

# Country Information & Practical Advice on Freedom of Association (FoA) & Collective Bargaining (CB)

VIETNAM





## THE GARMENT SECTOR IN VIETNAM

<p><b>Importance of the Ready Made Garment (RMG) sector for the country</b></p>	<ul style="list-style-type: none"> <li>• The Vietnamese garment industry plays an important role in Vietnam’s economy. It is the country’s second largest exporting industry after electronics.</li> <li>• The textile and garment industry (mainly Cut Make Trim) consists of approximately 6,000 enterprises and provides (direct and indirect) employment for more than 4.5 million people (including logistics, packaging and transportation). 84% of companies are privately owned, 1% are state-owned and 15% are Foreign Direct Investment.</li> <li>• Vietnam’s garment and textile industry has expanded by more than 7.5% (2019). In 2019, it was worth US\$ 39 billion in export revenue<sup>1</sup>.</li> <li>• The textile and garment industry’s main materials are cotton, synthetic fibre, wool, filament, and silk.</li> <li>• The garment industry of Vietnam relies heavily on the import of materials, especially fabric, mainly from China.</li> </ul>
<p><b>RMG export value</b></p>	<ul style="list-style-type: none"> <li>• The main export market<sup>2</sup> is the US (almost 39%), followed by the EU (11.28%), Japan (10.77%), China (10.9%%).</li> <li>• Since 2009, Vietnam has become the largest exporter of garment from ASEAN (Association of Southeast Asian Nations) to the United States<sup>3</sup>.</li> <li>• The biggest fashion brands sourcing from Vietnam include Nike, Adidas, Levi’s, and Inditex (Zara), among others.</li> </ul>
<p><b>Characteristics of the Vietnamese garment sector</b></p>	<ul style="list-style-type: none"> <li>• The garment, textiles, and footwear industry is known for its outdoor and sportswear items. This includes tents, ski outfits, shoes, and backpacks. Producing these products requires higher skills. For this reason, brands are usually committed to longer term relationships with their Vietnamese suppliers.</li> <li>• The industry faces a number of labour challenges, including wildcat strikes, high employee turn-over, gender-based discrimination, excessive overtime and low wages (there are hardly any differences between regions)<sup>4</sup>.</li> </ul>
<p><b>Main geographical production areas of garment production</b></p>	<ul style="list-style-type: none"> <li>• The centre of the industry is Ho Chi Minh City and the neighbouring region with 58% of garment and textile companies<sup>5</sup>.</li> <li>• The second biggest hub is Hanoi and a few Northern provinces such as Nam Dinh, Thai Binh, Hung Yen, which account for 27% of the total number of garment and textile companies.</li> </ul>
<p><b>Size of companies</b></p>	<ul style="list-style-type: none"> <li>• Textile and garment companies are generally small, with only 180 workers per firm<sup>6</sup>. There are nearly 700 companies with more than 1,000 workers and 100 companies with more than 5,000 workers.</li> </ul>
<p><b>Women in the RMG sector</b></p>	<ul style="list-style-type: none"> <li>• Women make up 81.6% of the garment workforce<sup>7</sup>.</li> </ul>

<sup>1</sup> Textile and garment industries, as well as leather and footwear, have recorded high growth in production and exports over the last few years. The Ministry of Industry and Trade reported that in the first five months of 2015, the textile and garment industry gained a Year On Year increase of 8.4 % in export value to US \$8.11 billion, including US \$1.65 billion recorded in May. ([Fair Wear Country Report 2021](#)).

<sup>2</sup> [Better Work. Annual Report 2019](#). ILO & IFC, page 8.

<sup>3</sup> Garment exports to the US in 2013 increased 14.2 percent to total US \$8.6 billion (VINATEX).

<sup>4</sup> Fair Wear Country report 2021: 3.

<sup>5</sup> Do, Chi. 2019. Business and Human rights in the Garment, Footwear and Electronics Supply Chains in Vietnam: A baseline study. Hanoi: FES Vietnam.

<sup>6</sup> [Social and Economic Upgrading in the Garment Supply Chain in Vietnam](#). DO Quynh Chi. Working Paper, No. 137/2020. Institute for international political economy Berlin.

<sup>7</sup> Fair Wear Country Report 2021: 19.

## A SPECIFIC BENEFIT FOR BUSINESSES IN VIETNAM

Apart from the benefits presented in the general fact sheet on Freedom of Association and Collective Bargaining, a specific benefit for factories in Vietnam is that once they comply with the new labour code, which includes provisions on FoA, they gain a comparative advantage when working with partner brands in the EU, US, or Canada. This has recently been concluded in free trade agreements, namely the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA). These agreements contain labour commitments which companies are expected to comply with. For more information, see this [video](#) about EVFTA.



## INTERNATIONAL STANDARDS

### **C.98 (Right to Organize and Bargain Collectively): Ratified by the Vietnamese government in 2019.**

Building upon previous trade agreements, including the European Union-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), in June 2019, Vietnam took a historic step toward freedom of association (FOA). It ratified International Labour Organization (ILO) Convention 98, which enshrines a worker's right to organize and bargain collectively.

