration of employees.¹¹⁴

121. The need to ensure that employees enjoy social security support despite employer failure:

The failure to register employees and transmit employer and employee contributions has been raised as an issue of great concern by MOLISA in the course of consultations. It has in particular been reported that the current framework of sanctions and penalties apparently has little impact on dealing with this problem effectively. It is inappropriate to exclude workers from coverage in the event where the employer fails to register workers and/or where the employer fails to deduct, and transmit employee contributions – especially where, as is the case in Viet Nam, workers engaged in an employment relationship do not have the option to self-register.

122. Complementary measures may need to be considered: There may be a need to consider additional and alternative enforcement mechanisms, over and above the seemingly ineffective mechanisms currently available and used in the Vietnamese system. As suggested in a recent ILO publication, sustained compliance can be ensured via a range of complementary initiatives, including:¹¹⁵

- the exclusion from public tenders of economic operators that fail to meet their obligations relating to the payment of social security contributions and interest on overdue payments in the case of the non-payment of contributions within the time limits;
- the establishment of a centralized system of employment and social security data and for the collection of contributions;
- closer cooperation between the institutions involved in the administration of social security and the tax authorities, including the exchange of data;
- making employers liable for the costs incurred by the State for the treatment of workers who are victims of avoidable accidents, in the event of negligence or misconduct by the employer;
- training and awareness-raising campaigns ensuring that: (a) the persons protected, especially the most vulnerable, are aware of their rights and obligations, as well as

114 Q.A. Nguyen and N. Cunha, *Extension of social security to workers in informal employment in the ASEAN region* (ILO, 2019), 47, box 3.5.

115 ILO, *Universal social protection for human dignity*, paras 194–196.

of the remedies available to them; and (b) employers are fully acquainted with their obligations in this context; and

- linking non-compliance to a well-developed, user-friendly, easily accessible and effective system of complaints and appeals.

123. Provide in the legal framework and enforcement practice for extended compliance measures: In view of the above, it is recommended that the following additional measures for enhanced compliance, over and above the current range of measures, be considered and incorporated in the Vietnamese social security legal framework, ideally in an overarching law that applies to all (contributory) arrangements:

- enhance inspection capacity by involving both MOLISA and VSS inspectors in monitoring and enforcing compliance;
- treat collection and inspection functions separately to help inspection focus on compliance;
- extend the scope of work undertaken by inspectors and adjust how they perform their functions to cover all labour market sectors and all issues related to compliance, including the non-registration of employees;
- exclude non-compliant employers from public tenders and/or other selected arrangements in the public domain;
- enhance a centralized system of employment and social security data, including for the collection of contributions;
- establish close collaboration with the tax authorities;
- make non-compliant employers liable for costs incurred by the state and/or social security institutions where benefits are transmitted to employees;
- strengthen in law and in practice a well-designed and user-friendly complaints and appeals system, as elaborated in Chapter 4 of this report, and include non-compliance by employers as a core element of the scope of this system;
- allow employees to self-register and provide them easy access to checking with the VSS whether contributions have been deducted and transmitted; and
- invest in dedicated training and awareness, aimed at both protected persons and employers.



05 The importance of universal and multi-tiered approaches: Viet Nam

5.1 Achieving comprehensive social security linked to universal and multi-tiered approaches

124. **Why it is important to consider adopting universal and multi-tiered approaches in Viet Nam:** Social security systems should ultimately aim to extend social security to everyone – in accordance with the right to social security accruing to every person in terms of universally endorsed human rights instruments, and the UN-driven goal to leave no one behind. This goal of comprehensive and universal social security requires that at least a minimum, and incrementally a higher level of protection across the life cycle, should be available to everyone. This applies to Viet Nam as well.
125. Countries pursue different ways of achieving such an outcome, usually in a mix of contributory and non-contributory modalities. Increasingly, countries are resorting to two principal approaches (or a combination thereof). The first approach relies on a universal benefits regime, in the form of either universal tax benefits and/or universally applicable national insurance scheme benefits, relying in part on government subsidies, aimed at essentially covering the whole population, regardless of employment, social or income status. Universal pension systems and inclusive national health insurance arrangements, such as the Vietnamese social health insurance scheme, are good examples of this approach. The second approach adopts a multi-tier regime, whereby (as a rule) in its simplest form, the non-contributory/tax-financed (social assistance) component constitutes the first tier; the contributory component (which could involve contributions paid by the state as well, also in the form of subsidized contributions) the second tier; and supplementary contributions on a voluntary basis the third tier. Universal systems can also be complemented by other tiers.
126. The design of a multi-tiered regime requires careful calibration of the different tiers or pillars, in order to avoid both duplication of and gaps in coverage; to ensure that incrementally coverage is extended to all of those affected by particular life-cycle risks; to facilitate the reduction of poverty and meaningful protection by gradually implementing both a minimum and a higher-level, adequate benefit; and to enable the optimal use of financial resources, including public finances. Of course, when calibrating the different tiers, it is crucial to proceed in a way which will heed and achieve long-term social security objectives set by the country concerned. In the case of Viet Nam, the principle that social insurance should constitute the main avenue of ensuring social security in the country, as expressed in Resolution 28 and several other national documents, is of critical importance, as indicated below.
127. **Universal and multi-tiered approaches in the Vietnamese social security system:** As discussed below, Viet Nam has achieved remarkable results in health coverage extension, via its social health insurance scheme. Viet Nam has done this essentially through gradually implementing contributory benefits, but also through significant fiscal support – in particular, by introducing various levels of tax-financed contributory support to different vulnerable categories of persons, and tax-based interventions to reduce the level of co-payments, differentiated for distinct beneficiary categories.
128. **Resolution 28** of 2018 – the Master Plan on Social Insurance Reform (MPSIR) and its

corresponding implementation plan,¹¹⁶ read with the Master Plan on Social Assistance Reform and Development (MPSARD), expressed in Decision 488 of 2017 – and its corresponding implementation plan (2019), reveal Viet Nam’s clear intention to establish a multi-tiered social security system, where tax-financed and contributory benefits work together to achieve universal coverage.¹¹⁷ In Viet Nam, the development of a multi-tiered social security system is a new phenomenon. In several respects, the contributory and non-contributory tiers of the Vietnamese social security system were developed independently, resulting in a fragmented and at times incoherent system filled with gaps and overlaps.¹¹⁸ Resolution 28 provides the strongest indication thus far of the resolve to introduce a multi-tiered regime.

129. Implementing appropriately calibrated/aligned multi-tiered social security benefits: Box 8 highlights conclusions on the subject.

Box 8

Implementing appropriately calibrated/aligned multi-tiered social security benefits in Viet Nam

These conclusions can be drawn in relation to well-calibrated or well-aligned social security benefits system in Viet Nam:

1. The envisaged reform of the Social Insurance Law, linked also to the reform of other elements of the Vietnamese social security system, provides a unique opportunity to bring about the necessary alignment between contributory and non-contributory benefits, significantly extend coverage, improve adequacy of benefits, streamline governance and administration arrangements and, generally, strengthen the social security system. However, materializing this requires in particular the alignment or, ideally, the consolidation of the various social security legal instruments and a uniform governance and administration framework. These matters are in part reflected on elsewhere in this report.
2. A multi-tiered structure should first and foremost be reflected in the design of the social security system. It should furthermore be supported by an underlying policy framework providing guidance towards the achievement of the integrated structure; a legal framework that contains the required mandate for action, provides a rights basis, and regulates the harmonisation content and process; a financial framework that ensures adequate financing of an integrated benefit regime; and an integrated governance and operational framework.

5.2 Social health insurance

130. Social health insurance in Viet Nam – a remarkable achievement: Social health insurance in Viet Nam is driven by a strong political and constitutional commitment to make comprehensive contributory-based health care available to the Vietnamese population, and is underpinned by a dedicated legal, policy and strategic framework. After a three-year pilot, social health insurance was introduced in 1992 and incrementally expanded to include an

116 Viet Nam, Resolution 125 on Government’s Action Program – Implementation of the Resolution 28-NQ/TW of May 23, 2018 (Resolution No. 125/NQ-CP) (Viet Nam)

117 See also P. James and S. McClanahan, *Assessing the Adequacy of Tax-financed Social Protection in Viet Nam* (ILO, 2019), x.

118 Ramírez López, Tsuruga and Cunha, 1.

ever-increasing range of categories of contributors and beneficiaries. By 2018, it exceeded targets by reaching about 88 per cent of the population; the target for 2020 is 90 per cent, and for 2025 95 per cent.¹¹⁹ Two critical budget-provided financial incentives have helped the scheme to reach this extensive level of coverage, and to make health expenses affordable, in particular for the poor and other vulnerable groups in society. The first incentive comes in the form of a State subsidy towards the payment of contributions, which differentiates between several member categories: for members of poor and near-poor households, ethnic minorities in difficult areas and people living on islands, the Government subsidizes 100 per cent of the health insurance contributions. For other but not all categories, the Government pays a lesser subsidy percentage. The second financial incentive relates to the Government's involvement in terms of cost-sharing of the health expenses: The Government revised the co-payment rates for the poor and near poor, whose health expenses are reimbursed 100 per cent and 95 per cent, respectively.¹²⁰

131. A third component, which has been critical in reaching comprehensive coverage, is the mandatory nature of the scheme, thereby enhancing enrolment.¹²¹

132. **Social health insurance in Viet Nam provides several pointers for incrementally achieving comprehensive, universal social security coverage:** Important lessons can be learned from the Vietnamese social health insurance experience, as far as universal, comprehensive coverage is concerned, and the careful calibration of tax-financed and contributory components. Box 9 highlights five key components.

119 ILO, *Expanding Social Health Protection: Towards Equitable Coverage in Viet Nam*, 2019; Viet Nam, Resolution No. 20-NQ/TW on Enhancement of Citizens' Health Protection, Improvement, and Care in New Situation of 2017.

120 Nguyen and Cunha, *Extension of social security to workers*, 58.

121 Nguyen and Cunha, *Extension of social security to workers*, 59.

Box 9

Key lessons from Vietnamese social health insurance

Achieving comprehensive, universal social security coverage informed by a calibrated tax-financed and contributory framework should draw on five key lessons from the Vietnamese social health insurance experience:

- **Tax-financed support is indispensable for reaching universal, comprehensive coverage and enhancing risk pooling:** Viet Nam would not have reached its social health insurance achievements without significant tax-financed support. Of particular importance, a considerable part of the tax-financed support is employed to bolster the contributory regime: subsidies make up around 60 per cent of the social health insurance revenue, thereby illustrating how important subsidization can be for extending coverage.¹ In addition, tax-financed support is also targeted at reducing beneficiary co-payments (out-of-pocket expenses), and making a substantial investment in hospitals, health centres and human resources in health.² All of this has contributed to strengthen the risk-pooling function of social insurance arrangements, in order to optimise the breadth and equitable nature of coverage.
- **The need for political commitment and a dedicated legal, policy and strategic framework:** Political commitment and support has been foundational to giving shape and direction to the incremental unfolding of social health insurance in Viet Nam. This is apparent, among others, from the Party Resolution adopted at the 6th Meeting of the 12th Central Committee in 2017.³ The success, in overall terms, of Vietnamese social health insurance is also a product of the rights-based approach embedded in the constitutional and broader legal domain. Article 38(1) of the Constitution of the Socialist Republic of Viet Nam (2013) provides for the right to health care and protection, while Article 58(1) states that the State shall “exercise health insurance for [the] entire people”. The constitutional commitment has been reflected in key legislation,⁴ and a large range of several subordinate legal instruments,⁵ and supported by a national policy and strategy framework.⁶
- **Compulsory participation has been instrumental in achieving coverage extension, in particular as far impoverished and vulnerable population groups are concerned:** Making Vietnamese social health insurance mandatory for all has contributed significantly to making the scheme inclusive and reaching the poor, the near-poor and other vulnerable groups, even though some challenges remain. As has been noted in general terms, but applicable to Viet Nam as well: “The expansion of voluntary coverage through subsidies often creates a situation whereby relatively, better-off self-employed workers are covered by the social health insurance, while the rest of the population, often the rural poor and urban informal workers, are not protected or are only inadequately protected. Moreover, voluntary schemes suffer from adverse selection, with members only joining the scheme when they need to access medical care.”⁷
- **Integration is a key element:** One of the key components of achieving comprehensive coverage has been the focus on integrating diverse elements of the broader health care system. In particular, integrating the compulsory and voluntary parts of the system in a mandatory regime in 2005, as well as the Health Care Fund for the Poor into the national health insurance scheme in 2008,⁸ has played an important role in synchronising social health insurance in Viet Nam.
- **An incremental approach required:** As a rule, achieving comprehensive, universal social security coverage implies a gradual, stepwise expansion of the system, supported by clearly indicated objectives, dedicated and strategic interventions, and measurable targets. It has taken Viet Nam more than 30 years since the first pilot to achieve the current high level of coverage of social health insurance, even though several remaining challenges need to be addressed – among others, in relation to the extent and adequacy of coverage.

¹ Nguyen and Cunha, *Extension of social security to workers*, 59. ² World Bank, *Moving Toward Universal Coverage of Social Health Insurance in Vietnam*; Aparnaa Somanathan, Ajay Tandon, Huong Lan Do, Kari L. Hurt and Hernan L. Fuenzalida-Puelma, *Moving Toward Universal Coverage of Social Health Insurance in Vietnam* (World Bank, 2014). ³ Viet Nam, Resolution No. 20-NQ/TW on Enhancement of Citizens’ Health Protection, Improvement, and Care in New Situation, 2017. ⁴ Viet Nam, Law on Health Insurance (2008) (Law No. 25/2008/QH12), 2008; and Viet Nam, Law amending the Law on Health Insurance (Law No. 46/2014/QH13), 2014. ⁵ For a recent example, see Viet Nam, Decree 146/2018/ND-CP on Elaborating and Providing Guidance on Measures to Implement Certain Articles of Law on Health Insurance (17 October 2018). ⁶ See the National Health Plan, contained in Government of Viet Nam, Ministry of Health, *Plan for people’s health protection, care and promotion 2016-2020*, 2016; and the National Health Strategy, reflected the Prime Ministerial Decision on Approving the National Strategy to Protect, Care, and Improve Public Health during 2011–2020, and the Orientation towards 2030 (Decision No. 122/QD-TTg of 10 January 2013). ⁷ National Health Plan, 59. ⁸ Under the Health Care Fund for the Poor, beneficiaries were enrolled in VSS’ Social Health Insurance Scheme; see ILO, *Expanding Social Health Protection: Towards Equitable Coverage in Viet Nam*, 2019.

5.3 Multi-tiered pension reform

133. **Overall perspective:** Pension coverage provides an important but developing example of a multi-tiered approach in Viet Nam. Yet, as indicated below, considerable further scope exists for appropriately calibrating or aligning the tax-financed social pension and the contributory pension regime, to achieve three objectives: universal/comprehensive protection, the adequacy or quality of coverage, and adhering to the principle, expressed in Resolution 28 and several other policy instruments, that social insurance should constitute the main avenue of ensuring social protection. The changes to achieve the multi-tiered outcome need to be reflected in the social security legal framework as well.
134. **Current benefit provisioning:** The current framework of benefits available to older persons in Viet Nam can be summarized as follows:
- The social pension (allowance), payable to all elderly above the age of 80, is essentially a pension-tested benefit – the social pension is payable to all those above this age who do not receive a contributory (VSS) pension benefit.¹²²
 - A means-tested pension for people aged 60–79 depends on strict conditions: it is only available to those living in poverty and with no family support.¹²³
 - Contributory pensions are available under the social insurance regime regulated by the Law on Social Insurance and paid by the VSS: both a compulsory scheme for those with an employment contract of at least one-month’s duration and a voluntary scheme for all other workers, including self-employed and other informal economy workers.
135. **The need for urgent reform of the retirement benefit system in Viet Nam, also to be reflected in the social security legal framework:** The rapid ageing of Vietnamese society is of particular concern. Currently, 12 per cent of the population is aged 60 and above, projected to rise to 18 per cent by 2030 and 23 per cent by 2040. Unless appropriate reform steps are urgently taken, this will place an unsustainable burden on society as regards both State revenue and social insurance funding.¹²⁴ Without a significant expansion of the tax-funded scheme, 16.4 million elderly – or 79 per cent of the 20.7 million elderly above the statutory retirement age in 2030 – risk ending up without a pension. Therefore, the only solution to extend effective coverage in this context is the establishment of a wider tax-funded pension scheme, integrated into a multi-tier pensions system.¹²⁵ Also, the reform necessitates that a range of crucial matters be addressed, impacting on the design of the contributory regime – including the unequal retirement age for men and women, the unsustainable replacement rate of the VSS pension, the high number of lump-sum withdrawals, and parametric reforms, among others, needed in relation to (i) the reliance on base salaries rather than the full wage complement for calculating contributions and (ii) the long qualifying period for benefits to accrue.¹²⁶ To this can be added the need to develop an appropriate framework for the meaningful participation in the contributory regime of those operating in the informal economy – without which the majority of the workforce risk being excluded. This matter is dealt with more extensively in a separate report.¹²⁷ Finally, when reforming

122 I. Tsuruga, N.M.S. Cunha and Q.A. Nguyen, *Summary note on options for the design of a multi-pier pension system in Viet Nam* (ILO, 2019) 6–7.

123 Tsuruga, Cunha and Nguyen, 7.

124 S. Kidd, B. Gelders and A. Tran, *A comprehensive old age pension system for Viet Nam: Delivering on Resolution 28/NQ-TW* (ILO, 2019), 2.

125 Tsuruga, Cunha and Nguyen, 7.

126 See Tsuruga, Cunha and Nguyen, 7–8.

127 Olivier, *Extending social security to informal economy workers*.

the contributory regime, consideration should be given to introduce measures that will help to address gender disadvantage in the pension regime, suffered by women contributors and beneficiaries. Importantly, all of the issues raised above also need to be incorporated in the legal framework.

136. The vision for retirement reform established by Resolution 28 (the MPSIR) and the MPSARD: Significant reforms of the current contributory and non-contributory retirement regimes are foreseen by Resolution 28 and the MPSARD. Key dimensions of these reforms concern the following:

- most importantly, as Resolution 28 advocates, introducing a multi-tier social security system;
- in the contributory pension framework, (among others) amending the regulations on qualifying conditions by (i) shortening of the minimum social insurance participation period and (ii) adjusting the old-age pension calculation formula;
- expanding compulsory social insurance coverage to other vulnerable groups of people, while accelerating the increase in number of informal sector workers transitioning to the formal sector and participating in the social insurance scheme;
- arranging to increase the retirement age in a phased manner, and making unemployment insurance support available to older workers to support their continued employment;
- adjusting accrual rates to maximize replacement rates of the contributory old-age pension;
- indexing old-age pension relatively independent to the wage of working persons; and
- reducing the age of eligibility for the non-contributory universal social pension to 75 (70 for ethnic minorities).

137. International standards indicate key objectives of old age provisioning: Overall, adequate old-age pensions are essential to ensure the right to at least basic income security and life in dignity in old age.¹²⁸ The minimum requirement, as set out in ILO Recommendation No. 202 of 2012, is to ensure basic income security, at least at a nationally defined minimum level, for older persons (Paragraph 5(d)). The higher-level requirement, translated into minimum income replacement rates to be achieved in accordance with ILO Convention No. 102 and the advanced target set in ILO Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128),¹²⁹ is aimed at maintaining pensioners' purchasing power stable.¹³⁰ International standards also relate to the adoption of a suitable legal framework, as reflected on in part 4.3.3 of this report and again below.