Ratification of an international convention by the parliament means that it becomes part of national law and should be codified in the national law.

### **C.87 (Freedom of Association and the Right to Organize): NOT ratified, NOR C135.**

However, the Vietnamese government has announced its intention to ratify Convention 87 by 2023.

# NATIONAL LEGISLATION

## The most important legislation

Labour Code 2012 was recently replaced by the Labour Code 2019 which took effect in January 2021. This Code gives the government less room for involvement, employers more autonomy, and workers the right to negotiate and decide on conditions, including wages, working hours, and job choice. The new law shows the Vietnamese government's commitment and willingness to increase space for workers to exercise these rights and allow new unions to be formed.

## Trade Union Rights

According to Trade Union Law 2012, trade unions have the right to:

- Represent workers' collective interests by negotiating, signing, and supervising the implementation of collective bargaining agreements.
- Litigate in court when CBAs are violated.
- Cooperate with enterprises in formulating and monitoring the implementation of wage scales and tables.
- Guide and counsel workers on their rights and obligations upon signing and implementing labour contracts with enterprises.
- Represent workers in taking legal actions in court.
- Take part in the settlement of labour disputes, together with the competent agencies.
- Organize and lead strikes as stipulated by law.

## Formation of a union

- The Constitution grants the right to form associations and trade unions to protect the lawful rights and legitimate interests of workers.
- There is one legally recognized Vietnam General Confederation of Labour (VGCL). According to Article 10 of the 2013 Constitution, VGCL has the mandate to represent all Vietnamese workers.
- Enterprise level workers have the right to establish, join, and operate trade unions. Under the previous code, trade unions were required to be approved by and affiliated with the VGCL. The new labour code allows workers to form or join a worker representative organization (WRO) at an enterprise of their choosing and it does not have to be affiliated with the Vietnam General Confederation of Labour.
- Under the 2019 Labour Code, all worker representative organizations (WROs) must register with an authorized state agency.

## Status of the WROs

- The VGCL and their affiliations at all levels, including enterprise level, are regulated by the Trade Union Law. WROs are regulated by the Labour Law and its accompanying decrees. A decree on workers' representative organizations is expected to provide

more details on the status of WROs, but it is not clear when this will take place.

- Labour Code 2019 defines a WRO at the grassroots level as an organization established on a voluntary basis by workers. This will be an undertaking with the purpose of protecting the lawful and legitimate rights and interests of workers in labour relations via collective bargaining or other forms stipulated by labour law. Workers' representative organisations include trade unions at the grassroots level and workers' organizations at the enterprise level.
- In accordance with international labour standards as well as Article 170 of Labour Code 2019, WROs and unions under the VGCL system should "have equal rights and obligations in protection of the legitimate rights and interests of employees in labour relations". It is still unclear as to how WROs and trade unions are going to ensure issues like equal rights, employer contributions to union fees, collective bargaining, and strike organization at the enterprise level, at least until the relevant decrees have been adopted.
- WROs are allowed to engage in collective bargaining and organizing strikes at the individual enterprise level, but there is nothing in the New Labour Code allowing them to form sectoral or regional federations beyond this level.
- The labour code says that if WROs want to become a union, they can become affiliates of the VGCL and will then be legislated by the Trade Union Law.

## Registration of the WROs

- When applying for registration, the number of members of an internal employee organization shall reach the minimum number prescribed by the government. The WROs need to be registered at an authorized state agency. To guide implementation (with concrete procedures and details for the registration), the government will issue a set of decrees and circulars.

## Social Dialogue

- Labour Code 2012, Decree 60/2013/ND-CP, and Decree 149/2018/ND-CP<sup>8</sup> on grassroots democracy have been replaced by Decree 145/2020/ND-CP, which grants enterprises the freedom to provide their own forms of dialogue and determine how often it should occur in their own grassroots democracy regulations. The employer should engage in social dialogue at least once a year and whenever requested by employees or their representative organizations.
- The new law specifically mentions social dialogue in the workplace as a forum for employers, employees, and employee representatives to share information, consult, discuss, and exchange opinions about the

<sup>8</sup> This decree includes all enterprises of at least 10 employees to be required to issue the grassroots democracy regulations and organize quarterly labour-management dialogues and the annual workers' conference.

issues relevant to the rights and interests of the various parties involved. This is meant to strengthen understanding and cooperation among the parties and lead to mutually beneficial solutions.

### Collective bargaining (CB)

- CB is defined by Vietnamese law as a process of negotiation between a party that consists of one or several employee representative organizations and another party that consists of one or several employers or employer representatives, in order to regulate working conditions (including wages), the relationship between the parties, and develop progressive, harmonious, stable labour relations.
- Principles for CB are defined as voluntariness, good faith, equality, cooperativeness, openness, and transparency.
- Employees can request CB via their representative organization. Any individual or group of workers not established legally are not permitted to make this request.
- Upon the request for CB from a workers' representative organization at the grassroots level that has the right to request CB, as stipulated in Article 68 of this Code or from the employer, the recipient party shall not refuse to negotiate. The CB must be held within 30 days from the day on which the request is received. The duration of the collective bargaining shall not be more than 90 days from the commencement date, unless otherwise agreed upon by the parties.
- Employees are allowed to vote on the draft enterprise level CB agreement. It can only be concluded if more than 50% of the employees vote for it. This is also the case for sectoral or multi-enterprise collective bargaining agreements. Sectoral and multi-enterprise collective bargaining is also allowed.
- For the multi-company CB: The parties can request the People's Committee of the province to establish a CB council.
- The current legal framework for CB is expected to change significantly when the new decree is enacted. This will cover worker representative organizations and collective bargaining.

### Representation of workers for collective bargaining

- When there are more internal representative organizations in an enterprise, the one with most members (and with the minimum required members) has the right to request the CB. Other employee representative organizations may participate in the CB, if the requesting organization agrees.
- The representative organization of employees has the right to request CB whenever it reaches the minimum number of members, as prescribed by the government. The minimum number has not yet been specified.

### Protection against discrimination

- Discrimination against employees or members of the management board of the employee representative organization, due to the establishment, operation, or participation in the representative organization of

employees, is prohibited. The acts of discrimination are listed in article 175.

- The employer may not obstruct in any way and must recognize and respect the rights of the lawfully established representative organizations.
- The dispute settlement system is open for disputes regarding the employer's discrimination against employees or members of the management board of the employee representative organization for reasons of establishment, operation, or participation in the organization; the employer's interference or influencing the representative organization of employees; the employer's violations against amicable negotiation (art. 179c).

### Right to strike

- The law allows employees to go on strike under certain conditions. VGCL has not organized any strikes since Vietnam has had labour code.

### Dispute settlement

- The government shall settle disputes among the parties over the right to request collective bargaining.





## MAIN GAPS BETWEEN THE NATIONAL LAW AND THE INTERNATIONAL STANDARDS

With this new labour legislation, Vietnam has brought its legal framework closer to international standards. The ILO expects the Vietnam government to continue working on ratifying the FoA International Standards as well. The ILO is closely monitoring this process.





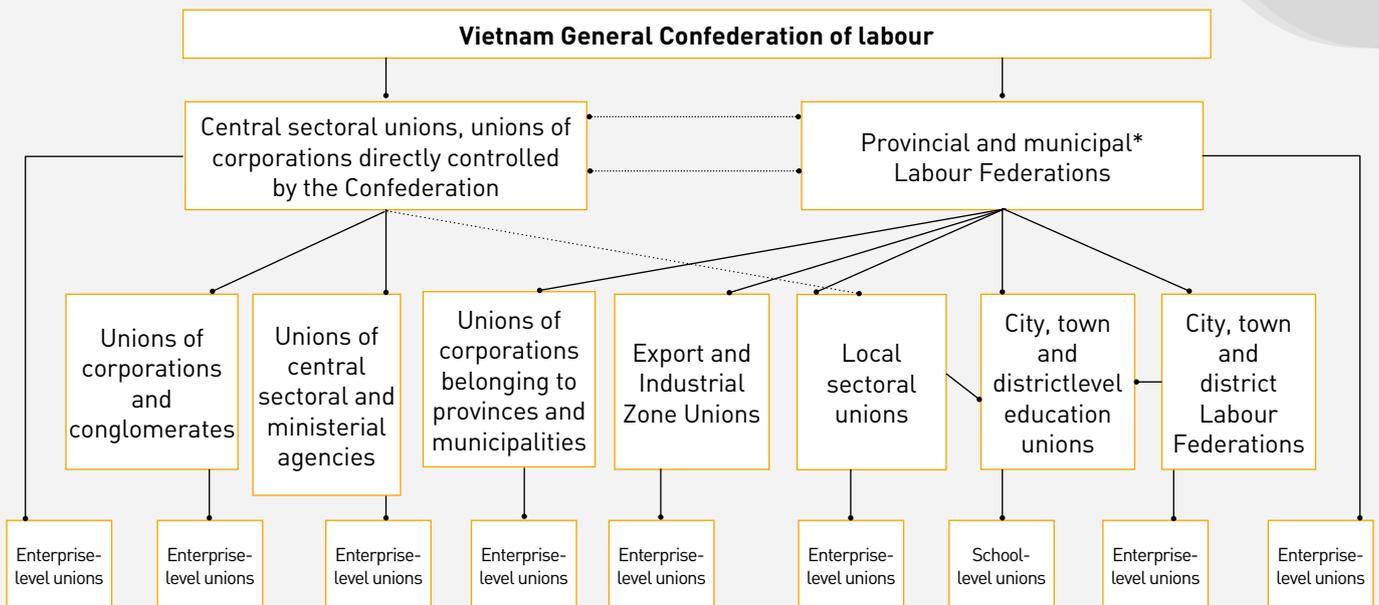
## UNIONS IN VIETNAM

There is only one legally recognized trade union organization in Vietnam – the **Vietnam General Confederation of Labour (VGCL)**. Established in 1929, VGCL is a member of the Vietnam Fatherland’s Front, a pro- government collective.