138. International experience – contributory arrangements: Invariably, countries aim at setting up national contributory-based pension schemes to achieve income smoothing and adequate levels of benefits for large groups of the population. This is true of ASEAN countries as well. As a rule, these schemes are compulsory, at least for those working in the formal economy, within the framework of an identifiable employment relationship. The ILO suggests that these schemes should be publicly managed and have defined benefits.¹³¹

128 ILO, *Universal social protection for human dignity*, para. 190.

129 The minimum income replacement rate, set at 40 per cent in Convention No. 102 and 45 per cent in Convention No. 128, needs to be achieved through any combination of social security old age provision modalities, and not only the contributory system.

130 ILO, *World Social Protection Report 2017–19*, 77, box 4.1.

131 Tsuruga, Cunha and Nguyen, 13.

139. **International experience – non-contributory tax-funded arrangements:** Based also on the direction given in ILO Recommendation No. 202, there is a world-wide tendency to guarantee a basic income for older persons, on the basis of universal coverage, via tax-financed schemes.¹³²
140. **International experience – multi-tier systems:**¹³³ Several countries have introduced a mix of contributory and tax-financed non-contributory pension arrangements, appropriately tiered and at times calibrated, with the aim of achieving universal coverage. Examples in Asia include the Republic of Korea, Thailand and Mongolia.¹³⁴
141. **Expanding pensions' coverage in Viet Nam, based on a multi-tiered arrangement indicated by Resolution 28:** Viet Nam has committed itself to gradually close the coverage gap by combining non-contributory and contributory elements in a multi-tiered social security system for older persons, with specific reference to developing a pension-tested component that aims at covering all elderly who lack contributory pension coverage.¹³⁵
142. **Key elements (further steps) to be addressed in the legal framework in implementing a multi-tier pension arrangement:** Key elements of the further steps to be taken to implement the multi-tier approach via the legal framework include:
- **Adjust the legal framework:** Both the contributory and non-contributory legal frameworks should be adjusted to provide a proper legal mandate and rights basis for the matters indicated above. Especially in view of the foreseen interlinked multi-tiered arrangement, it is necessary, as discussed earlier in the report, to ensure that primary legislation regulates not only the contributory context, but also tax-financed non-contributory arrangements. Furthermore, note should again be taken, as already indicated in section 4.3.3 above, of the ILO view that it is preferable that, “subject to the relevant constitutional requirements, not to confine the legislative dimension of social protection solely to framework laws, with the substantive parametric elements being left to the regulatory level.”¹³⁶ As indicated in section 4.3.3 above, Paragraph 7 of the ILO National Floors of Social Protection Recommendation, 2012 (No. 202) clearly sets out the elements to be addressed in the legal framework, with reference to: (i) the material scope of coverage; (ii) the personal scope of coverage; (iii) the type and nature, or range, and duration of the benefits; (iv) the level or amount of the benefits to be provided; and (v) the qualifying conditions.

132 Several options exist in this regard, including pension-tested non-contributory schemes targeting those who are not benefiting from other pension schemes (for example, Mongolia); and universal flat pensions (for example, Brunei Darussalam, Thailand and Timor-Leste).

133 See, among others, ILO, World Social Protection Report 2017–19, 82–83 and Nguyen, Q.A. & Cunha, N.M.S. *Exploring reform options for a multi-tier pension system in Viet Nam* (ILO, 2019), 37–41.

134 World Bank et al., *Universal Social Protection: Universal old age pensions in Mongolia*, 2016.

135 Tsuruga, Cunha and Nguyen, 9.

136 ILO, *Universal social protection for human dignity*, para. 614.

- **Gender gaps:** Consider and introduce other appropriate arrangements to effectively address gender gaps, in particular in relation to the tier 2 benefit (the VSS contributory benefit) but potentially also the tier 3 (supplementary) benefits – in addition to the equalization of the retirement age, the feasibility of introducing additional credits to make up for career gaps and ensure that benefit entitlements are protected despite periods of leave due to maternity or care of a family member.¹³⁷
- **Extending the tier 2 pension:** Consider and implement arrangements to appropriately extend the reach of the tier 2 pension to effectively promote the transition between the informal and formal economy, as well as include workers from other excluded categories.



137 Tsuruga, Cunha and Nguyen, 16; see also ILO, Universal social protection for human dignity, para. 519.

06 Extending coverage

6.1 Key coverage gaps

6.1.1 Levels of coverage

143. **Viet Nam has made considerable progress in extending coverage:** As far as social insurance (the contributory system) is concerned, since 1995 Viet Nam has taken a number of incremental steps to cover the working population. It introduced both a compulsory national scheme for workers in the formal economy and a voluntary scheme for others. Legal coverage has systematically been extended, by increasingly reducing the minimum required number of employees and the minimum duration of employment contracts necessary to be eligible to participate in social insurance. In the political sphere, specific goals, targets and timelines have over time been set to achieve coverage extension. The political and policy objectives have been supported by a raft of legal instruments, in particular the Law on Social Insurance (the current version being the 2014 law), which has been amended from time to time, and its implementing instruments. The voluntary system has been made more attractive by introducing flexible contribution options and reducing the minimum contribution payable, as well as the combination of pension rights under the compulsory and voluntary schemes. Attempts have been made, also in the legal domain, to increase the supervision of compliance, to increase penalties for delayed payments, and to modernize management information systems.¹³⁸

144. In the area of social assistance, namely the non-contributory tax-financed system, a number of programmes have been established to support certain vulnerable groups, including persons with disabilities, minorities and older persons. As regards the latter, as already indicated, a universal pension-tested social pension allowance for older persons 80 years above and a means-tested benefit for those between 60 and 79 years of age have been introduced. Regulatory instruments have been adopted to give effect to the social assistance vision. Lately, as indicated elsewhere in this report and also in section 6.1.5 below, (Party) Resolution 28 was adopted and the MPSARD introduced to provide a road map for the further extension of social security in Viet Nam.

145. **Statistical overview:** Though coverage levels have increased in recent years, the low social security coverage of the Vietnamese population is cause for concern. The VSS regularly publishes updated statistics on the schemes operating under its auspices.¹³⁹ During consultations with the VSS in January 2020 for this report, the VSS provided following updated figures concerning number of contributors/persons covered, indicating a steady growth in coverage, compared with previously published statistics:

- in the compulsory scheme, over 15 million contributors (31.2 per cent of the labour force);
- in the voluntary scheme, 570 000 contributors (1.3 per cent of the labour force);
- in unemployment insurance, over 14 million contributors (28.5 per cent of the labour force); and
- in social health insurance, 85 million persons covered (90 per cent of the population).

138 See P. Castel and A. Pick, *Increasing social insurance coverage in Viet Nam's SMEs* (OECD, 2018), 18–19.

139 Viet Nam Social Security, "Viet Nam Social Security Information Updates: March 2019".

The social assistance programmes generally cover small numbers of persons, due to the conditions for accessing the benefits under these programmes. For example, the means-tested pension for people aged 60–79 only reaches about 95,000 older persons,¹⁴⁰ since this is only available to those living in poverty and with no family support.

146. **Significant challenges remain:** As discussed in more detail below, significant challenges remain concerning the coverage of the Vietnamese social security system. The challenges mainly relate to a range of legal exclusions and other problems that cause persons not to participate in the social insurance system or to benefit from the non-contributory system. Also, an insufficient legal framework for social assistance exacerbates the exclusionary impact of the regulatory instruments governing that area, including Decree 136 among others. More fundamental dimensions to the issue of limited coverage – in particular the fragmentation in the legal, institutional, funding and operational domains – are reflected in the lack of integration and coordination of the system. Chapter 4 of the report reflects in part on these matters.

6.1.2 Legal exclusions and shortcomings

147. **Legal barriers to coverage – Law on Social Insurance – duration of contract:** Several legal barriers to coverage extension concern exclusions, whether explicit or by implication. In the compulsory social insurance scheme, one of the exclusions relates to the length of the period for which the contract of employment has been concluded. The Law on Social Insurance covers only persons working under a labour (employment) contract of at least one month’s duration.¹⁴¹ This is not (yet) aligned with the scope of coverage under the newly adopted Labour Code (2019). The Labour Code requires, as a rule, that an employment contract must be in writing.¹⁴² However, it does allow for a verbal contract for a period of less than one month, except for seasonal workers, and certain work with a duration of less than 12 months, where the contract has been concluded by a representative (in which case the contract has to be in writing) as well as domestic workers¹⁴³ – thereby excluding such contracts which have been concluded verbally and informally. As it is advisable to align in this regard labour law and social security provisions applicable to workers, there is, therefore, a need to revise the provision in the Law on Social Insurance, which currently restricts coverage to those working for at least one month. This may in particular be relevant for (some of the) short-term benefits, and coverage under the employment injury regime covered by the Law on Social Insurance.

148. Also, no contributions to the compulsory social security scheme are payable by the employee or employer if the employee has worked for less than 14 days in the month, although they may contribute to the voluntary social security scheme.¹⁴⁴ However, this can create negative consequences for these workers, who have to rely on the inadequate voluntary scheme, as discussed in Chapter 7,¹⁴⁵ as well as in a separate report submitted to the ILO.¹⁴⁶

140 Tsuruga, Cunha and Nguyen, 7.

141 Law on Social Insurance, Article 2(1)(b).

142 Labour Code (Law No. 45/2019/QH14), Article 14.

143 Labour Code (Law No. 45/2019/QH14), Articles 18(1) and 162(1).

144 Law on Social Insurance, Articles 85(3) and 86(4).

145 See in particular paras 172 and 173.

146 Olivier, *Extending social security to informal economy workers*.

149. **Exclusion of domestic workers from unemployment insurance coverage – Law on Employment:** The Law on Employment excludes domestic workers, among others, from its scope. However, these workers are not excluded under the Law on Social Insurance. There is increasing evidence of countries that have successfully extended unemployment insurance on a compulsory basis to domestic workers. For example, South Africa did so as from 2002, and has adopted special arrangements in the applicable legislation to fit the context of domestic workers – including allowing (i) contributions to be paid in other than monthly premiums and (ii) (partial) unemployment benefits to be drawn if the domestic worker loses one job, but still retains another.¹⁴⁷
150. **Gig economy and supply chain workers:** Three additional categories of workers should be considered for explicit inclusion under the scope of the Law on Social Insurance, given the reality of the labour market context in Viet Nam, and insufficient or, alternatively, no provision currently made for their coverage. They are: (i) gig economy workers; (ii) supply chain workers; and (iii) workers operating in the informal economy. The position of the informal economy workers is discussed in a separate report.¹⁴⁸ Here the focus falls on gig economy workers and supply chain workers.
- **Gig economy workers:** Workers in the gig economy typically sell their time or labour through a digital platform to a user, with crowd-work and work-on-demand being the most prevalent forms. In a 2018 report commissioned by the UK Government, the Institute for Employment Studies remarks that there is no single, agreed definition of the gig economy, and adopted the following definition for purposes of the report: “The gig economy involves the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment-by-task basis.”¹⁴⁹ Worldwide, the social security position of gig economy workers is often influenced by their labour law position. In this regard, the position differs. In several countries, on the basis of (amending) legislative provisions or jurisprudence, these workers are seen as “employees”, attached to an employment relationship. The labour law systems of other countries have chosen a different route, and essentially view them as persons who provide an independent service. As such, as noted in the report indicated above, self-employed gig workers “are engaged outside established systems of social security and the protections these afford, which means they may not have access to, among other things, pensions, statutory sick pay and holiday entitlement.”¹⁵⁰ While the position in Vietnamese labour law could not be verified for purposes of this report, it is nevertheless recommended that the provisions in the Law on Social Insurance be adjusted to ensure that they are specifically included in the scope of the law, (preferably) on the basis of being (deemed) employees, in respect of whom an employer and employee contribution are (generally speaking) payable. Of course, the issues of contributory capacity and modalities of coverage may have to be revisited, as far as these workers are concerned, as discussed in section 6.1.2 below.
 - **Supply chain workers:** An employment relationship, as traditionally understood, may be absent in the case of supply chain workers – in most cases, there would at best be a provider, or requester, of work, rather than an employer. The question then becomes one of identifying who will be responsible for complying with labour law, social security and occupational safety and health obligations imposed on employers. The 2016 ILO Resolution concerning decent work in global supply chains highlights the importance

147 See the Unemployment Insurance Act 63 of 2001 (South Africa).

148 Olivier, *Extending social security to informal economy workers*.

149 Broughton, A., Gloster, R., Marvell, R., Green, M., Langley, J. and Martin, A. The experiences of individuals in the gig economy (Institute for Employment Studies, 2018), 8.

150 Broughton, Gloster, Marvell, Green, Langley and Martin, *The experiences of individuals in the gig economy*, 13.

of an intervention such as “legislation on responsibility down the chain, sometimes providing for cross-border regulation of supply chains”.¹⁵¹ Some countries may use sector-based welfare funds to ensure that supply chain workers are covered in social protection terms. Several other countries have adopted a range of legislative measures to deal with this, including by deeming supply chain workers to be employees, and to make providers, and in particular the direct, and/or the apex provider, responsible for complying with labour law obligations.¹⁵² We recommend this latter approach for Viet Nam, as the establishment of welfare funds would be a novel approach. A corresponding change should be introduced into the Law on Social Insurance, to make it clear that supply chain workers are deemed to be employees, and that the direct, and/or apex provider/requester of the work, is deemed to be the employer, for social insurance purposes. Here again, as is the case with gig economy workers, the contributory capacity of those affected and modalities of coverage may have to be revisited, as discussed in section 6.1.2 below.

151. **Other workers in multi-party employment relationships:** A recent study on the extension of social security to workers in ASEAN highlights the plight of the 3.4 million informal workers in the construction industry in Viet Nam, who work in multi-party arrangements and who essentially remain undeclared, with limited access to labour protection and social security. As indicated in the study:¹⁵³

The construction sector is typically characterized by a complex value chain of contractors and unclear employment relationships. A main contractor or investor typically subcontracts a range of services to its subcontractors, which, in turn, outsource certain tasks to smaller subcontractors. The construction workers on-site are directly employed by small subcontractors. This widespread contracting practice is used by businesses to bypass their responsibilities as employer with respect to labour legislation, occupational safety and health and social insurance contributions. The multiple layers of subcontracting make it difficult to identify the employer and the party responsible for paying social insurance contributions on behalf of the workers.

It is suggested that these workers, as is the case with the coverage proposal in relation to supply chain workers, be deemed to be considered employees, and that the direct, and/or apex provider/requester of the work, is deemed to be the employer, for social insurance purposes.

152. **Business household heads, business managers and managers of cooperatives – addition of non-employee categories:** Resolution 28 supports the goal of “social insurance for all” and the inclusion of “groups of business household heads, business managers, cooperative’s managers who do not follow wages regimes, workers with a flexible working time regime.” These categories of persons fall under the scope of the Law on Social Insurance in their capacity as employers, and as such have to contribute to the compulsory scheme together with their employees. However, as individuals they do not enjoy protection under the contributory-based social insurance system in Viet Nam, as they would hardly be seen as “employees” (or workers) covered under the

151 ILO, *Resolution concerning decent work in global supply chains*, 2016, para. 9.

152 Lund, F. “Work-related social protection for informal workers” *International Social Security Review*, 65 (4), 2012, 23–24, 26. Important developments in this area have occurred in developed countries’ jurisdictions, such as Australia, although even here the developments are still piecemeal and sector-focused: see Rawling, M. “A generic model of regulating supply chain outsourcing”, in *Labour law and labour market regulation*, ed. Arup, C., Gahan, P., Howe, J., Johnstone, R., Mitchell, R. and O’Donnell, A. (Sydney: Federation Press, 2006).

153 Nguyen and Cunha, *Extension of social security to workers*, 42–43. See also ILO, *Social security gaps report: Report to the Department of Social Insurance, Ministry of Labour, Invalids and Social Affairs of Viet Nam*, 2018, 30–36.

framework of the law.¹⁵⁴ Hence their exclusion from both the compulsory and voluntary schemes leaves them deeply vulnerable. And yet, these people count for a considerable number in Viet Nam: it has been estimated that small and medium-sized enterprises account for 95 per cent of all enterprises in Viet Nam,¹⁵⁵ and that 61 per cent of informal employees work in the informal economy in individual business households, where neither employers and employees are registered with the VSS.¹⁵⁶ Their inclusion would extend social security protection to a very considerable number of vulnerable persons, and simultaneously bring on board their employees too, thereby enhancing the reach of the Vietnamese contributory-based social security system to a very significant extent. However, as is the case with other categories of persons indicated above, their capacity to contribute and modalities of coverage would have to be addressed; the discussion in section 6.1.2 below may be of relevance here too.

153. **The need to extend the range of persons to benefit from survivor benefits:** Another barrier relates to those who could qualify for survivor benefits that are payable to “relatives”. Article 3(6) of the Law on Social Insurance defines this term to mean “an insured’s natural child, adopted child, spouse, natural father, natural mother, adoptive father, adoptive mother, father-in-law or mother-in-law, or another family member whom the insured is obliged to nurture in accordance with the law on marriage and family”. Article 69(4) further stipulates that “for employees who die without any relatives as defined in Clause 6, Article 3 of this Law, the lump-sum survivorship allowance must comply with the law of inheritance.” Similar provisions apply in the case of survivors (relatives) under the voluntary social security system.¹⁵⁷
154. No provision is made for two other categories of persons, who do at times benefit in other social security systems: those who were in actual fact dependant on the deceased member (even if a legal obligation to support the person did not rest on the member), and persons nominated to be a beneficiary of the member in the event of death of a member. Consideration could be given to include these categories under the range of beneficiaries of the survivor benefit.
155. **Employees with multiple employers:** In Viet Nam, the various laws that affect social insurance coverage of employees deal with the issue of contributions payable in the event of multiple employers differently. According to the Law on Social Insurance (Article 85(4)) and the Law on Employment (Article 43(1)(c) – in relation to unemployment insurance), only the employment contract signed first will be taken into account for purposes of payment of contributions – in other words, no contributions are payable in relation to the labour contract(s) subsequently concluded with other employer(s). On the contrary, according to Article 43(2) of the Law on Occupational Safety and Hygiene, in the case of multiple employers, each employer shall pay insurance premiums. Two matters need to be raised here. Firstly, consistency is required, as there is no apparent rationale for this difference. Secondly, restricting the payment of contributions only in relation to one employment relationship potentially has a dramatic impact on coverage, and the extent and quality of the coverage enjoyed by workers, as the benefit size/amount will be evidently be influenced by the limited contribution paid. There is no principled justification for excluding more “recent” employers in the case of multiple employment relationships from the obligation to pay premiums. Similarly, employee contributions should be based on all the employment relationships the employee may be simultaneously involved in.

154 See Article 2(1)–(5) of the Law on Social Insurance.

155 Castel and Pick, 23.

156 Tsuruga, Cunha and Nguyen, 5.

157 Viet Nam, Decree No. 134/2015/NC-CP of 29 December 2015.

156. **Retirement age – the need for synchronization:** The Law on Social Insurance sets the retirement age for men at 60 years and for women at 55 years (Article 54(1)). The Labour Code (2019) now foresees the increase of the retirement age for men to 62 by 2028 and for women to 60 by 2035 (Article 169). It is, therefore, necessary to align the retirement age set for workers under Viet Nam’s labour law and social security framework respectively. However, note should also be taken of the sentiments expressed in section 4.3.2 and in an ILO report referred to there, arguing for the equalization of the retirement age – to have an equal retirement age for men and women, in order to avoid gender gaps.