<b>International Trade Union Confederation Index<sup>9</sup></b>	<u>In 2020, ranking 4 (ITUC).</u> Vietnam raised their level from 5 to 4. Level 5 is the worst score. This improvement was due to positive changes in the labour code
<b>Members</b>	Total membership of 10,284,828 (with a total of 5,815,259 female members and 4,569,569 male members) (VGCL, 2019)
<b>Union density</b>	43.8% (2016) 33% in the private and foreign-owned sector (2014) 76% in the State-owned enterprises (2014)

### Union structure

The structure of the VGCL is rather complicated. It is organized by both geographical regions (provinces, in districts, larger cities, etc.) and 22 sectors. The figure below shows the structure of the union.



- Black line: Directly manages
- - - Dashed line: Coordinates direction
- - - - Dashed double line: Coordinates activities

\* Municipalities are cities which have an administrative status equal to provinces. There are currently five: Can Tho; Da Nang; Hai Phong; Hano; Ho Chi Minh City.

Source: <https://twitter.com/JoeJBBuckley>

<sup>9</sup> The ITUC Global rights Index, reporting on the state of labour rights violations worldwide

The Vietnam National Union of Textile and Garment Workers (VNUTG) operates under the VGCL as a national sectoral trade union for the garment industry. In addition to the VNUTG, there are 3 provincial garment sector unions in Hanoi, HCMC, and Binh Duong, which have different memberships and report to the provincial Federation of Labour.

#### **Position of women in the VGCL<sup>10</sup>**

- The VGCL Presidium has 21 members (4 of whom are women, accounting for 19.04%).
- The VGCL Executive Committee at the national level has 161 members (39 of these are women, accounting for 24.22%).
- 45.78% of the provincial federations of labour are women.
- 37.11% of the immediate upper-level trade union (District Federation of Labour, Industrial Zone Trade Union) are women.
- 50.16% of factory level trade unions are women.

#### **Union budget**

In terms of the financial budget, the VGCL has 4 official sources of revenue:

- Trade union fees paid by members as prescribed in the charter of Vietnamese Trade Union
- Trade union funds which are paid by agencies, organizations, and enterprises in 2% salary funds to pay social insurance for labourers
- State budget allowances for assistance
- Other revenues from union activities of culture, sport, and economy or from projects, plans assigned by the State, from aid, funding of domestic and foreign organizations, individuals, etc.

#### **International affiliation**

The VGCL is affiliated with the World Federation of Trade Unions (WFTU), an international union organization of socialist countries. They have no affiliation to the ITUC because of their criticism regarding Vietnam's lack of guaranteed labour rights (such as FoA).



<sup>10</sup> This data is based on estimates from the Women's Affairs Department of VGCL.

# IMPORTANT STAKEHOLDERS

## Government

The [Ministry of Labour, Invalids and Social Affairs](#) (MOLISA) is in charge of regulating and enforcing labour standards, inspections, market policies, migration policies, vocational training, and social security policies.

## Employer organizations<sup>11</sup>

- The [Vietnam Chamber of Commerce and Industry](#) (VCCI) is one of two national employer organizations. The second is the Vietnam Cooperative Alliance, which mainly represents agricultural enterprises and cooperatives. VCCI has around 2,000 enterprise members and 7 branches in the most industrialized provinces and cities. The VCCI's Bureau of Employer Activities (BEA) is in charge of representing the employers' opinions with regards to national policy and legislation to the state and vice versa.
- The [Vietnam Textile and Apparel Association](#) (VITAS) is a non-governmental umbrella association working in the field of the textile and garment industry in Vietnam with 15 branches in Vietnam<sup>12</sup>. VITAS has a total of 635 members, and accounts for 70 percent of the total capacity of the industry. VITAS promotes business and investment cooperation and exchanges in-



formation for members among themselves and to the outside world. VITAS represents the Vietnamese textile and garment industry in international organizations and tries bridge cooperation between the domestic industry and the outside. VITAS also supports foreign companies in looking for Vietnamese textile and garment producers.

- The [Vietnam Textile and Garment Group](#) (VINATEX) is the biggest state-owned group of companies in the textile and garment field in Vietnam. VINATEX is also a member of VITAS. They have over 90 member companies in Vietnam, which together cover activities from spinning, knitting, weaving, and dyeing, to finishing. The total labour force of the VINATEX is nearly 100,000 employees in addition to another 35,000 employees working in joint-ventures with foreign and local partners. As Vietnam law does not allow foreign-owned companies to join industrial business associations (BAs) as official members, the business associations in the garment industry include only Vietnamese companies (both private and SOEs).