157. The low levels of coverage achieved by the voluntary social insurance scheme stress the need to adopt measures that will ensure extended coverage to workers in the informal economy. It is submitted that most of the challenges informing the low levels of coverage relate to insufficient provision made, in the material sense of the word, to capture this large group of people excluded from the compulsory social insurance scheme. These matters are discussed in a separate report.¹⁵⁸ However, there may be one concern to be raised from a legal exclusion perspective – relating to the restriction of participation in the voluntary scheme to Vietnamese citizens. This restriction does not apply to participation in the compulsory scheme. It may be that the payment of subsidies towards the contributions made by those participating in this scheme may be the reason for the exclusion. It is submitted that this should necessarily be treated as an impediment – it may be more prudent to allow those foreign workers who are not covered under the compulsory scheme to participate in the voluntary scheme, even in the absence of a Government subsidy in their case. This will require an amendment to Decree 134 of 2015. Of course, this raises broader issues of affordability (with reference to contributory capacity of participants and the size of the contribution required) and adequacy. This is further discussed in the separate report referred to above.

158. **Address social health insurance gaps:** As discussed in section 5.2 above, Viet Nam has made significant progress in the extension of social health insurance, also to an ever-growing list of categories of persons. However, further initiatives are needed in this regard. As an ILO report noted,¹⁵⁹

...coverage among some groups, such as the near poor workers in the informal sector, remains low due to their limited contributory capacities and lack of information and awareness. Enforcement of mandatory enrolment has not been effectively implemented.... compliance among private enterprises is low, with only 50 per cent of all formal sector employees covered.

159. **Address coverage shortcomings in the social assistance domain:** Earlier, this report reflected on several dimensions of the inadequate support and ineffective reach of the current Vietnamese social assistance system:

- As indicated earlier, thus far the Vietnamese social assistance system has largely focused on providing relief to certain vulnerable groups, and not on supporting people on the basis of a life cycle model – for example, it does not provide tax-financed maternity benefits, as discussed.¹⁶⁰
- Even so, the vulnerable group model has been restricted in scope and has had limited impact. It has been suggested that only 10 per cent of all vulnerable persons receive social assistance;¹⁶¹ as mentioned, these schemes cover only a small share of the population and suffer from exclusion errors, usually failing to cover families that

158 Olivier, *Extending social security to informal economy workers*.

159 Nguyen and Cunha, *Extension of social security to workers*, 60.

160 See section 6.4 above.

161 Nguyen and Cunha, *Extension of social security to workers*, 29.

are most in need.¹⁶²

- Strict means-testing and targeting conditions applicable to social assistance benefits has a dramatic impact on levels of coverage – as noted, for example, in respect of the old age benefit payable to those between 60 and 79 years.
- Social assistance is dealt with as an area on its own, with little integration into the broader social security system. Specifically, as indicated above, limited attention has been paid to let social assistance serve as basic floor or first tier of a multi-tiered system of social security support, with the aim to provide universal coverage in the event of life cycle risks. The fragmentation has caused many older, and other people, to be excluded from coverage and protection.¹⁶³
- Social assistance lacks a comprehensive policy and proper legal framework. In particular, it lacks a sufficient rights-based framework, and is regulated on the basis of a Government decree, not a Law on Organization of the National Assembly.¹⁶⁴

6.1.3 Other challenges impacting on coverage

160. **Several institutional and operational challenges impact on coverage and require intervention:** In the course of consultations held with stakeholders for this report, several other challenges, impacting on coverage under the Vietnamese social security system, were identified – as also confirmed in reports concerning the system.¹⁶⁵ These challenges include: (i) weak capacities to intervene and enforce legislation; (ii) delays experienced with the processing of applications and benefits payments, as regards both social insurance and social assistance benefits; (iii) difficulties experienced with registering workers; (iv) failure on the part of certain employers to declare their workers, and/or to collect and remit premiums to the VSS; (v) lack of trust in the system and lack of sufficient information on the part of in particular employees regarding their rights and obligations.

6.1.4 International standards and constitutional considerations

161. **International standards require everybody to be covered by social security, and that this should be incrementally implemented:** Several UN and ILO instruments and guiding frameworks endorse the right of every person to social security, thereby cementing a human rights basis for such protection. The UN Universal Declaration of Human Rights (1948) stipulates in Article 22 that “[E]veryone, as a member of society, has the right to social security”, and in Article 25 that “[E]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family ...”, including that “[A]ll children, whether born in or out of wedlock, shall enjoy the same social protection.” Also, the UN International Covenant on Economic, Social and Cultural Rights (1966) provides in Article 9 that everyone has the right to social security, and in Article 12 for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Similarly, the UN Sustainable Development Goals (2015) depart from the principle that no one should be left behind, and emphasize in SDG Target 1.3 the following: “Implementing nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.”

162 Nguyen and Cunha, *Extension of social security to workers*, 25.

163 See Chapter 5 above.

164 See section 4.1 above.

165 See among others Castel and Pick; Nguyen and Cunha, *Extension of social security to workers*, 33; ILO, *Social security gaps report* (Report to the Department of Social Insurance, Ministry of Labour, Invalids and Social Affairs of Viet Nam), 2018, 22–24, 26–27.

162. **ILO National Floors of Social Protection Recommendation, 2012 (No. 202):** The Recommendation requires ILO Member States to provide the basic social security guarantees referred to in the Recommendation to “at least all residents and children, as defined in national laws and residents and children”, and to seek to provide “higher levels of protection to as many people as possible, reflecting economic and fiscal capacities of Members, and as soon as possible.”¹⁶⁶ Paragraph 15 in turn requires extending social security to persons in both the formal and informal economy.
163. **Vietnamese constitutional provisions confirm the extension of social security to everyone, on the basis of equality:** As discussed in section 3.3.1 above, the Constitution of the Socialist Republic of Viet Nam (2013) supports the principle that social security is a right and entitlement, and not a matter of charity or discretion – as is evident from Article 34 (“The citizen has the right to social insurance”) and Article 38(1) (“The citizen is entitled to health care and protection”). It is also clear from the provisions in Articles 58 and 59(2) that social security should be extended on a basis of equality to effectively reach all citizens.

6.1.5 Resolution 28 and the MPSARD vision and objectives

164. **Resolution 28 and the MPSARD envisage important changes to matters of coverage:** Resolution 28, read with the MPSARD, contain specific suggestions to address several of the deficiencies raised above, including the limited scope of the system. As indicated by the MPSARD Implementation Plan, the above measures will require important legal changes: the replacement of Decree 136 and amendment of the Law on the Elderly. Some of the key legal and other reforms impacting on the sphere of coverage of the Vietnamese social security system foreseen by these documents can be summarized as follows:
- Firstly, the MPSIR (Resolution 28) endorses a multi-tiered system, where tax-financed and contributory tiers function together to reach universal coverage. For example, in relation to protection for older people, it sets the following targets for persons above normal retirement age entitled to a pension, monthly insurance benefits and social allowances: 45 per cent by 2021; 55 per cent by 2025; and 60 per cent by 2030. The MPSARD further foresees an increasing percentage of people facing emergency difficulties and those living in extremely difficult circumstances to benefit from social transfers.
 - Secondly, the MPSIR foresees the payment of higher levels of benefits with a gradual reduction in age, adjusting the age qualification for entitlement to social pension allowances from the current 80 years.
 - Thirdly, the MPSARD envisages among others, as from 2021, the introduction of support for children under three years of age, and support for pregnant women from poor and near poor households, and increased coverage of persons with disabilities of working age, carers’ benefits, as well as expansion of the range of persons living with HIV/AIDS falling under the social assistance umbrella. In this regard, the policy framework expresses itself clearly in favour of a rights-based and life cycle approach.
165. The next section, 6.1.6, will briefly indicate some of the next steps that could be taken, in particular from a legislative reform perspective. Here it suffices to indicate in summary the scope and framework of the intended reforms foreseen by Resolution 28 and the MPSARD.

166 ILO National Floors of Social Protection Recommendation, 2012 (No. 202) paragraphs 9 and 13(1) respectively.

Table 1: Key targets of MPSIR and MPSARD

MPSIR targets to 2030			
Target definition	Coverage 2021	to	Coverage to 2030
Percentage of working age population participating in social insurance schemes	35		60
Percentage of working age population in unemployment insurance scheme	28		45
Percentage of persons above normal retirement age entitled to a pension, monthly insurance benefits and social allowances	45		60
MPSARD targets to 2025			
Target type	Eligibility/coverage		Transfer values
Social pension	Age of eligibility gradually reduced to 75 (70 for ethnic minorities); inclusion of social insurance pensioners with low pensions		Gradually increased to 11% of GDP per capita (21% for those with severe disabilities)
Disability benefits	Gradually increase coverage to 100% of disabled persons of working age and their caregivers (1.8% of persons of working age)		Gradually increased to 10% of GDP per capita (20% for those with severe disabilities)
Carers' benefits	Those unable to work due to their care responsibilities for persons with disabilities		Increases to 20% of GDP per capita
Child benefits (including disability)	A child benefit for children up to 36 months and gradually expand to include all children younger than age 6 years; A child benefit for all children in special circumstances (as legally defined), regardless of age		Set at 5% of GDP per capita for all children but rises to 10% for children in special circumstances and 20% for children with disabilities, or children of single parents)
Benefits for persons with HIV/AIDS	Persons with HIV/AIDS living in poor families initially and gradually expanded to include those in near-poor families		Set at 8% of GDP per capita, then raised to 10%

Source: MPSIR (Resolution No. 28-NQ/TW dated 23 May 2018) and MPSARD Action Plan; S. McClanahan and B. Gelders. *Assessing the potential for multi-tiered child benefits in Viet Nam* (ILO, 2019), 8.

6.1.6 Next steps, including in relation to legal and policy reform

166. It is submitted that these barriers, in particular the legal barriers indicated above, need to be addressed in the course of the envisaged legal reform. Some of the key steps to be taken are in box 10.

Box 10

Key legal and policy reforms need to enhance coverage

In order to enhance coverage, the following key legal and policy reforms may be required:

- Ensure that an appropriate policy and explicit legal framework, informed by international standards and the Constitution of Viet Nam, as well as Resolution 28 and the MPSARD, reflect the legal and associated reforms as indicated in this chapter. The legal framework should be informed by a rights-based approach, in terms of which every person has a right/entitlement to social security, including social assistance (where this is applicable).
- It is suggested that unnecessary restrictions be removed from the Law on Social Insurance and the Law on Employment, and that the provisions of those laws be aligned with the corresponding provisions of the Labour Code of 2019. Areas where alignment is required concern among others the retirement age and the removal of requirements in relation to a minimum contractual period and a written contract of employment. As regards the Law on Employment, the exclusion of domestic workers from the scope of unemployment insurance needs to be revisited.
- It is further proposed that consideration be given to simplify the personal scope of application provisions of the Law on Social Insurance, by stipulating, as the social security laws of many countries do, that the law applies to all persons who work for an employer, irrespective of the nature, form or length of the employment contract. Coverage will be significantly extended if the State were to subsidize totally or partially the contributions of hard to cover groups (at least for an initial period).
- However, other categories of persons who may need to be covered should be listed separately, as the Law on Social Insurance indeed does. These categories may have to be expanded. It is proposed that coverage be extended to include specifically gig economy workers, supply chain workers, and workers involved in multi-party employment relationships, by deeming the provider(s)/requester(s) of work, in particular the apex provider/requestor, to be employers for purposes of contributory social security in Viet Nam. Consistency is also required as regards employees who have multiple employers, by providing that for purposes of all relevant social security laws, all employers of a particular employee should pay contributions.
- Extend legal coverage also to other vulnerable categories of people in need of coverage extension, who may not be employees, in particular business household heads, business managers and managers of cooperatives, as also foreseen by Resolution 28.
- Introduce a life cycle approach in social assistance, with reference to social security risks to which people are exposed to, in addition to the current emphasis on vulnerable groups, and revisit the narrow scope and strict conditionalities set to access social assistance benefits, in order to enhance the coverage sphere.
- Invest in a multi-tiered approach whereby the tax-financed social assistance and contributory social insurance systems are harmonized and coordinated, in order to achieve coverage extension.

167. In undertaking the legal reform, it is suggested that while bearing in mind Viet Nam's commitment to the SDG agenda of leaving no one behind, great care be taken, among others, to embed the following in the primary legislation, from a coverage perspective, as has already been partly reflected on in section 4.3.3 above:

- Clearly identify and define the categories of beneficiaries to be so covered.
- Indicate the material scope of coverage, with reference to the risk or contingency covered.
- Stipulate in particular the type and nature, or range, and duration of the benefits available to the persons covered in the event of a contingency, risk or situation covered by the law and for which protection is afforded. Such benefits, in accordance with Paragraph 9(2) of the Recommendation, “may include child and family benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, survivors’ benefits, unemployment benefits and employment guarantees, and employment injury benefits as well as any other social benefits in cash or in kind.”
- Determine the level or amount of the benefits to be provided.
- Elaborate the qualifying conditions that have to be met to qualify for a benefit.

168. A gradual approach to achieve extended coverage, in terms of both the categories of beneficiaries and the levels of social transfers to reflect, together with social insurance transfers, the replacement rates and conditions of ILO Convention No. 102 and other more recent ILO Conventions, may be called for and cemented in the legislative domain. In principle, therefore, there is scope to indicate in the applicable social assistance legislation the elements and content of an agreed national floor of protection as the baseline, as well as the incremental extension to reach higher levels of personal and material coverage over a period of time. This could best be achieved via a carefully aligned and calibrated multi-tiered approach, as discussed in Chapter 5 above.



07 Improving the scope and adequacy of the benefit regime

169. **Restricted range and inadequate level of benefits:** The overall objective of any social security system should be to ensure that benefits are available that will support dignified living on the part of the beneficiaries. There are several reasons why the social security benefits provided for in the Vietnamese legal system are inadequate from the perspective of both the range and the adequacy of the benefits. Regarding the range of benefits, the compulsory social insurance scheme does not currently provide for an earnings-related invalidity (disability) benefit or, for that matter, a child or family benefit arrangement. Also, some of the benefit types still have a restricted scope as they are, for example, not appropriately linked to the preventive and integrative dimensions of social security. In this regard, Resolution 28 acknowledges the need to link the unemployment (insurance) benefit to the maintenance of jobs. Also, the employee injury benefit system still has to develop appropriate links to a suitable return-to-work (including rehabilitation) framework. Reforms to achieve the extended coverage framework suggested here should be cemented in the legal framework, to have any binding and concrete effect.
170. **Reasons contributing to the inadequacy of the benefit regime:** The inadequacy of several benefit types is the result of a range of factors, which need to be addressed in the legislative domain as well. These factors include, as far as retirement benefits are concerned, the fact that lump sum retirement payments, instead of regular pension payments, are readily available to those who retire; that current eligibility conditions require a contribution period of 20 years to qualify for a (full) pension; contributions are not paid on full salary; that (as indicated in section 6.1.2 above) in the case of multiple employers, in some social protection laws employee contributions are calculated only with reference to the first signed labour contract and the most recent employer does not have to contribute; and high administrative costs. In addition, as discussed in Chapter 5, a holistic approach to address social security provisioning from a multi-tiered perspective, has been absent: social insurance and social assistance dimensions have been operating in silos.
171. **Reforms foreseen by Resolution 28:** The MPSIR (Resolution 28) has recognized many of these shortcomings and committed the Government to bring about necessary reforms. These include the following, and require careful legislative formulation that need to be introduced as amending legislative provisions:¹⁶⁷
- phasing out/reduction of the lump sum payment modality, while promoting regular pension payments;
 - incrementally reducing the qualifying period for accessing retirement benefits to 10 years to allow affected retirees to draw a (reduced pension);
 - removing vestiges of gender discriminatory provisions;
 - diversifying investment portfolio structures; and
 - including foreign workers in Viet Nam and Vietnamese workers abroad in the compulsory social insurance scheme, while also concluding bilateral social security agreements in appropriate cases.

167 See also in relation to this and the following paragraph the ILO actuarial valuation of 2015 – ILO, *Viet Nam: Actuarial valuation as of 31 December 2015 of long-term benefits administered by the Viet Nam Social Security Organization* (Report to the Government, May 2019).

172. **Parametric and other reforms required:** Other areas that may affect the adequacy of benefits are also indicated in Resolution 28 and its implementation plan. These parametric and other reforms need to be translated into legal provisions that will provide the required mandate for action, and include:

- As indicated in section 4.3.2, a redefinition of insurable earnings and value references is required. For this purpose, but also to ensure consistency with the labour law domain, there would be value in replacing the basic salary basis of insurable earnings (that is, not accounting for the value of fringe benefits), required by Article 89 of the Law on Social Insurance, with the much broader scope of earnings provided for in the definition of “wage” contained in Article 90 of the 2019 Labour Code.
- Measures need to be introduced that will ensure the fiscal balance of the sickness and maternity scheme.
- Stringent measures to avoid the depletion of the retirement scheme’s assets by 2070, as a result of the rapidly ageing of society and reduction in the fertility rate – suggested measures include a phased increase in the retirement age; and adjustment of the pension accrual rate to maximise replacement rates for old age pensions.
- There is a need to index the basic old pension to increases in the consumer price index.

173. **Gradual implementation of reforms:** Many of the important and ambitious provisions may have to be introduced over a period of time. Therefore, while the legislative reforms should indicate clearly which reforms will be introduced, the ultimate outcomes/goalposts to be achieved need to be indicated too, as well as the necessary details as to how these will be gradually implemented. This applies to both the social insurance and social assistance components of the system. Extended coverage to be achieved over time should reflect the replacement rates and conditions of ILO Convention No. 102 and eventually other ILO Conventions and Recommendations. As indicated before, there is scope to indicate in the applicable social assistance legislation the elements and content of an agreed national floor of protection as the baseline, as well as the incremental extension to reach higher levels of personal and material coverage over a period of time.¹⁶⁸

174. **Challenges posed by the voluntary social insurance scheme:** The voluntary social insurance scheme operates at a suboptimal level, despite the availability of Government subsidies to contribute to different degrees indicated for different categories of workers not covered by the compulsory scheme. The factors causing the very limited coverage (see below) are manifold and include:

- **The limited benefit range:** Currently only retirement and survivor benefits are payable, while the actual priority needs to be addressed for many of the affected categories of people may actually be short-term needs.
- **The application of much of the legal framework relevant to the compulsory scheme also to the voluntary scheme:** This includes the period of contributions required to qualify for the retirement benefit and the high contribution rate (generally 22 per cent) payable, even if this may be partly subsidized by the Government.
- **Insufficient flexibility:** Flexibility is required as regards the regularity/irregularity of contribution payments and mode of contribution payments.
- **The inadequate level of Government subsidies:** Government subsidies must be paid at an adequate level to partly replace and partly support contributions paid by

¹⁶⁸ Section 6.1.6 above.

particularly vulnerable categories of informal economy workers.