## International organizations

- [Better Work Vietnam](#) was created in 2009 as a unique partnership between the UN's International Labour Organization (ILO) and the International Finance Corporation (IFC), a member of the World Bank Group. The programme engages with workers, employers, and governments to improve working conditions and boost competitiveness in the garment industry. ILO Better Work Vietnam supports factories in their plans to withdraw senior management staff from union executive positions. This prevents cases where the employer exerts control over union funds or union rules. Upholding this fundamental principle is also a stepping-stone for the industry to develop a new industrial relations framework in the workplace, in accordance with the 2019 labour code. All of these issues are addressed in a modular training programme on industrial relations for union and management representatives, which has been rolled out in the participating factories, with follow-ups during the advisory service. Among factories that have been with Better Work Vietnam for 8 years, non-compliance on this issue has dropped from 66% at baseline to 0% in recent assessments.
- [The Dutch Embassy](#) plays an active, supportive, and convening role.

<sup>11</sup> Source: [Fair Wear Country Study 2021](#); [Cornell University and Fair Wear](#), Vietnam Labour Relations report, 2019. Also: Vietnam country study - Labour standards in the garment supply chain, by Do Quynh Chi, Research Centre for Employment Relations (ERC).

<sup>12</sup> About 2,500 garment export-oriented factories are operating and registered with VITAS (with 77 % owned by joint stock companies with state partnership, 18.5 percent being 100 % Foreign Direct Investment companies, 0.5 % state-owned and 5 percent local Cooperatives).

# CIVIL SOCIETY ORGANIZATIONS

**Labour NGOs in Vietnam can potentially defend workers' rights. Key international CSOs in the labour field include the following organizations<sup>13</sup>:**

## Oxfam Vietnam

Oxfam Vietnam is an international NGO specializing in rural development and poverty reduction. Since the 2000s, Oxfam OSB has pioneered in working with the VGCL and Provincial and City Federations of Labour (FOLs) to provide training for union officials. Since 2011, Oxfam Great Britain has joined in this effort to cooperate with European corporations to improve labour standards, especially for the rural migrant workers in their factories and suppliers in Vietnam.

## Centre for Development Integration

The Centre for Development Integration (CDI) is a non-profit and non-governmental labour organization with the objective of promoting sustainable socio-economic development and good governance. The CDI provides consultancy and research services in the areas of gender equality and women's rights, migration, labour and corporate social responsibility.

## The Research Centre for Employment Relations

The Research Centre for Employment Relations (ERC) is an independent research and training organization, with a focus on researching labour practices in manufacturing industries and providing labour relations training for export-oriented manufacturing companies.

## Friedrich-Ebert-Stiftung

Friedrich-Ebert-Stiftung is a German political foundation, which has strong ties to the labour movement in Germany. In Vietnam, FES' longstanding cooperation with VGCL focuses on two main areas including collective bargaining and legal aid. In addition, FES works with local NGOs and researchers to increase understanding and application of the UN Guiding Principles on Business and Human Rights (UNGPR) in manufacturing sectors, including the garment sector.

## The Sustainable Trade Initiative

The Sustainable Trade Initiative (IDH) coordinates (multi-stakeholder) initiatives in the apparel sector, such as the [Race to the Top programme](#). This is a collaborative effort between the Vietnamese government, the Vietnamese apparel and footwear industry,

global consumer brands (GAP, NIKE, Marks & Spencer, Levi Strauss & Co), international organizations (Sustainable Apparel Coalition, IDH, Better Work), and manufacturer (SAITEX) and civil society organizations, to create a sustainable apparel and footwear sector in Vietnam.



<sup>13</sup> Other international CSOs you might hear about in Vietnam: [CARE](#) and [APHEDA](#) (both promoting gender equality in decision making); the [Solidarity Center](#) (providing training on OSH, awaiting government certification), and CCR CSR (child rights).

# MAIN RISKS TO IMPLEMENTATION OF FOA AND CB IN VIETNAM

When doing due diligence into the supply chains in Vietnam, brands need to be aware of the following specific risks in Vietnam in regard to FoA and CB<sup>14</sup>:

## Weak union democracy and lack of independence

- To be able to protect workers' interests, it is important for trade unions to be able to act independently of the employer. The reality in Vietnam is that 60-70% of the leaders of enterprise unions also hold managerial positions in the company (VGCL survey 2019). Union representatives are rarely democratically elected. It is common for high-ranking managers, such as HR managers or deputy directors, to be appointed by factory management (this prevents the union from functioning independently of management)<sup>15</sup>. Such an approach usually results in "yellow unions"<sup>16</sup>. However, this is not a violation of national law in Vietnam.
- While the enterprise unions are mostly dominated by management, the labour code officially grants some key labour rights to unions. In particular, the right to CB and the right to strike are granted to enterprise unions and upper-level unions in cases where workplaces have not been organized. VGCL and their affiliated unions have never used this right.
- According to managers, workers have no time to organize and are too busy for unionization. This, however, has not been confirmed by workers. But the result remains that effective communication is often lacking between management and the workers and that workers are not engaged. This lack of worker participation, the impression that they are not informed or aware of their rights and do not have the capacity to organize, raises concerns.