- 175. The case for moving away from voluntary coverage and making participation compulsory:** However, there are three principled reasons as to why voluntary coverage provides insufficient coverage, impacting in particular on the position of informal economy workers. These relate to adverse selection practices; small risk pools; and dysfunctional incentives, in particular for those who want to avoid affiliation with the compulsory scheme, as discussed in the separate report on the extension of social security coverage to these workers.¹⁶⁹ It is therefore suggested that compulsory participation in social insurance may achieve better coverage outcomes – even if this is gradually achieved, and if sufficient steps are taken to facilitate and support the transition of informal economy workers to the formal economy so they become eligible to participate in the compulsory system. Viet Nam’s experience with establishing and extending social health insurance may be critical, as discussed in section 5.2. Fundamental reforms, including in the legal domain, are required to let this scheme provide meaningful coverage to the millions of workers who do not participate in the scheme. As has been suggested in several ILO reports, coverage extension would require the consideration of two approaches: making participation compulsory and improving the scheme to meet the needs of workers who are not covered by the compulsory scheme.
- 176. Government subsidies and additional short-term benefits:** Two explicit reforms are foreseen by the MPSIR (Resolution 28): (i) the extension of Government subsidies to farmers, the poor, low income people and workers in the informal economy; and (ii) the introduction of flexible voluntary short-term social insurance benefits to enable such workers to have more options to participate. Whether these reforms may help significantly increase participation remains to be seen. It may well be that a broader range of tailor-made and dedicated measures have to be introduced to achieve this result, in addition to consideration to be given to making participation compulsory. This matter is discussed in the separate report indicated above, in relation to measures adopted in other countries to extend coverage to those operating in the informal economy. Nevertheless, whatever suitable arrangements may be introduced, specific attention needs to be given to identifying potential legal (and other) barriers to participation.
- 177. Limitations in social assistance domain:** Viet Nam's social assistance is currently characterized by a limited system providing insufficient social security support to a restricted range of beneficiaries. It focuses on the welfare of persons in difficult circumstances meeting certain narrowly defined eligibility requirements. Social assistance transfers reportedly have very little impact on poverty and other outcomes due to low coverage as well as low transfer values. Currently the social assistance system consists of three components: regular transfers; emergency assistance; and social care and social work. A 2019 ILO report notes, “Regular transfers comprise the largest component of social assistance and include targeted cash support for certain groups of children (such as orphans and children with disabilities), persons with disabilities, single parents, persons living with HIV/AIDS, and older persons aged 60–79 who lack any means of support, as well as the universal social pension for all persons aged 80 and above.”¹⁷⁰ It goes on to note:¹⁷¹

Because of their design, the social assistance programmes in Viet Nam have relatively small target populations, reflected in low overall coverage of the social protection system. Less than 20 per cent of all Vietnamese households have a beneficiary of any social protection programme, as shown in figure 2.1, according to analysis of the Viet

169 Olivier, *Extending social security to informal economy workers*.

170 James and McClanahan, 1.

171 James and McClanahan, 5.

Nam Household Living Standards Survey (VHLSS) 2016. Indeed, there are large coverage gaps across all ages. Younger generations and people of working age are particularly disadvantaged in Viet Nam's existing social protection system, with more than 85 per cent living in households with no access to any social protection. Meanwhile, some 45 per cent of older persons receive some form of social protection, with VSS pensions, social pensions and merit payments accounting for the difference between coverage rates for the elderly and for younger cohorts.

178. Reforms foreseen by Resolution 28 and Decision 488: Recent policy instruments foresee major changes to this scenario. Apart from extending the personal coverage sphere by the suggested expansion and addition of benefit types, increasing social assistance transfer values and greater integration of the social insurance and social assistance systems are specifically envisaged – in the MPSIR (Resolution 28), the MPSARD (Decision 488) and their accompanying implementation plans. These matters have to some extent been discussed in different chapters of this report,¹⁷² in view of their close association with the extension of the categories of beneficiaries of the reformed social assistance system.

179. Suggested further reforms to the social assistance domain: In addition to the required legal reforms indicated above, other needed reforms in social assistance include the need to:

- Set a proper base for the setting of the value of the various social transfers. Poverty measures such as the national poverty line are, it has been suggested, an inappropriate tool for assessing (i) the adequacy of life cycle social assistance benefits in Viet Nam and (ii) the need overall to achieve the income replacement levels indicated in ILO Convention No. 102.¹⁷³
- Arrange for a realistic and objective indexing option, such as price indexation, to be used to preserve the real value of the transfers, bearing in mind that there may be a need to introduce special measures to make up the accumulated loss of 18 per cent of the value of existing benefits since 2013.¹⁷⁴
- Achieve vertical coverage extension (that is, an increase in the social transfer values). This may have to be balanced against the need to achieve horizontal coverage extension (that is, an increase in the number and range of beneficiaries). While horizontal coverage extension may have to be given priority, in particular from the perspective of developing an integrated, multi-tiered system of social protection provisioning, in the case of social pensions and disability benefits, “great care must be taken to ensure that tax-financed benefit levels are high enough to enable a decent standard of living for the millions of Vietnamese citizens who rely on them not only to meet their basic needs, but to live in dignity, prosper and contribute to society.”¹⁷⁵

180. Absence of other social assistance arrangements typically included in modern social assistance laws: It needs to be highlighted that Decree 136 apparently makes no provision for social assistance arrangements that would typically be included in modern social assistance laws. Including these arrangements would strengthen the rights-basis of social assistance. We mention only some of the salient issues, without discussing them in any detail:

172 See in particular section 6.1.5.

173 James and McClanahan, 52.

174 James and McClanahan, 58–66.

175 James and McClanahan, x.

- suspension, cancellation and lapsing of benefit;
- review of and increased/reduced benefit payment;
- protection of the individual against abuse;¹⁷⁶ and
- enforcement and inspection.

181. **Social health insurance gaps:** As indicated in a recent ILO report, despite the remarkable achievements of social health insurance in Viet Nam, further reforms impacting on the adequacy of social health benefit regime need to be considered:¹⁷⁷

The system underperforms in terms of the quality of and access to health care services, especially in rural areas. Although benefit packages are the same for all beneficiaries, differences in infrastructure and quality of care between rural and urban area hospitals affect the equitable access to health care benefits. Out-of-pocket expenditure for health is still high due to high ratios of co-payments and ceiling payment for high-tech services, which affects the attractiveness of the scheme.

The implementation capacity of the Government is still limited, and high administrative costs impact the financial sustainability of the health insurance fund.



176 Reference is made the recently published ISSA Guidelines on Service Quality (2019), which elaborates on many of the relevant issues. See, among many other provisions, Guideline 19 on “Building public trust through transparency and accountability” and Part B on the “Voice of the Participant”. Also, there are indeed numerous ways in which social assistance regimes world-wide ensure proper protection against abuse of individuals – including protection against “loan sharks” – i.e. a person who offers loans at high interest rates and demand repayment of the loan when the social assistance benefit is received; strengthening the basic rights of users and beneficiaries of the social assistance system, such as the right to be served in the language of the applicant/beneficiary, the right to be informed of the reasons for a negative decision, and stringent obligations imposed on officials when withdrawing or suspending benefits. Finally, as clearly indicated in this report, there is need for a consistent and comprehensive treatment of complaint and appeal provisioning in the Vietnamese social security system.

177 Nguyen and Cunha, *Extension of social security to workers*, 60, box 4.3.

08 Implementing social security legal and institutional reform and system integration

8.1 Implications of not undertaking integrated and holistic reform of the Vietnamese social security system

182. **Considerable achievements reached, yet major challenges remain:** Over the years Viet Nam has achieved remarkable progress in expanding and reforming its social security system. Yet, as indicated in this report, the system faces numerous challenges and shortcomings. There are several undesirable implications that will flow in the event that these challenges and shortcomings are not addressed in a holistic and integrated fashion.
183. **Continuation of large-scale institutional and legal fragmentation:** Uncertainty of institutional and legal mandate contributes to lack of clarity of mandate and powers and inconsistencies in the allocation of responsibilities – as is evident from, for example, the overlapping powers and functions of the VSS and the Department of Employment regarding the approval and payment of unemployment insurance benefits. Fragmentation causes an inability to develop and even execute policy coherently. Also, non-alignment of particular concepts and provisions across the spectrum of social security laws and with the labour law regime causes inconsistencies and weakens the extent of coverage under the social insurance regime.
184. **Lack of an appropriate legal framework:** The absence of a legal framework, which sets out in clear terms obligations and in particular individual entitlements, is in conflict with a human rights-based approach and causes uncertainty, as ongoing access to benefits is dependent on the exercise of discretion on the part of the Government, in particular in the area of social assistance. Furthermore, legal uncertainty makes it difficult, if not impossible, to develop an appropriately aligned multi-tiered system, given the need to fix the relative components of the system and their relative (monetary) contribution to multi-tiered social security provisioning.
185. **System fragmentation despite some attempt to develop a multi-tiered approach:** The absence of a coherent social security system, in terms of which non-contributory and contributory elements are carefully aligned (in particular, with a view to multi-tiered provisioning), has a detrimental impact on the vision of comprehensive and universal coverage, as called for by Resolution 28, as it remains unclear how the different elements in the system interact. This has a major impact on the extent and quality of coverage, as the systematic expansion of the sphere of persons covered and the adequacy of that coverage would be difficult to achieve.
186. **Improper design and regulation, and inadequate provisioning prejudice certain vulnerable groups in particular:** As also discussed in separate reports, informal economy workers and Vietnamese workers abroad are negatively affected by inappropriate design of the social security modalities currently applicable to them; a fundamental redesign of these modalities is required. In the case of informal economy workers, voluntary affiliation to a social insurance arrangement is unlikely to achieve significant coverage extension for a large part, if not the majority of the workforce in Viet

Nam.¹⁷⁸ Also, certain currently excluded categories of persons in need of social security coverage are negatively affected by absent (or inconsistent) provisions to include them within the framework of the Law on Social Insurance – in particular, gig economy workers, employees engaged in multi-party and/or multi-employer employment relationships, supply chain workers, business household heads, business managers and managers of cooperatives. Furthermore, the limited extent of social assistance provisioning and the low value of social assistance transfers exclude a large part of Viet Nam’s vulnerable population from adequate social security support.

187. **The absence of an integrated policy:** Resolution 28 and the MPSARD provide important policy pointers for the further development of the contributory and non-contributory system. However, as many other countries have done, there is need for overall policy direction and objectives. This could best be achieved through the development of a dedicated National Social Protection Policy or Strategy.

188. **Weak governance arrangements:** Reforms in the governance of social security in Viet Nam are critically needed. This applies among others to matters related to the autonomy of the VSS Board, and the effectiveness of, among other, the complaints and appeals process.

8.2 Implementing social security reform

8.2.1 Comparative examples

189. **Scope and objectives of reforms:** Social security reform can take many forms. Much depends on the objectives of an envisaged reform. At times it may be necessary to reform a particular component of the system, such as the pension system or the health care system. This may be prompted by, for example, a rapidly ageing society or the unsustainable fiscal ability of the social security scheme to provide guaranteed benefits (in the pension area), or the need to establish a universal system of provisioning to ensure adequate levels of care and services – as in the event of social and national health insurance schemes. In other cases, however, there may be a need to overhaul the system as a whole, given comprehensive shortcomings across the board, and/or to create a well-aligned and especially a multi-tiered system of social security support.

190. **Key lessons:** From the three examples of countries that have initiated comprehensive system-wide reforms – Japan, India and South Africa – some key lessons can be learned, listed in boxes 11–14.

178 Olivier, *Extending social security to informal economy workers*; Olivier, *Extending social protection to Vietnamese workers abroad*.

Box 11

Key lessons from social security reform experiences in other jurisdictions

Salient lessons can be learned from other jurisdictions concerning the design and implementation of social security reforms. These include:

- **Prompting factors:** Comprehensive social security reforms are usually triggered by significant challenges or shortcomings in the system experienced in several domains and/or across the board.
- **Complete overhaul may be required:** Reforms take time and are usually of an ongoing nature. Yet, at a certain point in time, which could occur at different intervals, there may be a need to completely overhaul the system. This will be the case when it becomes clear that the sheer amount and/or serious nature of the challenges or shortcomings experienced may call for a concerted effort to redesign the system. The need for a complete overhaul may flow from any one or a combination of, for example: inequalities and unequal outcomes inherent in the current system; significant demographic, labour market and/or socio-economic changes; debilitating fragmentation, from an institutional, legal and/or operational perspective; serious coverage gaps, in terms of categories of persons not covered and/or the (in)adequacy of the benefit regime; the need for parametric reforms; a needed change in objectives to be achieved; and the need for a well-aligned and well-calibrated multi-tiered system.
- **Both a technical and political process required:** Technical analysis, interpretation, reporting and implications for the policy domain are a critical part of the process of reform: reforms need to be informed and evidence-based. Reliance can be placed on the expertise of, for example, the ILO in this regard. So too is the political process of evaluating the technical proposals and decision-making critical, in particular as regards adopting policy approaches, setting priorities and making politically feasible choices. Broad agreement must be evident in the political sphere; otherwise needed reforms may be delayed. This requires strong, high-level political leadership.
- **Alignment of foreseen outcomes and views on system reform:** It is important to make sure that there is a sufficient measure of alignment of the political and technical process outcomes and views on system reform described above. In the absence thereof, progress may be significantly delayed.
- **The value and limits of stakeholder interests:** Elaborate but targeted stakeholder consultation is a prerequisite for informing the scope and content of the reform and to ensure buy-in of the reforms to be adopted. The views in particular of those who will be affected by reforms need to be heard and considered. However, while taking into account stakeholder interests is important, these interests should not be allowed to derail or delay either the finalization of the technical analysis and proposals, and/or political decision-making.
- **Normative frameworks are imperative:** Normative frameworks are critical for defining the objectives, scope and nature of reforms and in this way steering the reform process – in particular, constitutional perspectives and international and regional standards provide important benchmarks.
- **Formulation of policy objectives:** Policy objectives to be achieved should be clarified early on in the process of developing the technical proposals – in order to give direction to the reform process and content.
- **Institutional and legal implications:** Implications for the institutional and legal domains need to be considered – and may require a legal mapping (mapping and evaluation of regulatory instruments) and alignment/consolidation, as well as the recasting of institutional frameworks.
- **Confirming the fiscal framework:** Identifying the fiscal framework required to implement social security reform would call for social budgeting and actuarial studies to facilitate the implementation.
- **Implementation measures:** Care should be taken to ensure that the implementation measures required are well-understood and attended to – with reference to, among others, complaints and appeals; data protection; enforcement and inspection; developing and linking relevant databases; and strengthening actual service delivery.
- **Capacity-building:** Capacity may have to be built and/or strengthened in order to facilitate the processes outlined above. ILO assistance may be of particular value in this regard.
- **Monitoring and evaluation:** Monitoring and evaluation measures should be put in place.

191. Reform of the Japanese social security system:

Box 12

Reform of the Japanese social security system¹

Several lessons that can be learned from the experience of Japan with social security reform:

Context and scope of the envisaged reform: The reform of the Japanese social security system has been an ongoing matter for many years. Currently, however, the Japanese Government is engaged in a major overhaul of the entire Japanese system, prompted by fiscal unsustainability, the worsening demographic crisis and the inconsistent treatment of different generations; much of the focus of the system is on the interests of the older generation. Therefore, according to the current Prime Minister, there is a need to reform the system for the younger generation in particular, advocating “social security reform for all generations”.² Envisaged labour market reforms are linked to the suggested social security reform: one of the Government’s aims has been to encourage older people to work for longer, and thereby keep on contributing to a more affordable social security system.

Political leadership: In the past, use was made of a National Commission on Social Security to drive the reforms. With the current reforms in mind, however, the process is one driven decisively by political leadership, supported by high-level technical contributions. A mandated panel, comprising 16 people from ministerial, business and academic backgrounds, developed first an interim report and more recently a final report. However, the actual reform will be undertaken by a panel of political leaders. The Prime Minister has put the whole Cabinet in charge of the reform and will effectively lead the reform. Representatives from, among others, industry associations are not included. For now, seemingly, the reforms require leadership and direction from the most senior politicians in the country.

¹ H. Takenaka, “Reforming Japan’s social security system”, *Japan Times*, 3 March 2020; “Japan’s Abe vows to reform social security system amid rising demographic crisis”, *Xinhua*, 20 September 2019. For an overview of the Japanese system, see Ministry of Foreign Affairs of Japan, “Social Security in Japan: Toward a Japanese Model of the Welfare State”.

² “Japan’s Abe vows to reform social security system amid rising demographic crisis”, *Xinhua*, 20 September 2019.

192. Social security policy and legal reform in India:¹⁷⁹

Box 13

Social security policy and legal reform in India

Social security reform in India has been characterised by a number of developments:

Reform context: The social security system in India is characterized by its highly fragmented nature: there are often overlapping schemes and arrangements at both state and union level, with some of these being industry schemes, and targeted at a diverse range of beneficiary groups, including select categories of those who fall below the basic poverty line (namely social assistance beneficiaries), all citizens (for example, Government health schemes), those who work in the organized sector (several schemes), voluntary schemes for those who opt in, and cess-based industry schemes for categories of poor workers. In their variety, the schemes are informed by multiple laws, with many agencies, ministries and governments involved, while the benefits are essentially inadequate, and very substantial categories of persons remain uncovered – in particular those operating in the informal economy, constituting approximately 90 per cent of labour market participants.

¹⁷⁹ See Government of India, Ministry of Labour and Employment, “Social Security Policy for India”, 5 September 2017, as well as M. Olivier, *Social security reform in India: Draft framework* (ILO and the Ministry of Labour and Employment, India, 2016).

Second National Commission on Labour (NCL, 2000): Since 1931, several commissions and national studies have grappled with expanding the system to serve the second largest country population on earth. The recommendations of the second National Commission on Labour (NCL) of 2002 are of particular importance.¹ The NCL was set up as a high-level body with a limited number of members reflecting technical expertise, scientific inputs, involvement of the social partners, and participation of civil society in the informal economy context. Its terms of reference included the making of recommendations on: (i) rationalization of existing laws relating to labour in the organized sector; and (ii) umbrella legislation for ensuring a minimum level of protection to the workers in the unorganised sectors. It arranged consultations in the major cities of India with a wide range of stakeholders, including Government and research institutions, the social partners, informal economy organisations and legal bodies. Questionnaire-based surveys were conducted both in the organized and unorganized sector, and study visits were paid to China and Malaysia.

Key reform recommendations: Comprehensive reform of the social protection system in India, aimed at the integration of fragmented schemes, universalization of social security, and the need for overall regulation, were recommended in Chapter VIII of the NCL's report, including:

- a normative basis for the social security system in India, based on a human rights-based approach, and the objective of ratifying key ILO social security instruments;
- the development of a national policy (and national plan) for social security and the establishment of a national social security authority under the chairmanship of (preferably) the Prime Minister of India;
- a social security fund of India at central level, replicated at State level, to oversee an integrated and comprehensive social security scheme provided for via single, integrative legislation, managed by a single Ministry/department, and implemented via a single unified social security office in every locality;
- functional integration of social security programmes into a four-tiered social security system, consisting of social assistance; partly contributory schemes, partly subsidized by the State; wholly contributory social insurance schemes; and voluntary arrangements; and
- as regards the unorganized sector, progressive inclusion was foreseen, through welfare funds and subsidized insurance programmes.²

ILO technical studies and policy reports built on the work done by the NCL and other commissions, partly confirming and partly expanding on the recommendations of the NCL.

Slowly unfolding reforms: Yet, despite formidable work done at the technical level and high-level input from a range of stakeholders, as well as some important but piecemeal reforms (such as the establishment of a social health insurance scheme, the RSBY (Rashtriya Swasthya Bima Yojana), and the development of a social security framework law pertaining to the informal economy), the (political) reform process has been unfolding slowly, and the reaching of consensus elusive. This is reflected in the nature and orientation of the consolidated draft law, aimed at developing a single, coordinating legal framework for the social security (in particular the social insurance) domain. While the 2017 and 2018 draft laws still largely reflected the views of the two commissions highlighted above and the more recent studies undertaken, the 2019 version of the consolidated draft law (the Draft Code on Social Security) represents a different approach, essentially leaving it to the central and state governments to establish welfare schemes that would include workers in the informal economy, the largest labour market segment in India. Nevertheless, the 2019 version emphasises the inclusion of gig workers, and the merging of a large number of laws relevant to social security in India.

¹ See also G. Shivaji Rao, "India: The Report of the Second Indian National Labour Commission – 2002: An Overview", *Mondaq*, 5 March 2003. also; and R. Furtado, "Social security and the 2nd National Commission on Labour", *iPleaders*, 2 December 2016. The full report of the Commission is available as Government of India, Ministry of Labour and Employment, *Report of the National Commission on Labour*, 2002.

² Also the National Commission for Enterprises in the Unorganised Sector (NCEUS) covered in one of its reports the extension of social security to the informal economy; a draft bill (Unorganised Workers Social Security Bill) was attached to the report. See National Commission for Enterprises in the Unorganised Sector (NCEUS), *Social Security for Unorganised Workers*, 2006.

Box 14

A comprehensive system of social security for South Africa

The reform context: South Africa has a long history of contributory and non-contributory social security provision. Both these components developed piecemeal and have seen numerous reforms over the years. However, South Africa has never had an integrated system of social security provisioning – a coordinated multi-tiered framework has been lacking. For a considerable time the system was also racialized, with non-white segments of the population enjoying unequal and inequitable protection, comparatively speaking. Also, the contributory system has largely focused on serving those in the formal economy. The social security system therefore reflects the deeply unequal and fragmented nature of society in South Africa. This is despite the fact that the non-contributory (social assistance) system has developed rapidly over the last 25 years: What initially was meant to serve as a safety net for poor whites gradually became a comprehensive system aimed at granting State support to well over 18 million beneficiaries – almost one-third of the population. Until now there has been no overarching policy framework to guide social security direction and reform; furthermore, there is a plethora of laws and institutions entrusted with the policy development and implementation. A national system of a public nature has been absent in certain key areas, in particular in pensions and, at least until recently, in health. Much of the current provisioning is therefore still of a private nature.

Committee of Inquiry into a Comprehensive System of Social Security for South Africa: The range of problems referred to above has over the years prompted the Government to investigate reform possibilities. Several committees and commissions of enquiry have investigated social security for different demographic groups and the operation of the limited number of public insurance schemes. To address the social security needs of a new democratic South Africa, a comprehensive review of the system was undertaken by the Cabinet-appointed Committee of Inquiry into a Comprehensive System of Social Security for South Africa between 2000 and 2002. An Inter-Ministerial Committee on Social Security, Retirement Reform and National Health Insurance, supported by an Inter-Departmental Task Team, was entrusted with the task to construct a comprehensive social security system for South Africa. The Committee had 18 members (senior governmental officials) and representatives from the social partners, civil society and the research community. Its terms of reference required the Committee to review options on ultimate objectives and targets for the system, covering key social security areas, including a national pension system, social assistance grants, social insurance schemes, unemployment insurance and health funding and insurance. Long-term objectives and targets had to be formulated by the Committee, but also short-term or required intermediate reforms. A social budget had to be developed for the country. The Committee set up subcommittees and consulted widely; collected information and perspectives from a large range of stakeholders; and sought the advice of a range of international experts.

180 See in particular Government of South Africa, Department of Social Development, *Transforming the Present – Protecting the Future: Committee of Inquiry into a Comprehensive System of Social Security: Final Report*, 2002; M. Olivier, “Social Security: Framework”, *LAWSA (The Law of South Africa) – Labour Law and Social Security Law* 13, No. 2 (2012): paras 10–12.

Key reform recommendations: Building on the constitutional imperatives and guarantees embedded in the South African Constitution, and considering the direction given by a range of international social security standards, the Committee formulated a comprehensive social security system that focuses on creating greater income security for the poor and the substantial reform of the contributory system, to achieve comprehensive coverage on a universal basis. It recommended institutional streamlining, an overarching social security governance structure, consolidated legislation, and an enabling financing framework. Deliberate coverage extension and improvement in the adequacy of transfers are two of the key dimensions of the comprehensive system proposed by the Committee.

A difficult reform path: The reform of the South African social security system in the aftermath of the Committee's report has met many challenges. A few of the Committee's recommendations were not accepted by the South African Government, in particular the introduction of a universal basic income grant. Within the Government, different and at times opposing views have been expressed by various ministries; it took many years to build a broad Government consensus around the comprehensive social security system objectives and mechanisms. Broad-based consultations are regularly held with civil society and social partners within an indicated tripartite plus facility to further develop the reform framework. Specific piecemeal reforms have been adopted, including, among others, commencement with the establishment of a National Health Insurance Scheme, and reforms to the unemployment insurance and pension regimes. Dedicated studies have been undertaken to search for ways to appropriately accommodate non-citizens and those in the informal economy into the comprehensive social security system.

8.2.2 Social protection reform in Viet Nam: Key reform dimensions

194. Matters to be considered in setting the reform framework: In developing a framework for the further reform of the Vietnamese social security system, it may be advisable to consider the following dimensions:

- setting the reform agenda and policy objectives to be achieved;
- developing a well-grounded implementation (master) plan and strategy;
- implementing reforms incrementally, with time-bound objectives and milestones to be achieved, learning from the processes in establishing the Social Health Insurance system, the reform/revision of the Labour Code, and the development of Resolution 28;
- highlighting the different steps that need to be taken, as well as the sequence of these steps;
- paying particular attention to the need for integration in a range of areas, including (i) policy coordination; (ii) consolidation of laws, which may require the mapping of regulatory instruments first; (iii) institutional integration; and (iv) database development and configuration;
- removing inconsistencies and duplications at the macro and meso levels, as regards the policy, legal and institutional domains; and
- building on existing interventions, for example, in addition to the foreseen revisions of the Law on Social Insurance and the Law on Employment, considering the reports emanating from 63 provinces on the Law on Social Insurance.

8.2.3 Social security reform in Viet Nam: Institutional framework, mandate and process

195. **Stakeholder views – comprehensive reform and a dedicated framework:** In the course of consultations for this report, several stakeholders indicated that, in their view, a comprehensive reform of the Vietnamese social security system is needed. According to them, this reform cannot be achieved only by relying on and implementing the vision, direction, actionable measures and milestones contained in Resolution 28 and to utilize current processes (such as regular legislative revisions) for this purpose. This appears to be confirmed by the analysis of key challenges and shortcomings inherent in the current system outlined in this report, and summarized in the motivation contained in section 8.1 above. A dedicated framework driving and informing the reform therefore seems to be called for. However, stakeholders did also express the view that Resolution 28 should serve as the ideal point of departure, and that the reform to be considered should be aligned with Vietnamese constitutional imperatives and international standards, while learning from good comparative experiences.
196. **Consider political and policy guidance as well as other processes:** As indicated in section 4.2 above, Party Resolutions 15 of 2012, 18 of 2017 and 10 of 2018 emphasize – in relation to social security policy development, institutional (including operational) coordination and legal reform – the need for review and revision, with a view to achieving streamlining and uniformity, consistency, coordination and consolidation. Other processes pertaining to policy and legal reform in Viet Nam should also be considered – for example, both the Law on Social Insurance and the Law on Employment are due for revision in the next 18 months. Furthermore, as also indicated by some of the stakeholders, the reform should be aligned with constitutional prescripts, relevant international standards, and Viet Nam’s broader development agenda. Reports emanating from 63 provinces on the Law on Social Insurance should also be considered.
197. **Institution steering the reform:** Several options exist as regards the institution that should ideally be tasked with steering the reform. It may be possible to establish a separate commission or committee to undertake this task. However, this does not necessarily guarantee the political endorsement and prompt implementation of recommendations made by such an institution, as the examples of India and South Africa above have indicated. Therefore, as also suggested by many of the consulted stakeholders, it is best to let a powerful and respected institution in Viet Nam steer the reform process and implementation. It needs to be reiterated that such an institution does not equate an apex body, possibly to be established in Viet Nam, to provide an overarching consolidated, centralized coordinated structure for social security direction and policy development on an ongoing basis (such as a National Social Protection Council) – discussed earlier in section 4.2 of this report.

In light of this, another possibility is to task a relevant institutional structure of the National Assembly to undertake this task. However, most of the stakeholders who expressed a view on this, suggested that it might be best to use the example of an existing structure that recently dealt with social security reform in Viet Nam, within the framework of developing Resolution 28. Attention is therefore drawn to the Steering Committee established on the basis of the Prime Ministerial Decision on Establishing the Central Steering Committee on Reforming Policies on Wages, Social Insurance and Policies for People with Merits (2017).¹⁸¹ Based on feedback from several Vietnamese stakeholders it is suggested that, given its high-level political status and significant experience in matters concerning social security, this particular body, or a body similar to this one, be tasked with deciding on, driving and overseeing the comprehensive

181 Viet Nam, Decision on Establishing the Central Steering Committee on Reforming Policies on Wages, Social Insurance and Policies for People with Merits No. 43/QĐ-TTg of 12 January 2017.

reform of the Vietnamese social security system. Such a body clearly reflects the required political leadership required for successful reform design and implementation, given the fact that the Steering Committee indicated here, used for purposes of developing Resolution 28, was chaired by the Deputy Prime Minister, with the MOLISA Minister and the Minister of Finance serving as the deputy heads.

198. **The need for an appropriately capacitated technical expert body:** It is evident, also from worldwide experience in this regard, that comprehensive reform of a social security system requires exceptional technical expertise, bringing together experts from a range of relevant disciplines. Such an expert body should ideally be tasked with undertaking the significant evidence-based work required for this purpose, designing a range of options, and perhaps also consulting with stakeholders on matters of design and implementation of a comprehensive framework. The key issue here is that the analytical work undertaken by an expert body has to serve as a necessary input into the political decision-making process. In order to be able to undertake its analytical work at the level required by a comprehensive reform, this body should not only have a sufficiently wide spread of experts, and other stakeholders, as members (see below), but should also be appropriately capacitated in terms of financial and logistical resources, as well as supporting staff (for example, to conduct research, and to provide administrative support).

A technical expert body can be a body separately constituted for this purpose, or it can be a committee created within the structure and framework of the Steering Committee. Nevertheless, regardless of the avenue selected, it is important that the technical expert body is appropriately aligned with the political process of decision-taking. Therefore, it is critical that this body reports directly to the Steering Committee and that, ideally, a selected range and limited number of Steering Committee members also serve on the technical expert body.

199. **Composition of Steering Committee:** As suggested by several stakeholders, and learning from the global experience and the drafting of Resolution 28, the Steering Committee should reflect strong and respected political leadership and engagement, with the power to take decisions, give direction and oversee implementation of the reform. The composition of the Steering Committee for developing Resolution 28 serves this purpose, chaired by the Deputy Prime Minister, and co-chaired by the MOLISA Minister and the Minister of Finance. Several other ministers, as well deputy ministers, also served as members, in addition to a range of other key stakeholder institutions, including among others the Director-General of the VSS, senior Party officers, the National Assembly, the judiciary, and the Viet Nam General Confederation of Labour.
200. **Composition of technical expert body:** With reference again to worldwide experience in this regard, it is proposed that the composition of the technical expert body should include, apart from stakeholder representation, experts from key disciplines relevant to the suggested social security reform and implementation – in particular experts with social security experience in the following areas: actuarial science, legal reform, financing, governance, social policy design and execution, labour market analysis and reform. It is further proposed that key stakeholders be included in the composition of this body. Their views and experience are crucial for the successful design and implementation of a reformed social security system. In our view, and based on comparative experience in other countries, the stakeholders should include senior governmental representatives, the social partners, informal economy representatives, and civil society, including civil society organizations representing particularly vulnerable categories of persons (such as the elderly, women, children, persons with disabilities, internal and overseas migrants, and pensioners). Also, as suggested above, a selected range and limited number of Steering Committee members, over and above the governmental representatives already mentioned, should ideally serve on the technical expert body as well. However, it needs to be stressed that while this body's membership should reflect the technical

expertise and stakeholder involvement indicated here, membership should be restricted in number to ensure that the body could move swiftly and efficiently in the work undertaken.

201. **Scope of mandate – Steering Committee:** Given the extensive scope of the suggested mandate of the technical expert body, the core mandate of the Steering Committee should include:

- finalizing the mandate of the technical expert body and its composition, and appointing its members;
- evaluating and commenting on the interim report of the technical expert body;
- deciding on recommendations and options contained in the final report of the technical expert body in order to endorse a final framework for reform and its implementation;
- allocating responsibilities for implementing the final framework for reform, and overseeing its implementation;
- consulting with relevant stakeholders as needed, in the course and for purposes of the above; and
- developing draft legislation to give effect to the final framework for reform, in accordance with the provisions of the Law on Promulgation of Legislative Documents (2015).¹⁸²

202. **Scope of mandate of the technical expert body:** It is suggested that – bearing in mind the proposals made by consulted stakeholders, the range of matters indicated in this report that would require consideration and/or reform or revision, and the experience of reform initiatives in other countries – the following (high level) non-exclusive range of matters be included in the mandate given to the technical expert body:

- **Sources that must be considered:** Resolution 28, but also Party Resolutions 15 of 2012, 18 of 2017 and 10 of 2018; Viet Nam’s Constitution; relevant international and regional instruments, regardless of whether they have been ratified, emanating in particular from the UN, ILO and ASEAN; bilateral instruments; existing laws and other regulatory instruments; Viet Nam development planning policies and strategies; good practice examples of other countries; and any other source that the expert body deems relevant and appropriate;
- **Modus operandi:** Evidence-based investigation, analysis and weighing of options; consultation with relevant stakeholders; making recommendations with options indicated, contained in a first, interim report, and then a final report, informed by feedback obtained from the Steering Committee and other stakeholders;
- **Overall outputs:** An interim and a final report, containing an evidence-based analysis of challenges and shortcomings, as well as recommended reforms, with options indicated and weighed; supported by a master (work) plan indicating implementation actions, timelines, responsible actors and assessment criteria; accompanied by a suggested suitable incremental implementation pathway with priorities set and clear deliverables and timelines indicated; and indicating required capacity building;
- **Institutional coordination and consolidation:** As per section 4.2 of this report and following further analysis by the expert body, reflecting on the coordination

182 Viet Nam, Law on Promulgation of Legislative Documents (Law No. 80/2015/QH13 of 22 June 2015).

of current political and policy oversight, as well as dedicated synchronized governance and administration; a consolidated institutional structure coordinating with other relevant institutional structures; operational coordination, supported by an integrated database system; and an overarching consolidated, centralized coordinated institutional long-term structure to be established for ongoing policy direction and oversight (such as a National Social Protection Council);

- **Addressing legal fragmentation:** As per section 4.3 of this report and following further analysis by the expert body, including a thorough legal mapping exercise, identifying overlaps, gaps and inconsistencies; recommended synchronization and removal of restrictions; a consolidated legal framework; establishing a rights-based framework supporting benefit entitlement and service delivery; simplified personal scope of application provisions to facilitate coverage extension; material scope of coverage; types and nature, or range and duration of benefits; alignment with the labour law regime and the rest of the Vietnamese legal system; strengthening compliance with the legal framework
- **Coverage extension:** As per Chapter 6 of this report and following further analysis by the expert body, identifying key coverage gaps and needed reforms to address; including other currently excluded categories of persons in need of social protection coverage and indicating modalities for their coverage (specifically gig economy workers, supply chain workers, workers involved in multi-party employment relationships, business household heads, business managers and managers of cooperatives); reflecting in particular also on informal economy workers and informal employees, and Vietnamese workers abroad;
- **Scope and adequacy of benefit regime:** As per Chapter 7 of this report and following further analysis by the expert body, identifying gaps and shortcomings, with recommendations on improving the scope and level of benefits under the contributory and non-contributory regime; giving effect to a lifecycle approach.
- **System design and coherence:** As per Chapter 4 of this report and following further analysis by the expert body, reflecting on a national synchronized system with contributory and non-contributory elements coordinated within a universal and multi-tiered framework of provisioning; reflecting on compulsory versus voluntary coverage; addressing the contributory framework, including extended State contributions;
- **Financing:** Reflecting on financial resources needed to implement a reformed system of social protection provisioning; identifying sources for financing, and the development of a social security financing policy;
- **Service delivery:** Reflecting on a streamlined service delivery model, supported by a suitable identification and registration system, (linked) databases, and case management and single window approaches.
- **Capacity building:** Identifying human and technical capacity needs to implement the reforms and how these needs can be addressed; and
- **National Social Protection Policy and accompanying Strategic Framework:** A considered framework for developing and implementing a National Social Protection Policy and its accompanying strategic framework, indicating the suggested scope of both instruments, and proposals for its concrete development and implementation (see section 4.1).

09 Recommendations

203. **Consistent reflection of a life cycle approach:** While the MPSARD often refers to the life cycle approach, this is not dealt with consistently in the Vietnamese system. Important reforms have to be undertaken in this regard. The key social assistance instrument, Decree 136, does not deal with some of the key life cycle risks to which also poor people are exposed, such as maternity. On the other hand, it deals elaborately with a range of social (welfare) care services beyond social assistance as normally understood.
204. **There is a need to underpin the provision of social security – both social assistance and social insurance – with a rights-based entitlement basis:** The provision of predictable and transparent benefits to the people who need them and who, in the event of social insurance, may have contributed thereto, requires confirmation in the legislative domain that qualifying individuals have a right thereto. This follows from the global acceptance of a rights-based approach to social security and the recognition of social security as a human right, both at the international level and in the Constitution of Viet Nam. It is recommended that the statutory framework pertaining to social assistance and social insurance in Viet Nam confirm that individuals in Viet Nam are entitled to social assistance and to social insurance.
205. **Further alignment with and implementation of relevant international standards:** It is evident that Viet Nam has achieved significant progress in establishing and extending a social security system that is meant to be inclusive. Viet Nam has also committed itself to enhance the effectiveness and adequacy of the system, in view of the priority it gives to the development of an integrated and multi-tiered/multi-pillar system. It is recommended that in order to optimally reach these goals, which are indeed pursued by many countries, including developing ones, Viet Nam formally align itself to universally applicable international standards and guiding frameworks.
- **National floors of social protection from a life cycle perspective:** In particular, it is recommended that Viet Nam consider, firstly, adopting national floors of social protection from a life cycle perspective to ensure that all those in need in the country enjoy at least a minimum level of social security. The guidance provided in this regard by the ILO Social Protection Floors Recommendation No. 202, adopted in 2012 by the governments and workers' and employers' organizations from all countries, may be particularly helpful in this regard.
 - **Ratification of the ILO Minimum Standards (Social Security) Convention, 1952 (No. 102).** Secondly, it is suggested that, in addition to those international instruments already adopted, Viet Nam consider ratifying ILO Convention No. 102. Several of the risk benefits covered by the social security system in Viet Nam appear to be (mostly) aligned with the respective benefit requirements for specific social security branches set in Convention No. 102; some others are not. The ILO has indeed indicated that "social security provisions in the country are generally aligned with Convention No. 102", as discussed above.¹⁸³ Already, in relation to another ILO Convention, the MLC, 2006, Viet Nam has specified some of the social security branches as being applicable to the country: medical care, old-age benefits, and employment injury benefits.
206. **Creation of a uniform consolidated legal framework for the regulation of all social security branches, with the exception of health insurance:** It is recommended that all social security branches or risk categories, except for health insurance, be consolidated

183 Ramírez López, Tsuruga and Cunha.

in a uniform legal framework, preferably a single, consolidated law, instead of the present fragmentation of these branches across many different laws. The consolidated legal framework or law should cover both contributory and non-contributory benefits, in a way that expresses the goal of a multi-tiered social security system. Further legal mapping is needed to address shortcomings in the legal framework and to ensure proper alignment. The primary law, and not secondary regulation, should indicate in particular the material and personal scope of coverage; the type and nature, or range, and duration of benefits; the level or amount of benefits; and qualifying conditions. Compliance challenges experienced in the Vietnamese social security system have to be addressed.