## Expected resource problems for the new WROs

Even now that WROs are allowed to exist independently from VGCL, the VGCL continues to hold the position of power. There are uncertainties about how the WROs will operate and to what degree they will be able to maintain their independence. Vietnamese labour activists and international observers have expressed concerns over the ambiguity of the law and how VGCL and WROs will ultimately co-exist. They expect resource problems for the WROs since they probably will not be supported by an umbrella institution for legal advice, training, and resources.

## Social dialogue has not become a norm in the industry

- The frequency, and especially quality of workplace dialogues, have not lived "up to expectations," as many enterprises conduct dialogues as a formality and without engaging workers. Genuine labour-management dialogue and effective grievance handling are rare (Do 2017)<sup>17</sup>. CB is rarely the outcome of real negotiations between workers and employers. Better Work Vietnam confirms that often the problem is that employers fail to inform workers about the existence of a CBA and the CBAs are not approved by more than 50% of workers. 56% of the CBAs concluded are merely copies of the labour law and only 15% of these agreements have shown any sign of worker participation<sup>18</sup>.
- One of the main reasons for this weak social dialogue, is the weakness of the enterprise unions and the shortage of effective channels for labour-management dialogues and grievance-handling in these companies. The management usually leaves it up to the team of supervisors to communicate with the workers and handle their grievances, without providing them with a proper dialogue system.
- The division between the sectoral unions and regional FOLs has also seriously affected how representative the trade unions in the garment industry are. Similarly, the representation of employers in this industry is also fragmented among foreign business associations and sectoral associations at national and regional levels.
- Under the new law, the government provides regulations around social dialogue (see the [decree 145/2020/ND-CP](#)).

## Weak enforcement of the labour rights

- The number of labour inspectors remains limited compared to the fast-growing number of enterprises. Specifically, there are over 700 labour inspectors in Vietnam, while the total number of enterprises is nearly 500,000.
- Another problem is the transparency of inspectors. Excessive working hours and low wages, sexual harassment, and gender issues are therefore often not identified as problematic. This problem makes it even more important to have well-functioning representative workers' organizations in the factories.

<sup>14</sup> Cornell report: Vietnam Labour Relations Report. *A report submitted to the New Conversation Project of Cornell University and Fair Wear Foundation. Do Quynh Chi*. Research Center for Employment Relations. 2019.

<sup>15</sup> Also indicated by Fair Wear audits, see annex 1 of the guide for Brands Fair Wear.

<sup>16</sup> A union set up and controlled by the employer to prevent the establishment of a genuine trade union (IITUC).

<sup>17</sup> 'From industrial policy to economic and social upgrading in Vietnam', [FES Asia Working Paper](#). Also: 'Social and economic upgrading in the garment supply chain in Vietnam'. [IPE Working paper](#).

<sup>18</sup> Business & Human Rights in the Garment, Footwear and Electronic Supply Chains in Vietnam. [A Baseline Study](#). By Do Quynh Chi (2019).

## Restrictions for civil society

Restrictions on freedom of expression, association, and peaceful assembly are prevalent in Vietnam<sup>19</sup>. Political space for CSOs, especially the labour NGOs, has been restricted. Directive 102 of the Party Central Committee on discipline of Party members, issued in 2017, provides that Party members are not allowed to collaborate with Civil Society Organisations (Article 7.3). Violations of this provision may result in dismissal from Party membership. The CSOs are permitted to work with the VGCL, provincial trade unions, and government agencies, to jointly develop an agenda, depending on the issue. They are allowed to implement technical assistance projects via the VGCL-affiliated trade unions but may not engage in organizing activities. CSOs must be registered with their local authoritative body in order to receive funding from abroad and be able to cooperate with domestic stakeholders.

## Low representation of women<sup>20</sup>

Although more women currently participate in trade unions, their numbers are still low, especially in leadership positions. According to many of those interviewed, gender is not usually found the agenda, despite it being an issue which needs to be addressed, especially in regard to violence and harassment in the workplace<sup>21</sup>. The employment and income pressures created by COVID-19 have caused a shift in the balance of power between workers and their employers, which alongside a lack of transparency to workers about business impacts and job vulnerabilities, has placed female workers in particular in a vulnerable position. Common forms of gender-based violence in the workplace include yelling and cursing by managers (64.5%). In particular, 12% of workers indicated an increase in sexual harassment against female workers, including dirty jokes about sensitive body parts and sexual teasing and solicitation of sexual favours, especially with newcomers<sup>22</sup>.