207. **Leaving no one behind is a powerful objective informing the extension of social security to uncovered categories of persons:** Legal barriers to coverage in the social insurance domain need to be addressed, in relation to (i) alignment with the 2019 Labour Code scope of coverage; (ii) domestic workers (unemployment insurance); (iii) gig economy and supply chain workers; (iv) other workers in multi-party employment relationships; (v) business household heads, business managers and managers of cooperatives; (vi) the inconsistent treatment of employees with multiple employers; and (vii) certain dependants/survivors. Shortcomings in the social assistance domain also require attention, given the narrow range of beneficiaries, and strict means-testing and targeting conditions, and existing operational challenges. It is, therefore, recommended that unnecessary restrictions be removed from the legal framework; consideration be given to simplify the personal scope of application provisions; coverage be extended to the range of other workers and other categories of persons in need of social protection, indicated above; and a life cycle approach informs the extension of social assistance to persons in need of social assistance. A gradual approach to achieve extended coverage may be called for.
208. In the social insurance domain, there is need to ensure that workers employed on a short-term basis, and who may not have a written or formal contract of employment, are not excluded from social insurance. The same applies to those who work in supply chain contexts. It may be necessary to simplify coverage arrangements to achieve these purposes. Furthermore, there may be a need to expand the current narrow range of relatives entitled to draw survivor benefits. Also, the envisaged introduction and/or strengthening of benefit categories to support large and particularly vulnerable categories of persons, including very young children, poor pregnant women, and persons with disabilities, has to be carefully cemented in the legal framework.
209. **Developing an overarching national social protection policy:** There is need for a policy instrument that provides on an ongoing basis a comprehensive framework and direction, as well as strategic framework, for social protection, including social security, in Viet Nam, informed by international guidelines and best practice experience worldwide. This follows from several challenges experienced in the Vietnamese social security policy domain. It is therefore necessary to indicate a pathway to a comprehensive social security system; address policy, institutional and legal fragmentation; unpack in detail a multi-tiered approach to social security provisioning and coverage; formulate long-term social assistance goals; reflect on modalities to better include informal economy workers and informal employees, as well as other vulnerable categories of persons; and provide for governance, funding and implementation arrangements.
210. **Adopting a multi-tiered approach to social security provisioning:** The envisaged reform of the Law on Social Insurance provides a unique opportunity to bring about an appropriately calibrated/aligned multi-tiered social security benefit system in Viet Nam. Much can be learned from the experience with establishing social health insurance. In

pensions, the multi-tiered framework could achieve meaningful coverage extension by, for example: (i) gradually reducing the eligibility age of the current 80 years of age or more social pension, and simultaneously adjusting the small size of the benefit (already costed by the ILO); and (ii) adjusting the social insurance retirement pension in regard to the effective transition of workers from the informal to the formal economy; the wide range of pension parameters, as also foreseen by Resolution 28; and the necessary legal adjustments. Appropriate arrangements also need to be adopted to effectively address remaining gender gaps.

- 211. Achieving dignified living for social security participants through ensuring an adequate range and content of benefits:** Legislative and other measures need to be adopted to introduce benefits not currently provided for, or insufficiently present in the system: an earnings-related invalidity (disability) benefit, a contributory child or family benefit arrangement, and benefits appropriately linked to the preventive and integrative dimensions of social security. This may require, as foreseen by Resolution 28, the need to link the unemployment (insurance) benefit to the maintenance of jobs; in addition, the employee injury benefit system still has to develop appropriate links to a suitable return-to-work (including rehabilitation) framework. Also, the benefits currently available are restricted in range and inadequate in level, in both the contributory and non-contributory domains. As partly foreseen by Resolution 28 and the MPSARD, parametric and other reforms are needed, and may have to gradually implemented. This implies moving away from voluntary social insurance coverage, making participation compulsory, and expanding Government subsidies. It is also necessary to set a proper base for the value of the various social assistance transfers, and to arrange for a realistic and objective indexing option, to preserve the value of the transfers. Furthermore, there is need to improve the adequacy of benefits by letting the full salary, instead of the base salary, of the employee concerned serve as the basis for contribution payments and benefit size.
- 212. Addressing factors that inhibit the adequacy of the benefit regime:** For example, in the retirement domain, Resolution 28 recognizes the need to address the need to discourage lump sum payments; to reduce the contribution period of 20 years to be eligible for the (full) retirement benefits; and to introduce a multi-tiered approach to retirement provisioning. Prudent drafting to give effect to a wide range of foreseen reforms is required, and may have to set goalposts, to be achieved incrementally.
- 213. The voluntary social insurance scheme requires fundamental reform if it were to provide meaningful social security coverage to the millions of workers excluded from compulsory social insurance:** Introducing the envisaged package of flexible short-term benefits may not be sufficient to achieve the objective of extended and meaningful coverage. Alternative or additional measures may have to be adopted, bearing in mind the worldwide experience with extending coverage to workers in the informal economy. Significant obstacles to coverage extension exist, since: (i) the voluntary scheme only covers long-term benefits; (ii) participants in the voluntary scheme effectively have to pay a double contribution (at a contribution rate of 22 per cent), in the absence of an identifiable employer; and (iii) the inadequate level of subsidies. From a comparative and principled point of view, three key challenges with voluntary coverage can be identified: adverse selection; small risk pools; and dysfunctional incentives (such as perverse incentives for enterprises to make work informal). It is therefore recommended that compulsory participation in social insurance may achieve better coverage outcomes and may have to be introduced gradually, and may imply the need for enhanced subsidization by the Government.

214. **An enhanced legal and policy framework is required to introduce much-needed social assistance reforms:** The current social assistance regime provides minimal support to narrowly-defined categories of beneficiaries. There is a clear need, as also indicated in the MPSIR and MPSARD policy domain, to increase social assistance transfer values and bring about greater integration of the social insurance and social assistance systems. Also, the current social assistance regulatory framework can benefit from reforms in areas covered by social assistance laws elsewhere, for example with respect to protecting beneficiaries from abuse, as indicated earlier in Chapter 7.
215. **Good governance principles are insufficiently reflected in the social security legal domain:** A vast range of legislative shortcomings need to be addressed, from the perspective of universally accepted good governance principles. These relate, among others, to further ensuring sufficient autonomy on the part of the VSS Board; the removal of duplication of powers as far as Government and the VSS Board are concerned; and the legislative introduction of good governance principles at the level of the Board and the VSS, among others, relating to the functioning of the Board, accountability, and the financial affairs of the VSS. Also, tripartism is insufficiently reflected in the legal domain. The voice of the social partners and also other relevant stakeholders, such as informal economy workers and pensioners, needs to be better reflected. There is also need to provide for easily-accessible, speedy and effective social security dispute resolution, settlement procedures, instead of the current lengthy and cumbersome procedures, in accordance with prevailing international standards. Further, there is a need to expand the availability of social security-dedicated dispute resolution to areas currently not covered (voluntary social security, social assistance, employee injury benefits and unemployment insurance benefits), to reconsider referral to a general court of law for final resolution, and to appropriately sensitize VSS clients.
216. **Institutional coordination requires a reformed two-tiered institutional framework:** It is recommended that there be: (i) a consolidated structure at the apex level (such as a National Social Protection Council), entrusted with providing ongoing supervision and policy guidance, and facilitating integrated and coordinated interventions; and (ii) a coordinating institution, tasked also with ensuring coordination among institutions involved in the management/execution of social security. It is necessary to pursue operational coordination, supported by an integrated database system. As discussed above,¹⁸⁴ support for these approaches is to be found, in addition to Resolution 28 (2018), in Party Resolutions 15 of 2012, 18 of 2017 and 10 of 2018 – which emphasize, in relation to social security policy development, institutional (including operational) coordination and legal reform, the need for review and revision, with a view to achieving streamlining and uniformity, consistency, coordination and consolidation.

184 As indicated in para. 92 of this report, Resolution 15 among others emphasizes the need to ensure social protection for the whole population. It also highlights systematic legal system, mechanisms and policies reform to reflect uniformity. Furthermore, as again indicated in para. 92, Resolution 18 of 2017 on Some Issues on Continue Innovation, Organization of the Political Policy System towards Efficient and Effective Operation (Resolution No. 18-NQ/TW dated 25 October 2017 of the Sixth Conference of the Second Central Executive Committee XII on Some Issues on Continue Innovation, Organization of the Political Policy System towards Efficient and Effective Operation) contains important principles on institutional coordination and efficiency. It stresses the need for consolidation to avoid duplication. While it targets the reduction of intermediaries, but not the establishment of new intermediaries, it also supports administrative reforms, and the need to explore new models of organization structure to achieve streamlining and uniformity. It requires the Government, ministries and branches to continually renovate, consolidate and reorganize organizational structures and to achieve functional consolidation. The implementing (Government) Resolution 10 of 2018 on Promulgating the Government's Program of Action for Implementing Resolution No. 18-NQ/TW (Resolution No. 10/NQ-CP dated 3 May 2018 on Promulgating the Government's Program of Action for Implementing Resolution No. 18-NQ/TW) emphasizes the task of among other ministries and ministerial-level agencies to review laws to be amended, supplemented or promulgated and to review, arrange and streamline organizational structures, with a view to substantially reducing the number of departments and offices.

217. **Implementing social security legal and institutional reform and system integration:**

Several implications would follow if an integrated and holistic reform of Vietnamese social protection system is not undertaken. Key lessons can be taken from social security reform experiences in other jurisdictions. Bearing in mind these lessons, stakeholder views in Viet Nam, and the political and policy guidance offered by Party Resolutions 28 of 2018, 15 of 2012, 18 of 2017 and 10 of 2018, the following recommendations are made:

- **A powerful and respected institution:** Establish a powerful and respected institution in Viet Nam to steer the reform process and its implementation. The Steering Committee utilized for the development of Resolution 28 may be particularly appropriate for this purpose.
- **Technical expert body:** Establish an appropriately capacitated technical expert body to undertake the significant evidence-based work required for this purpose, design a range of options and consult with relevant stakeholders. This body could be created within the structure and framework of the Steering Committee, and would have to submit both an interim and final report to the Committee.
- **Sufficient stakeholder representation and technical expertise:** Pay particular attention to the composition of the Steering Committee and technical expert body respectively, to ensure sufficient stakeholder representation, but also (as regards the latter body) sufficient technical expertise.
- **Scope of the mandate** Determine the scope of the mandate of both the Steering Committee and the technical expert body to reflect the myriad of issues that require to be considered for purposes of the needed comprehensive reform of the Vietnamese social security system.

Sources

General

- Barbone, L. and Sanchez, L.B. 1999. "Pensions and Social Security in Sub Saharan Africa – Issues and Options." Paper presented at Social Security in Africa: New Realities, Thirteenth African Regional Conference, Accra, July 6-9; also International Social Security Association (ISSA) Social Security Documentation, African Series No. 21, Abidjan, 1999; and World Bank Africa Region Working Paper Series No. 4, 1999.
- Baruah, N. and Cholewinski, R. 2006. *Handbook on establishing effective labour migration policies in countries of origin and destination*. OSCE, IOM and ILO.
- Battistella, G. 2020. *Return Migration: A Conceptual and Policy Framework*. Center for Migration Studies.
- Berghman, J. 1991. "Basic Concepts of Social Security." In Bruylant, T. *Social security in Europe*. Brussels, Maklu
- Berghman, J. 1997. "The resurgence of poverty and the struggle against exclusion: A new challenge for social security?". *International Social Security Review* 50: 3–21.
- Bonnet, F., Cichon, M., Galian, C., Marzelkaite, G. and Schmitt, V. 2012. "Analysis of the Viet Nam Social Protection Strategy (2011–2020) in the context of Social Protection Floors Objectives: A Rapid Assessment", ILO ESS Paper No. 32.
- Broughton, A., Gloster, R., Marvell, R., Green, M., Langley, J. and Martin, A. 2018. *The experiences of individuals in the gig economy*. Institute for Employment Studies.
- Calvo, E., Bertranou, F. and Bertranou, E. 2010. "Are Old-age Pension System Reforms Moving Away from Individual Retirement Accounts in Latin America?". *Journal of Social Policy* 39(2): 223–234.
- Castel, P. and Pick, A. 2018. *Increasing social insurance coverage in Viet Nam's SMEs*. OECD (Organisation of Economic Co-operation and Development).
- Chaabane, M. 2002. *Towards the universalization of social security: The experience of Tunisia*, ILO ESS (Extension of Social Security) Paper No 4.
- Damrongplasit, K. and Melnick, G. 2009. "Early results from Thailand's 30-baht health reform: Something to smile about". *Health Affairs* 28(3).
- DoLAB (Department of Overseas Labour), Ministry of Labour, Invalids and Social Affairs (MoLISA), Government of Viet Nam) and IOM (International Organization for Migration). 2014. *Returning Vietnamese migrant workers: Policy and practice*.
- Dorfman, M., Wang, M. O'Keefe, P. and Cheng, J. 2012. "China's pension schemes for rural and urban residents". In *Matching contributions for pensions* edited by R. Hinz, R. Holzman, D. Tuesta and N. Takayaka, 217–241. Washington, DC: World Bank.
- United Nations Economic and Social Commission for Western Asia (ESCWA). 2016. *Social Protection Country Profile: Tunisia*.
- Ellis, P. 2020. "Vietnam's diaspora returns with attitude". *Euromoney*, 6 April 2020.
- Fernández, A. 2014. "Social security coordination in Ibero-America: Ibero-American Multilateral Agreement on Social Security". In *Social Security and Migrant Workers: Selected Studies of Cross-Border Social Security Mechanisms*, edited by R. Blanpain, P. Arellano Ortiz, M. Olivier and G. Vonk, 71–79. Alphen aan den Rijn: Kluwer.
- Fombad, C. M. 2013. "An overview of the constitutional framework of the right to social security with special reference to South Africa". *African journal of international and comparative law* 21(1): 1–31.

Furtado, R. 2016. "Social security and the 2nd National Commission on Labour". *Ipleaders* (blog). 2 December 2016. <https://blog.ipleaders.in/social-security-2nd-national-commission-labour/>.

Gillion, C., Turner, J., Bailey, C. and Latulippe, D. 2000. *Social Security Pensions: Development and Reform*. ILO.

Government of India, Ministry of External Affairs – India Lok Sabha (Lower House of Parliament). 2017. Question No. 4517 *Social Security Agreements*. 29 March 2017. https://mea.gov.in/lok-sabha.htm?dtl/28266/QUESTION_NO4517_SOCIAL_SECURITY_AGREEMENTS

Government of India, Ministry of Labour and Employment *Social Security Policy for India*. 2017. 5 September 2017. <https://labour.gov.in/sites/default/files/SS%20Policy%20&%3B%20Code%20-%20Full%20presentation%2024-4-17.pdf>

Government of Japan, Ministry of Foreign Affairs. n.d. *Social Security in Japan – Toward a Japanese Model of the Welfare State*. https://www.mofa.go.jp/j_info/japan/socsec/maruo/maruo_5.html.

Government of Pakistan, Ministry of Overseas Pakistanis and Human Resource Development. 2018. *Presentation on Mapping of Social Protection Provisions for Migrant Workers in the CP Member States* (in support of TAWG Goal 2) (Presentation: 4th Meeting of the Colombo Process TAWG on Pre-Departure Orientation and Empowerment. Colombo. 24 July 2018)

Government of South Africa, Department of Social Development. 2002. *Transforming the Present – Protecting the Future*.

Guérard, Y. 2005. *The New Indonesian National Social Security Law*.

Holzmann, R., Koettl, J., and Chernetsky, T. 2005. *Portability regimes of pension and health care benefits for international migrants: An analysis of issues and good practices*, World Bank Social Protection Discussion Paper No. 0519.

Houng, P. Unpublished. *Laws and policies for providing social insurance to non-citizens working in Vietnam*. ILO.

ILO. 2015. *Analytical report on the International Labour Migration Statistics Database in ASEAN: Improving data collection for evidence-based policy-making*.

ILO. 2019. *Expanding Social Health Protection: Towards Equitable Coverage in Viet Nam*.

ILO. 2019. *Extending social security to workers in the informal economy: Lessons from international experience*.

ILO. 2019. *Universal social protection for human dignity, social justice and sustainable development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*. International Labour Conference. 108th Session.

ILO. 1999. *Report V(1): Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*. International Labour Conference. 87th Session.

ILO. 2016. *Maternity cash benefits for workers in the informal economy*.

ILO. 2006. *Multilateral Framework on Labour Migration*.

ILO. 2011. *Social Security and the Rule of Law: General Survey concerning social security instruments in light of the 2008 Declaration of Justice for a Fair Globalization*.

ILO. 2018. *Social security gaps report: Report to the Department of Social Insurance, Ministry of Labour, Invalids and Social Affairs of Viet Nam*.

ILO. 2008. *Strategies to promote transition to formality in Africa: Contribution to the joint AU/ILO workshop on the informal economy in Africa*.

- ILO. 2019. "Viet Nam: April – June 2019." *TRIANGLE in ASEAN Quarterly Briefing Note*. (https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_614384.pdf)
- ILO. 2019. *Viet Nam: Actuarial valuation as of 31 December 2015 of long-term benefits administered by the Viet Nam Social Security Organization: Report to the Government, May 2019*.
- ILO. 2017. *World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals*.
- ILO. 2010. *World Social Security Report 2010/11: Providing coverage in times of crisis and beyond*.
- ILO, IOM and UN Women. 2014. *Making the return of migrant workers work for Viet Nam: an issue in brief*.
- IOM. 2017. *Viet Nam Migration Profile 2016*,
- ISSA (International Social Security Association) and SSA (Social Security Administration). 2017. *Social security programs throughout the world – Africa*.
- James, P. and McClanahan, S. 2019. *Assessing the Adequacy of Tax-financed Social Protection in Viet Nam*. ILO.
- Kidd, M. 2019. *Vietnam Social Security (VSS): Review of Governance Structures and Processes*. World Bank.
- Kidd, S., Abu-el-Haj, T. Khondker, B., Watson, C and Ramkissoon, S. 2016. *Social assistance in Viet Nam: Review and Proposals for Reform*. UNDP (United Nations Development Programme, Development Pathways, and MOLISA (Ministry of Labour – Invalids and Social Affairs).
- Kidd, S., Gelders, B. and Tran, A. 2019. *A comprehensive old age pension system for Viet Nam: Delivering on Resolution 28/NQ-TW*. ILO.
- Kidd, S., Gelders, B. and Tran, A. 2019. *Potential impacts of social pensions in Viet Nam*. ILO.
- Lam, V. 2018. "Vietnam: reconciling the diaspora." *The Interpreter*. 18 June 2018. <https://www.lowyinstitute.org/the-interpreter/vietnam-reconciling-diaspora>.
- McClanahan, S., Gelders, B and Ramírez López, B. 2019. *A focus on families: A Short-Term Benefit Package for the Extension of Multi-Tiered Social Security Coverage in Vietnam*. ILO.
- Mekong Migration Network. 2019. "Roles of Countries of Origin in Enabling Migrant Workers to Access Social Protection: Vietnam, in *Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants' Rights*, 83–120.
- Mesa-Lago, C. 2008. "Social protection in Chile: Reforms to improve equity". *International Labour Review* 147 (4): 377–402.
- Mines, J. 2015. *Moving towards inclusive growth: The Philippine Social Security System*. Philippine Social Security System. https://www.sss.gov.ph/sss/DownloadContent?fileName=2015_Updated_ISSA_Report_on_ISCoverage_FINAL.pdf
- MOLISA (Ministry of Labour – Invalids, and Social Affairs). 2020. *Webinar on Improving Operating Capacity of the Board of Commissioners of Viet Nam Social Security International Experience and Recommendations for Viet Nam: Proposal for Defining the Functions, Tasks and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity*.
- Nguyen, Q.A. and Cunha, N.M.S. 2019. *Exploring reform options for a multi-tier pension system in Viet Nam*. ILO.
- Njuguna, A. 2012. "Critical success factors for a micro-pension plan: An exploratory study". *International Journal of Financial Research* 3 (4): 82–97
- Ofreneo, R. and Sale, J. 2014. "Social security and migrant workers in the Philippines: Social

protection for the country's economic protectors". In *Social security and migrant workers: Selected studies of cross-border social security mechanisms*, edited by R. Blanpain et al., 167–186. Kluwer.

Olivier, M. 2020. "Climate Change and Social Protection – the Need for an Enhanced Legal Framework". In *Liber Amicorum in honour of Professor Edwell Kaseke and Dr Matthias Nyenti*, edited by M. Olivier, L. Mpedi and E. Kalula, 29–51. Sun Media.

Olivier, M. 2020. "Extending social protection to Vietnamese workers abroad". Unpublished. ILO.

Olivier, M. 2020. "Extending social security to informal economy workers and informal employees in Viet Nam". Unpublished. ILO.

Olivier, M. 2019. "Portability of Social Security for Migrant Workers in Asia". In *Building Partnerships for Effectively Managing Labor Migration – Lessons from Asian Countries*, 38–69. ADBI (Asian Development Bank Institute), OECD and ILO.

Olivier, M. 2019. "Recent developments concerning portability of social security benefits for skilled workers in Asian countries of destination: The impact of ILO standards and implications for Australian and New Zealand citizens and permanent residents". Paper presented at the New Zealand Labour Law Society, Wellington, New Zealand, November 15–16.

Olivier, M. 2017. "Social Protection for Migrant Workers Abroad: Addressing the Deficit via Country-of-Origin Unilateral Measures?" In *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM: Geneva, edited by M McAuliffe and M Klein Solomon, 79–90. IOM.

Olivier, M. 2018. "Social protection for migrant workers in ASEAN: Developments, challenges, and prospects". ILO.

Olivier, M. 2011. "Social security adjudication in the light of international standards: The need for reform in Southern Africa". *International Journal of Social Security and Workers Compensation* 3(1): 29–54.

Olivier, M. 2019. "Social security protection for informal economy workers: Developing world perspectives". In *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers*, edited by Mies Westerfeld and Marius Olivier, 2–29. Edward Elgar Publishing Ltd.

Olivier, M. 2016. *Social security reform in India: Draft framework*. ILO and Government of India, Ministry of Labour and Employment. Unpublished.

Olivier, M. 2012. "Social security: Framework". In *LAWSA (The Law of South Africa) – Labour Law and Social Security Law Vol 13, Part 3*, second edition, edited by J. Faris et al. Durban: LexisNexis, Durban.

Olivier, M. 2014. "Work at the margins of social security: Expanding the boundaries of social protection in the developing world". In *Invisible Social Security Revisited: Essays in Honour of Jos Berghman*, edited by W. van Oorschot, H. Peeters and K. Boos, 215–230. Lannoo Publishers.

Olivier, M. 2011. "Informality, employment contracts and social insurance coverage: Rights-based perspectives in a developing world context". *The International Journal of Comparative Labour Law and Industrial Relations* 27 (4): 419–433.

Olivier, M. 2010. *Reflections on the feasibility of a multilateral SADC social security agreement involving South Africa and Lesotho, Mozambique, Swaziland and Zimbabwe*. ILO.

Ong, C. and Peyron Bista, C. 2015. *The state of social protection in ASEAN at the dawn of integration*. ILO.

- Ortiz, P. A. 2019. "Informal and self-employed workers in Latin America: from an excluded category to an example of innovative inclusive measures". In *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers*, edited by M. Westerfeld and M. Olivier. Edward Elgar Publishing, Ltd.
- Paparella, D. 2004. "Social security coverage for migrants: Critical aspects". Paper presented at ISSA European Regional Meeting: Migrants and Social Protection, Oslo, 21–24 April 2004.
- Pasadilla, G. and Abella, M. 2012. "Social protection for migrant workers in ASEAN", CESifo Working Paper No. 3914.
- Pennings, F. 1993. *Introduction to European social security law*. Zuidpoelsingel, Netherlands: Kluwer.
- Pieters, D. 2006. *Social Security: An Introduction to the Basic Principles*. Alphen aan den Rijn: Kluwer.
- Pino, A. and Confalonieri, N. 2014. "National social protection policies in West Africa: A comparative analysis". *International Social Security Review* 67(3–4): 127–152
- Ramírez López, B., Tsuruga, I. and Cunha, N.M.S. 2018. *Challenges and recommendations on the institutional and legislative framework to realise Resolution 28 in Viet Nam*. ILO.
- Ratha, D., Plaza, S. and Dervisevic, E. 2016. *Migration and remittances factbook*. World Bank.
- Rawling, M. 2006. "A generic model of regulating supply chain outsourcing". In *Labour law and labour market regulation*, edited by C. Arup, P. Gahan, J. Howe, R. Johnstone, R. Mitchell and A. O'Donnell. Sydney: Federation Press.
- Republic of Korea, Ministry of Foreign Affairs. 2010. *Social Security Agreements with Poland, Slovakia and Bulgaria to Come into Force in March 2010* (26 February 2010). http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=308125
- Roberts, R. 2009. "A short history of social security co-ordination". In *Fifty years of social security co-ordination: Past – present – future*, edited by Y. Jorens, 8–28. European Commission.
- Rwigamba, E. 2018. "An inclusive and integrated pension model for informal sector workers in Rwanda". In *Saving the next billion from old age poverty: Global lessons for local action* edited by P. Khana, W. Price and G. Bhardwaj. Pinbox Solutions.
- Sabates-Wheeler, R. and Koettl, J. 2010. "Social protection for migrants: The challenges of delivery in the context of changing migration flows", *International Social Security Review* 63(3–4): 115–44.
- Sabates-Wheeler, R. A. et al. 2017. "Linking Social Rights and Active Citizenship for the Most Vulnerable: The role of rights and accountability in the 'making' and 'shaping' of social protection", UNICEF Innocenti Working Paper WP-2017-14.
- Sankaran, K. 2012. "Flexibility and informalisation of employment relationships". In *Challenging the legal boundaries of work regulation*, edited by J. Fudge, S. McCrystal and K. Sankaran, 29–47. Oxford and Portland, Oregon: Hart Publishing.
- Sankaran, K. 2012. "The human right to livelihood: Recognizing the right to be human". *Comparative Labor Law and Policy Journal* 34(1): 81–94.
- See, J. 2016. "Negotiating bilateral social security agreements: The Philippine experience". Paper presented at the Ninth ASEAN Forum on Migrant Labour (AFML), Vientiane, Lao People's Democratic Republic, November 9.
- Servais, J. 2012. "The new ILO Recommendation on social security". *E-Journal of International and Comparative Labour Studies* 1(3–4):1–26
- Somanathan, Aparnaa, Ajay Tendon, Huan Lan Dao, Kari L. Hurt and Hernan L. Fuenzalida-Puelma. 2014. *Moving Toward Universal Coverage of Social Health Insurance in Vietnam*. World Bank.

- Takenaka, H. "Reforming Japan's social security system". *Japan Times*, 3 March 2020. <https://www.japantimes.co.jp/opinion/2020/03/03/commentary/japan-commentary/reforming-japans-social-security-system/#.Xs6cxWgzY2w>)
- Tamagno, E. 2008. *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements*. ILO.
- Tsuruga, I., Cunha, N.M.S. and Nguyen, Q.A. 2019. *Summary note on options for the design of a multi-tier pension system in Viet Nam*. ILO.
- UNDP. 2018. *The State of Social Assistance in Africa*.
- UNICEF. n.d. "Viet Nam: Social Protection". <https://www.unicef.org/vietnam/social-protection>.
- Van Dinh, P. *International migration and return migrants in Viet Nam*. https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/return_migration_development_070708/pres_dinh.pdf
- Van Ginneken, W. 2013. "Social protection for migrant workers: National and international policy challenges". *European Journal of Social Security* 13(5): 209–21
- Van Panhuys, C.; Kazi-Aoul, S. and Binette, G. 2017. "Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements", ILO ESS Working Paper No. 57.
- Viet Nam News. 2020. *VN struggling to get internal migrants on social insurance*. 13 January 2020. <https://vietnamnews.vn/society/571036/vn-strugling-to-get-internal-migrants-on-social-insurance.html>.
- Viet Nam Social Security. n.d. "History Development." <https://vss.gov.vn/english/aboutus/Pages/history-development.aspx>.
- Vonk, G. 2014. "Social security rights of migrants: Links between the hemispheres". In *Social Security and Migrant Workers: Selected studies of cross-border social security mechanisms*, edited by R. Blanpain, P. Ortiz, G. Vonk and M. Olivier, 47–68. Alphen aan den Rijn: Kluwer.
- Weissbrodt, D. 2004. *Final report on the rights of non-citizens*, (UN Doc. E//CN.4/Sub.2/2003/23. New York: UN, 2004)
- Wickramasekara, P. 2015. *Bilateral agreements and memoranda of understanding on migration of low skilled workers: A review*. ILO.
- World Bank et al. 2016. *Universal Social Protection: Universal old age pensions in Mongolia*.
- World Bank. 2020. *Migration and Development Brief 32*. April 2020.
- World Bank. n.d. "Moving Toward Universal Coverage of Social Health Insurance in Vietnam". (World Bank, n.d.) <https://www.worldbank.org/en/country/vietnam/publication/moving-toward-universal-coverage-of-social-health-insurance-in-vietnam>.
- World Bank. 2018. *Report on Governance and Related Issues of Vietnam Social Security (VSS)*.
- World Health Organisation. *Health Financing in Viet Nam* (<https://www.who.int/vietnam/health-topics/health-financing>)

International and regional instruments and related documents, including bilateral agreements

Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership (2008) (<https://www.mofa.go.jp/region/asia-paci/vietnam/epa0812/agreement.pdf>, accessed on 15 May 2020).

Agreement between the Government of the Socialist Republic of Vietnam and the Government of the State of Qatar Concerning the Regulation of Manpower Employment in the State of Qatar (2009) (<https://asean.org/wp-content/uploads/2016/08/Vietnam46.pdf>, accessed on 15 May 2020).

Agreement between the Vietnam Economic and Cultural Office in Taipei and the Taipei Economic and Cultural Office in Hanoi regarding the Sending and Receiving Vietnamese Workers as Contract Labour (1999) (<https://asean.org/wp-content/uploads/2016/08/Vietnam55.pdf>, accessed on 15 May 2020).

Agreement for the Extension of the Validity of the Memorandum of Understanding (MOU) on the Sending of Workers to the Republic of Korea between The Ministry of Labour, Invalides and Social Affairs of Vietnam and the Ministry of Labour of the Republic of Korea (2006) (<https://asean.org/wp-content/uploads/2016/08/Vietnam57.pdf>, accessed on 15 May 2020).

Agreement on sending guest workers to Thailand to work in the construction and fishing sectors (2018) (<https://vietnamnews.vn/society/469549/thailand-to-receive-vietnamese-workers-in-construction-and-fishing.html>, accessed on 15 May 2020).

ASEAN Charter of the Association of Southeast Nations (2008)

CARICOM Agreement on Social Security (1996)

EU Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 *on the coordination of social security systems* (2004)

EU Regulation (EC) No 987/2009 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems laying down the procedure for implementing Regulation (EC) No 883/2004 *on the coordination of social security systems* (2009)

Ibero-American Social Security Convention (2011)

ILO Decent Work for Domestic Workers Convention, 2011 (No. 189)

ILO Domestic Workers Convention, 2011 (No. 189)

ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118)

ILO Governance of Social Security Systems: a Guide for Board Members in Africa (2010)

ILO Income Security Recommendation No. 67 (1944)

ILO Invalidity, Old-Age and Survivors' Benefits Convention, No. 128 (1967)

ILO Maintenance of Social Security Rights Convention, 1982 (No. 157)

ILO Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

ILO Maritime Labour Convention, 2006, as amended (MLC, 2006)

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

ILO Migrant Workers Convention, 1975 (Convention No. 143)

ILO Migration for Employment Convention (Revised), 1949 (No. 97)

ILO Minimum Standards (Social Security) Convention, 1952 (No. 102)

ILO NORMLEX - Information System on International Labour Standards (2018): <http://>

www.ilo.org/dyn/normlex/en/f?p=1000:11001:26577594460994:::P11001_COUNTRY_SORT:2#Asia%20and%20the%20Pacific

ILO Private Employment Agencies Convention, 1997 (No. 181)

ILO Recommendation concerning Migrant Workers (Recommendation No. 151)

ILO Recommendation concerning Migration for Employment (Recommendation No. 86) (Model Agreement)

ILO Recommendation concerning National Floors of Social Protection Floors, 2012 (No. 202)

ILO Resolution concerning decent work in global supply chains (2016)

ILO Resolution concerning decent work in global supply chains, 2016

ILO Resolutions adopted by the International Labour Conference at its 100th Session (Geneva) 2011.

ILO Right to Organise and Collective Bargaining Convention, 1949 (No 98)

ILO Social Protection Floors Recommendation No. 202 (2012)

ILO The Transition from the Informal to the Formal Economy Recommendation, No. 204 (2015)

ILO Tripartite Consultation (International Labour Standards) Convention No. 144 (1976)

ISSA Guidelines on Good Governance (2013)

ISSA Guidelines on Service Quality (2019)

Memorandum of Cooperation on the Technical Intern Training Program between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labour and Welfare of Japan and the Ministry of Labour, Invalids and Social Affairs of Viet Nam (2017) (<http://www.moj.go.jp/content/001226481.pdf>, accessed on 15 May 2020).

Memorandum of Understanding between Government of the Socialist Republic of Vietnam and the Government of the United Arab Emirates in the Field of Manpower (2009) (<https://asean.org/wp-content/uploads/2016/08/Vietnam50.pdf>, accessed on 15 May 2020).

Memorandum of Understanding between The Government of the Socialist Republic of Vietnam and The Government of the Kingdom of Thailand on Labour Cooperation (2015) (<http://un-act.org/publication/view/memorandum-of-understanding-between-the-government-of-the-socialist-republic-of-viet-nam-and-the-government-of-the-kingdom-of-thailand/>, accessed on 15 May 2020).

Memorandum of Understanding between the Ministry of Manpower in the Government of the Sultanate of Oman and the Ministry of Labor-Invalides and Social Affairs in the Government of the Socialist Republic of Vietnam in the Field of Manpower (2007) (<https://asean.org/wp-content/uploads/2016/08/Vietnam53.pdf>, accessed on 15 May 2020).

Memorandum of Understanding on the Recruitment of Vietnamese Workers between The Government of the Socialist Republic of Vietnam and The Government of Malaysia (2003) (<https://asean.org/wp-content/uploads/2016/08/VietnamMalaysia1.pdf>, accessed on 15 May 2020)

UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 19: The right to social security (Art. 9 of the Covenant), E/C.12/GC/19, 4 February 2008 (2008)

UN Convention on the Elimination of All Forms of Discrimination against Women (1981)

UN Convention on the Rights of Persons with Disabilities (2008)

UN Convention on the Rights of the Child (1990)

UN General Comment No 19 on the right to social security (E/C12/GC/19 of 4 February 2008)

UN Global Compact for Safe, Orderly and Regular Migration (2018)

UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

UN *International Covenant for Economic, Cultural and Social Rights* (ICESCR) (1966)

UN *Sustainable Development Goals 2030*, 2015

UN *Universal Declaration of Human Rights* (1948)

Legislation and other regulatory instruments, including policy and strategic frameworks

Act amending Republic Act no. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, further improving the standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes, 2009 (Republic Act No. 10022) (2009) (Philippines)

Action Plan for MPSARD Implementation (2019) (Viet Nam)

Beedi and Cigar Workers (Conditions of Employment) Act in India (1996) (India)

Constitution of the Republic of South Africa, 1996 (South Africa)

Constitution of the Republic of the Philippines (1987) (Philippines)

Constitution of the Republic of Viet Nam (2013)

Decision approving the project on supporting poor districts in promoting the sending of workers abroad for sustainable poverty reduction in the period of 2009–2020 (Decision No. 71/2009/QD-TTg of 29 April 2009) (Viet Nam)

Decision on Approval of “Master plan on social assistance reform and development, in the period 2017–2025 with vision to 2030” (Decision No. 488/QD-TTg of 14 April 2017) (Viet Nam)

Decision on Approving the National Strategy to Protect, Care, and Improve Public Health during 2011–2020, and the Orientation towards 2030 (Decision No. 122/QD-TTg of 10 January 2013) (Viet Nam)

Decision on Establishing the Central Steering Committee on Reforming Policies on Wages, Social Insurance and Policies for People with Merits (Decision No. 43/QD-TTg of 12 January 2017) (Viet Nam)

Decision on Roles, Responsibilities, Duties, Authorities and Organization of Department of Overseas Labour (Decision 1638/QD-LDTBXH of 17 October 2017) (Viet Nam)

Decree Detailing a Number of Articles of the Law on Social Insurance regarding Voluntary Social Insurance (2015) (Decree No. 134/2015/NC-CP) (Viet Nam)

Decree Elaborating and Providing Guidance on Measures to Implement Certain Articles of Law on Health Insurance (Decree No. 146/2018/ND-CP) (Viet Nam)

Decree on Providing Guidance on the Law on Health Insurance (Decree 146/2018/ND-CP) (Viet Nam)

Decree Prescribing the Functions, Duties, Power and Organizational Structure of Viet Nam Social Security (2016) (Decree No. 01/2016/ND-CP) (Viet Nam)

Decree Providing details and directives on the implementation of several articles of the Law on Health insurance (Decree No. 105/2014/ND-CP) (Viet Nam)

Decree Providing for Social Support Policies for Social Protection Subjects (2013) (Decree No. 136/2013/ND-CP) (Viet Nam)

Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data (2016) (European Union)

Draft Code on Social Security (2019) (India)

Draft Decree on the Functions, Duties and Powers of the Board of Commissioners of Viet Nam Social Security to Strengthen its Organization and Improve its Operational Capacity (Draft Proposal, 2020) (Viet Nam)

Emigration Ordinance (1979) (Pakistan)

Emigration Rules (1979) (Pakistan)

Filipino Overseas Workers Welfare Administration Act (2015) (Philippines)

Kenya National Social Protection Policy (2011) (Kenya)

Labour Code (Law No. 45/2019/QH14) (Viet Nam)

Law Amending and Supplementing a Number of Articles of the Complaints and Denunciations (2004) (Law No. 26/2004/QH11) (Viet Nam)

Law amending the Law on Health Insurance (2014) (Law No. 46/2014/QH13) (Viet Nam)

Law Concerning the National Social Security System (Law 40 of 2004) (Indonesia)

Law on Complaints and Denunciations (1998) (Law No. 09/1998/QH10) (Viet Nam)

Law on Employment (2013) (Law No. 38/2013/QH13) (Viet Nam)

Law on Health Insurance (2008) (Law No. 25/2008/QH12) (Viet Nam)

Law on Occupational Safety and Hygiene (2015) (Law No. 84/2015/QH13) (Viet Nam)

Law on Promulgation of Legislative Documents (2015) (Viet Nam)

Law on Social Insurance (2014) (Law No. 58/2014/QH13) (Viet Nam)

Law on Social Protection (2007) (Mozambique)

Law on the Elderly (2009) (Law No. 39/2009/QH12) (Viet Nam)

Law on the Implementing Agency of Social Security (Law 24 of 2011) (Indonesia)

Law on Vietnamese Workers Working Abroad under Contract (2006) (Law No. 72/2006/QH11) (Viet Nam)

Migrant Workers and Overseas Filipinos Act (1995) (Philippines)