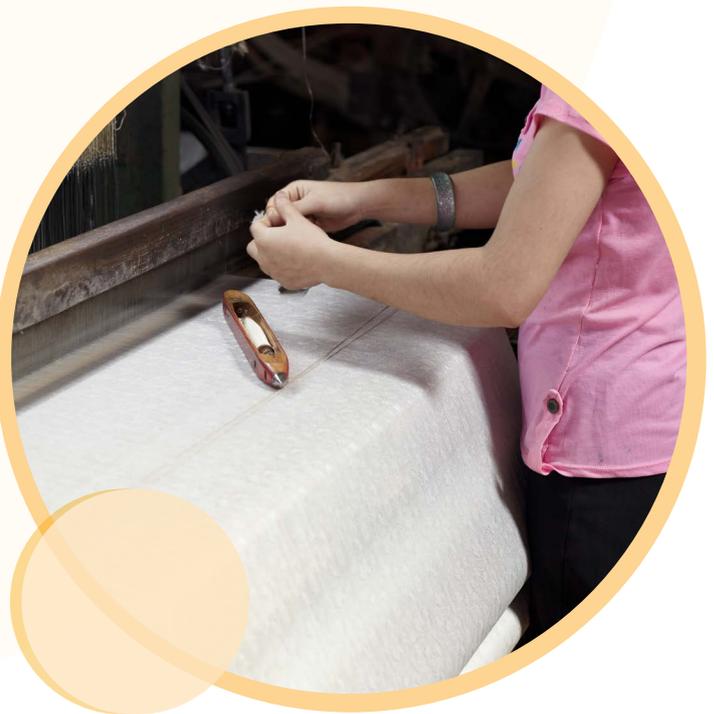
## Wildcat strikes

The garment, footwear, and electronic industries are the sectors most hit by strikes. They account for over 50% of the strikes in Vietnam. By enterprise ownership, the Korean and Taiwanese investors remain the most strike-hit groups, accounting for over 60% of strikes in the country. Wildcat strikes<sup>23</sup> have become an effective

weapon for workers to protect their own rights and bargain for better conditions. During strikes, workers often demand attention for late payment of wages<sup>24</sup>, lack of transparency regarding wage scales and wage adjustment, and especially, the adjustment of their wages to meet legislative changes made to the minimum wage. According to the VGCL, 91 “wildcat” strikes occurred in the first five months of 2020, mostly due to the lack of dialogue between management and workers about Covid-19 adjustment measures<sup>25</sup>.

## Lack of education and awareness of rights and benefits

Workers often automatically register as union member upon signing a labour contract, sometimes without knowing or being very aware about their workers’ rights and obligations<sup>26</sup>.



<sup>19</sup> [Amnesty International 2019](#).

<sup>20</sup> For more information on gender in Vietnam, see: <https://api.fairwear.org/wp-content/uploads/2019/02/4.-Vietnam-Gender-Fact-Sheet.pdf>

<sup>21</sup> Nearly half (43.1%) of the 763 women interviewed in Vietnamese factories said they had suffered at least one form of violence and/or harassment during the previous year, according to a study by the [Fair Wear Foundation](#).

<sup>22</sup> [Sustainability re-defined in the pandemic: Disruption, resilience and adjustment in the apparel and footwear industries of Vietnam](#). Report for the public-private partnership working group. 2021.

<sup>23</sup> A wildcat strike is a strike action, undertaken by workers without union leadership’s authorization, support, or approval. The name is based on the stereotypical characteristics associated with wildcats: unpredictability and uncontrollability.

<sup>24</sup> The regional minimum wages are applied in Vietnam by 4 regions to reflect differences in living standards. In addition, there are some cultural differences among the North, the Centre and the South regions of the countries. E.g. People in the North tend to be more conservative and people in the South tend to be more open and more direct.

<sup>25</sup> [Cornell University publication](#).

<sup>26</sup> Also indicated in Fair Wear audit results, see annex 1 of The guide for Brands Fair Wear Foundation.



## COVID 19<sup>27</sup>

- The garment industry in Vietnam has been profoundly affected by the Corona virus pandemic due to its dependence on China and Korea (for raw materials) and the US and the EU (for export). The sector export revenue dropped in the first four months of 2020 by 6.6%. Factories suffered postponed delivery deadlines and reduced cut-off orders; workers were confronted with reduced working hours, unpaid leave, temporarily closed operations or loss of jobs<sup>28</sup>. It is expected that the garment industry will continue to struggle. The most significant risk of decreasing demand still lies ahead, resulting from shrinking business operations and layoffs. This could create even less space for social dialogue, especially in small and medium-sized enterprises.
- A recent social dialogue report by Cornell University about the role of trade unions in protecting workers rights concluded that enterprise-level unions play a minor role in dialogue and bargaining between employers and the affected workers<sup>29</sup>.