Migrant Workers and Overseas Filipinos Act, 1995 (Republic Act No. 8042) (1995) (Philippines)

Ministry of Health Plan for people's health protection, care and promotion 2016–2020 (2016) (Viet Nam)

National Social Protection Policy Framework 2016–2025 (2017) (Cambodia)

National Social Protection Strategy (2020) (Lao People's Democratic Republic)

National Social Security Law (2004) (Indonesia)

Overseas Workers Welfare Administration Act (2015) (Philippines)

Privacy Act (1974) (USA)

Proclamation Providing Foreign Nationals of Ethiopian Origin with certain Rights to be Exercised in their Country of Origin Proclamation 270/2002 (Ethiopia)

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (2016) (European Union)

Resolution 125 on Government's Action Program – Implementation of the Resolution 28-NQ/TW of May 23, 2018 (Resolution No. 125/NQ-CP) (Viet Nam)

Resolution 28 on Social Insurance Policy Reform (Resolution No. 28-NQ/TW dated May 23rd, 2018) (Viet Nam)

Resolution No. 10/NQ-CP dated 3 May 2018 on Promulgating the Government's Program of Action for Implementing Resolution No. 18-NQ/TW (Viet Nam)

Resolution No. 15-NQ/TW dated 1 June 2012 of the Fifth Plenum of the XII Central Committee on Some Key Issues on Social Policies in the Period 2012–2020 (Viet Nam)

Resolution No. 18-NQ/TW dated 25 October 2017 of the Sixth Conference of the Second Central Executive Committee XII on Some Issues on Continue Innovation, Organization of the Political Policy System towards Efficient and Effective Operation (Viet Nam)

Resolution No. 20-NQ/TW dated 25 October 2017 on Enhancement of Citizens' Health Protection, Improvement, and Care in New Situation (2017) (Viet Nam)

Social Protection Code, 2016 (Gabon)

Social Protection Operational Framework and Strategy (2012) (Philippines)

Social Security (Regulatory Authority) Act (2008) (United Republic of Tanzania)

Social Security Act, 1994 (Namibia)

Socialist Republic of Vietnam The Five-Year Socio-Economic Development Plan 2016–2020 (2016) (National Assembly Resolution on the 5-Year Socio-Economic Development Plan of 2016–2020, Resolution No. 142/2016/QH13) (Viet Nam)

South African Social Security Agency Act (2004) (South Africa)

The Viet Nam National Social Protection Strategy (2011–2020) (Viet Nam)

Unemployment Insurance Act 63 of 2001 (2001) (South Africa)

Unorganised Workers' Social Security Act (Act 33 of 2008) (India)

Vietnam's Socio-Economic Development Strategy for the Period of 2011–2020 (Viet Nam)

Court judgments

Gottardo v Istituto nazionale della previdenza sociale (INPS) ECJ January 2002, no. C-55/00

Internet sources

MOLISA (Ministry of Labour, Invalids and Social Affairs), Viet Nam. n.d. "Organisational structures". <http://english.molisa.gov.vn/Pages/About/Organizational.aspx>.

NCEUS (National Commission for Enterprises in the Unorganised Sector). May 2006. "Social Security for Unorganised Workers". <https://ruralindiaonline.org/en/library/resource/social-security-for-unorganised-workers-report/>.

Ministry of Labour and Social Protection, Republic of Kenya. 2017. "Kenya Social Protection Sector Review". <http://www.socialprotection.or.ke/images/downloads/KENYA-SOCIAL-PROTECTION-SECTOR-REVIEW/Kenya%20Social%20Protection%20Sep%204.pdf>.

Shi, Y. 2019. "Japan's Abe vows to reform social security system amid rising demographic crisis". *Xinhua*, 20 September 2019. http://www.xinhuanet.com/english/2019-09/20/c_138408434.htm.

Wang, Y. 2019. "Vietnam among world's top 10 remittance recipients in 2019: World Bank". *Xinhua*, 23 October 2019. http://www.xinhuanet.com/english/2019-10/23/c_138495916.htm.

PASGR (Partnership for African Social and Governance Research) and AIHD (African Institute for Health and Development). 2016. "Mapping of existing studies on social protection in Kenya." <https://includeplatform.net/wp-content/uploads/2019/07/Mapping-report-on-Social-Protection-in-Kenya.pdf>.

United Nations Human Rights Office of the High Commissioner. n.d. "Status of Ratification interactive dashboard. Ratification of 18 International Human Rights Treaties." <https://indicators.ohchr.org/>.

Huynh, H. 2020. "Vietnam receives around US\$16.7 billion of remittances last year". *Vietnam Insider*. <https://vietnaminsider.vn/vietnam-receives-around-us16-7-billion-of-remittances-last-year/>.

Việt Nam News. 2018. "Foreign workers to pay social insurance". <https://vietnamnews.vn/society/469107/foreign-workers-to-pay-social-insurance.html>.

Việt Nam News. 2018. "Thailand to receive Vietnamese workers in construction and fishing". <https://vietnamnews.vn/society/469549/thailand-to-receive-vietnamese-workers-in-construction-and-fishing.html>.

Vietnam Social Security. 2020. "History Development". <https://vss.gov.vn/english/aboutus/Pages/history-development.aspx>.

Vietnam Social Security. 2019. "Statistics VSS's achievements by March 2019". <https://vss.gov.vn/english/research/Pages/statistics.aspx?CateID=202&ItemID=8763>.

Parliament of Australia. 2019. "The National Disability Insurance Scheme: a quick guide". https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/Quick_Guides/NationalDisabilityInsuranceScheme.

Liu, S. 2021. "Eligibility requirements for the Disability Pension". *Finder*. <https://www.finder.com.au/eligibility-requirements-for-the-disability-pension>.

ILO (International Labour Organization). "Ratifications for Viet Nam". https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004.

ILO (International Labour Organization). "Up-to-date Conventions and Protocols not ratified by Viet Nam". https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103004.

Mansor, N. 2017. "Building inclusive Societies-Aging: Inclusivity; Agenda for the elderly." *UNESCO Senior Officials Meeting*. https://www.kpwkm.gov.my/kpwkm/uploads/files/Muat%20Turun/MOST/S2_3_Prof%20Norma_v3.pdf.

Ziter, P., Russin and Vecchi. 2020. "Building inward remittances in Vietnam with blockchain". *Lexology*. <https://www.lexology.com/library/detail.aspx?g=75b2ad95-0f62-4a53-ae6-da1771f87788>.

Malay Mail. 2019. "Govt drafting National Social Protection Policy". <https://www.malaymail.com/news/malaysia/2019/12/12/govt-drafting-national-social-protection-policy/1818669>.

Shivaji Rao, G. 2003. "India: The Report of the second Indian National Labour Commission – 2002: An Overview". *Mondaq*. <https://www.mondaq.com/india/employee-rights-labour-relations/20167/the-report-of-the-second-indian-national-labour-commission-2002---an-overview>.

Report of The National Commission on Labour. 2020. "NLCII-Report". *International Journal of Law Management & Humanities*, 3(5): 1–1745. <https://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.

The Social Protection Secretariat Kenya. "Vision 2030". <https://www.socialprotection.or.ke/about-sps/social-protection-secretariat>.

UNICEF Viet Nam. n.d. "UNICEF is committed to helping Viet Nam realize a child-sensitive social protection system that addresses social vulnerabilities, alongside income poverty and economic shocks". <https://www.unicef.org/vietnam/social-protection>.

Appendix I: Stakeholders consulted

International Labour Organization Vietnam (ILO)

Ministry of Labour, Invalids and Social Affairs (MOLISA)

- Department of Employment
- Department of Legal Affairs
- Department of Social Security (DSS)
- Department of Social Assistance (DSA)
- Institute of Labour Science and Social Affairs (ILSSA)

National Assembly

- Department of Law (National Assembly Office)
- Social Affairs Committee

Vietnam Chamber of Commerce and Industries (VCCI)

Vietnam General Confederation of Labour (VGCL)

Vietnam Social Security (VSS)

United Nations International Children's Emergency Fund (UNICEF)

World Bank

Appendix II: Survey of international approaches to social security administration¹⁸⁵

This appendix provides a summary of the corresponding administrative frameworks used in other parts of the world, extracted from four reports, *Social Security Programs Throughout the World*. These reports are a joint effort of the Social Security Administration (SSA) of the United States of America and the International Social Security Association (ISSA), which together form a volume, and are published on a six-monthly basis over a rolling two-year period and cover different regions as follows:

- Europe, 2018;
- Asia and the Pacific, 2018;
- Africa, 2019; and
- the Americas, 2017.

The information in the tables that follow is drawn from the introductory section to each report, which describes benefits provided across five major categories and summarises the prevalent administrative arrangements for each of them. The categories considered are:

- old age, disability and survivors;
- sickness and maternity;
- work injury;
- unemployment; and
- family allowance.

The introductory section is the same for all four of the reports, so no distinction has been made in the summary that follows for different regional approaches. Detailed country-by-country information is available across the four reports covered by this summary, which are available at the web site of the ISSA, www.issa.int.

¹⁸⁵ Essentially an adapted version of an input prepared by R. Rusconi for a position paper on social security institutional arrangements by M. Olivier and R. Rusconi (March 2015) (on file with author).

Summary of administrative frameworks for social security systems by region

Old age, disability and survivors	<p>Usually managed by semi-autonomous institutions or funds, self-governing but with general supervision by a ministry or government department. Tripartite boards, with representation from workers, employers and government, are most common, but in some cases this extends only to workers and employers or to workers and government.</p> <p>In some instances, coverage is organized separately by occupational group or by category of employee and in these instances, each grouping usually has a separate institution or fund.</p> <p>In a few cases, administration falls directly with a government ministry or department.</p>
Sickness and maternity	<p>Administrative organization for these programmes is broadly similar to the corresponding approach used for old age benefits, most commonly falling under a national social security institution. Differences between systems are most common in the structure of the national health insurance programme and the manner in which autonomous health funds operate.</p> <p>In some instances, government departments are responsible for the provision of medical services, but usually through a national health service programme. Responsibility for delivering actual medical services is in many cases separated from the administration of the cash benefit programme, which are then frequently linked with other types of social security benefits.</p>
Work injury	<p>Models vary widely, depending on the structure of the system itself. In some countries, the public company or fund has sole responsibility for collecting contributions and paying benefits. In others, the mandate rests with employers to insure with private carriers. And in yet others, the employer is not required to insure at all.</p>
Unemployment	<p>Unemployment insurance (UI) systems are administered by government departments or by self-governing institutions overseen on a tripartite basis by representatives of insured persons, employers and government.</p> <p>Placement service programmes are usually closely linked, administratively, with their UI counterparts to ensure that benefits are paid only to workers registered for employment and to provide incentive for unemployed persons to register and report regularly. In some instances this linkage has been extended to a formal merger especially at the level of the local employment office, which may act as a registration point only or could manage the receipt of claims and payment of benefits as well as facilitating employment services.</p> <p>Efforts to prevent or counteract unemployment are usually coordinated by government in conjunction with industry with the goal of promoting occupational or geographic mobility of workers and reduce unemployment caused by economic or technological developments. Governments may allocate explicit funding or provide tax incentives to overcome seasonal variations or alleviate unemployment in certain parts of the economy.</p>
Family allowances	<p>The structure of administration depends usually on the nature of the coverage. Where allowances are available to all families and are financed by general tax revenue, administration is usually by a government department. Where the system is focused more on the formally employed – allowances are payable to the families of employed persons and financing is mainly by employers – administration more commonly rests with a semi-autonomous entity under public-sector supervision.</p> <p>Equalization funds may be used to address the potential for incentive distortions. The same funds may handle the financial operations of the programme and act as financial interface with employers.</p>

Appendix III: Good governance principles: ISSA guidelines

Contents

Introduction

Objectives of the ISSA Guidelines on Good Governance

Definition of Good Governance

Governance Framework of Social Security Institutions

Financial sustainability

Sound investments

Member coverage and contributions, and member benefits and services

Resource management; Human resources and ICT infrastructure

Structure of the ISSA Guidelines on Good Governance

Acknowledgements

A. Good Governance Guidelines for the Board and Management

A.1 Principles and Guidelines for the Board

A.1.1. *Accountability*

Guideline 1. Powers and responsibilities of the board

Guideline 2. Delegating powers and responsibilities of the board

Guideline 3. Independence of the board from political interference

Guideline 4. Suitability and competence of members of the board

Guideline 5. Legal liability of the members of the board

Guideline 6. Performance standards for the management

Guideline 7. Strategic planning

Guideline 8. Risk Management

Guideline 9. Internal and external systems of control

Guideline 10. Investment management

Guideline 11. Financial sustainability of the programme

A.1.2. *Transparency*

- Guideline 12. Policy on disclosure
- Guideline 13. Code of conduct
- Guideline 14. Public reports
- Guideline 15. Members' right to information on benefits

A.1.3. *Predictability*

- Guideline 16. Duties and responsibilities of members and beneficiaries
- Guideline 17. Rights and privileges of members and beneficiaries
- Guideline 18. Consistent application of board decisions

A.1.4. *Participation*

- Guideline 19. Board representation of stakeholders

A.1.5. *Dynamism*

- Guideline 20. Implementing rules and regulations for legislation, policy or decree
- Guideline 21. Leadership and innovation in the institution

A.2. Principles and Guidelines for the Management

A.2.1. *Accountability*

- Guideline 22. Powers and responsibilities of the management
- Guideline 23. Clarity in powers and responsibilities
- Guideline 24. Accountability of the Head of Management
- Guideline 25. Independence of the management from political interference
- Guideline 26. Suitability and competence of the Head of Management
- Guideline 27. Legal liability of the management
- Guideline 28. Strategic planning
- Guideline 29. Risk management
- Guideline 30. Internal and external systems of control
- Guideline 31. Investment management
- Guideline 32. Financial sustainability of the programme
- Guideline 33. Performance standards for management officers and staff

A.2.2 *Transparency*

- Guideline 34. Policy on disclosure
- Guideline 35. Code of conduct
- Guideline 36. Public reports
- Guideline 37. Members' right to information on benefits

A.2.3. *Predictability*

- Guideline 38. Duties and responsibilities of members and beneficiaries
- Guideline 39. Rights and privileges of members and beneficiaries
- Guideline 40. Information and communication strategy

A.2.4. *Participation*

- Guideline 41. Participation of stakeholders
- Guideline 42. Management of stakeholder initiatives

A.2.5. *Dynamism*

- Guideline 43. Leadership and innovation in the institution
- Guideline 44. Encouragement of staff involvement

B. Guidelines for Specific Areas in Social Security Administration

B.1.Strategic Planning

- Guideline 45. Initiating the strategic planning process
- Guideline 46. Development of a vision statement
- Guideline 47. Strategy formulation
- Guideline 48. Strategy implementation
- Guideline 49. Strategy diagnosis and performance review

B.2.Operational Risk Management

- Guideline 50. Process model
- Guideline 51. Scanning and scenario analysis
- Guideline 52. Clarity of responsibilities and measures in care of an intervention
- Guideline 53. Aligning and coordinating risk management activities

B.3. Internal Audit of Operations

- Guideline 54. The internal audit charter
- Guideline 55. Communication between the internal auditor and the actuary
- Guideline 56. Performance assessment and quality assurance
- Guideline 57. Implementation and management of audit findings

B.4. Actuarial Soundness

- Guideline 58. Actuarial measures of the social security programme
- Guideline 59. Actuarial valuations of the social security programme
- Guideline 60. Changes in contribution rates and benefit entitlements
- Guideline 61. Investment performance and benchmarks

B.5. Enforcing the Prudent Person Principle in Investment Management

B.5.1. Guidelines for institutions with internal investment units

- Guideline 62. Prudent person principle
- Guideline 63. Investment policies
- Guideline 64. Due diligence
- Guideline 65. Valuation of the investment portfolio
- Guideline 66. External safekeeping measures

B.5.2. Guidelines for institutions with external fund managers

- Guideline 67. Selection process for external fund managers
- Guideline 68. Alignment of incentives
- Guideline 69. Custody of investment assets

B.5.3. Guidelines for institutions with representation on boards of companies

- Guideline 70. Objectives of representatives on boards of companies

B.6. Prevention and Control of Corruption and Fraud in Contributions and Benefits

- Guideline 71. Prevention and control of corruption and fraud in contributions
- Guideline 72. Prevention and control of corruption and fraud in benefits

B.7. Service Standards for Members and Beneficiaries

- Guideline 73. Contribution collection services
- Guideline 74. Benefit distribution services
- Guideline 75. Developing new services for members and beneficiaries

B.8. Human Resources Policies: Development, Retention and Succession

- Guideline 76. Recruitment, selection and promotion policies
- Guideline 77. Performance appraisals of personnel
- Guideline 78. Development and training
- Guideline 79. Talent management and retention
- Guideline 80. Succession planning
- Guideline 81. Personnel morale, compensation policy and decent work
- Guideline 82. Promoting corporate values

Appendix IV: Governance of social security systems: A guide for board members in Africa – ILO publication

TABLE OF CONTENTS

INTRODUCTION

CHAPTER 1: GOVERNANCE OF SOCIAL PROTECTION

1.1 FRAMEWORK OF NATIONAL SOCIAL PROTECTION

1.2 GOVERNANCE OBJECTIVES

1.3 RISK MANAGEMENT

1.4 SOCIAL INSURANCE SCHEME STAKEHOLDERS

1.5 COMPOSITION OF BOARDS

CHAPTER 2: GOVERNANCE AND THE BOARD

2.1 WHAT A BOARD MEMBER DOES

2.2 THE LEGAL FRAMEWORK

2.3 THE BOARD'S ACTIVITIES

CHAPTER 3: GOVERNANCE OF ADMINISTRATIVE OPERATIONS

3.1 MANAGEMENT STRUCTURES

3.2 OBJECTIVES AND MEASUREMENT OF PERFORMANCE

3.3 RECORD KEEPING

3.4 TRANSPARENCY AND FAIRNESS

3.5 COMMUNICATIONS

CHAPTER 4: FINANCIAL GOVERNANCE OF ADMINISTRATIVE OPERATIONS

4.1 THE ACCOUNTS

4.2 BUDGETS AND FINANCIAL CONTROLS

4.3 MONITORING ADMINISTRATIVE EXPENSES

4.4 MONITORING ENFORCEMENT AND COMPLIANCE

4.5 AUDITS

4.6 VALUE FOR MONEY

4.7 FRAUD

CHAPTER 5: FINANCIAL GOVERNANCE OF SOCIAL INSURANCE BENEFITS

5.1 FINANCIAL SYSTEMS

5.2 ACTUARIAL VALUATIONS

5.3 THE ACTUARIAL REPORT

CHAPTER 6: GOVERNANCE OF INVESTMENTS

6.1 INVESTMENT OBJECTIVES

6.2 INVESTMENT POLICY AND STRATEGY

6.3 ALLOCATION OF INVESTMENTS

6.4 GOVERNANCE STRUCTURES

6.5 ACCOUNTABILITY

6.6 MEASURING PERFORMANCE

6.7 CONTROL SYSTEMS

CHAPTER 7: FINANCIAL GOVERNANCE OF NON-CONTRIBUTORY SCHEMES

7.1 TYPES OF NON-CONTRIBUTORY SOCIAL PROTECTION

7.2 FINANCING NON-CONTRIBUTORY BENEFITS

7.3 ADMINISTRATION OF NON-CONTRIBUTORY SCHEMES

CHAPTER 8: PLANNING

8.1 SOCIAL BUDGETS

8.2 SOCIAL PROTECTION EXPENDITURE AND PERFORMANCE REVIEWS

8.3 PRACTICAL CONSIDERATIONS

GLOSSARY