<sup>27</sup> Resources: 'Covid-19 and the Apparel and Footwear Industries of Vietnam: Impacts and Strategic Responses'. [VITAS Working Paper](#). A second resource: [COVID-19 impacts on Vietnamese apparel and footwear workers: Key Findings and Policy Implications for Trade Unions and Government](#). Or: 'Responsibility in the time of Crisis: Brands' practices during the Covid-19 Pandemic and Impacts on Factories and Workers in the Garment, Footwear and Electronic Supply Chains in Vietnam'. [FES Asia Working Paper. A study](#) on the impact of COVID-19 on 3 manufacturing sectors in Vietnam and brands' practices which identified the absence/deficiency of brands-suppliers dialogue as key problem to supply chains' sustainability.

<sup>28</sup> [Textiles, garment and footwear industries amid the Covid-19 crisis. Impacts and strategic responses. December 2020](#). IDH, CNV, Fair Wear, VITAS and Lefaso.

<sup>29</sup> A firm survey made clear that only 15.5 % of employers consulted the enterprise-level unions on their cost-cutting measures and in a worker survey, only 4.11 % of interviewed workers were represented by the trade unions in negotiating with the employers during the COVID-19 adjustment. According to the VGCL, 91 'wildcat' strikes occurred in the first five months of 2020, mostly due to the shortage of dialogue between management and workers when the adjustment measures were applied in response to the adverse impacts of COVID-19 (Vietnam News, 2020).



## WHAT CAN BRANDS DO TO PROMOTE FOA AND CB IN VIETNAM?

Several publications, including the general fact sheet on FoA, describe steps for brands to take to promote FoA and CB. Please read that overview. In addition to these more common steps, the following steps are specific to Vietnam and require attention as they are entry points for promoting FoA and CB.

### Analysis of the Vietnamese context

- Learn about the local union structure and closely follow (you, your vendor/local agent) any new decrees or circulars issued by the national authorities related to the new labour codes.

Information can be found at <https://english.luatvietnam.vn/> or [www.molisa.gov.vn](http://www.molisa.gov.vn) or <http://boluatlaodong2019.molisa.gov.vn>

- Focus on the supplier level. Here is where you will find most leverage. District/ industrial zone level can be interesting as well.

### Policy checks and compliance

- Review your own supplier policy, especially in regard to FoA and CB.
- Make sure all your suppliers have a policy on FoA, CB, and industrial relations, and a process for CB. Does this policy comply with (new) Vietnamese labour law? The FoA policy must include a non-retaliation clause to protect workers who decide to organize (see [Fair Wear annex 3](#) for an example of such a letter).
- Obtain CBA copies from suppliers and see if they comply with labour law, and preferably, allow workers more benefits (for example, a higher wage than the mandatory regional minimum wage). Also ask how and when the CBA was concluded to check if workers and representatives were actually involved.
- Stay alert for information on WROs in facilities and begin auditing for potential non-compliance with the new code and subsequent government decrees and circulars.

- Ensure that policies are communicated to workers and management, including new employees. Assess how the social dialogue process and unions function
- Check the process of social dialogue, if there is any. How often does dialogue take place? On what topics? Check how the trade union or WRO consults members about their concerns. How do they reach a consensus? Are union executive committees given time to organize meetings with members?
- Check the job description/title of the factory trade union president/vice presidents to see whether they are workers or from management. How were the representatives elected? By voting? By the workers?
- Review and update all internal monitoring procedures to ensure that supplier and facility compliance with the new requirements is tracked and evaluated.
- Given the constraints of Vietnam's industrial relations structure, we recommend programmes promoting bottom-up social dialogue at the regional and national levels and expanding the current multi-company CBAs, which are already in place (see example in next section<sup>30</sup>).

### Stakeholders

- It is highly recommended to work with locally-based stakeholders who have a clear understanding of the legal and cultural context.
- Talk to different stakeholders in Vietnam (also CSO, researchers, the labour research network), not only your supplier and vendor! Ask for their support to provide input to further risk assessments.
- Engage with local CSOs or service providers to share information on best practices or seek out opportunities for training for factory management and workers' representatives on effective implementation of the updated provisions.

<sup>30</sup> 'Multi-Employer Collective Bargaining Agreement - Towards a High-road Approach'. [ILO Working Paper](#).

## Support build capacity

- Invest in and support resources to build the capacities on issues like worker rights, FoA and CB of trade unions, WROs, management and workers.
- Since the ratification of the ILO Convention and the new labour law, factory managers/owners have been more interested in SD, FoA, and CB. They are more eager to learn about what the law entails. They also want to understand what is expected from European brands. You can help to build management and worker capacity by supporting and financing workplace training. Examples include Fair Wear's Workplace Education Communications Module or Better Work's factory training on industrial relations.
- Because of the challenges in legislation and practical applications, working towards promoting FoA and CB will take a nuanced and careful approach. Developing a strategic approach will require time, staff, and financial resources for things like trainings.



## Monitor implementation

- Use the outcomes of your audits as entry points for further discussions about FoA and CB.
- Auditors can be made more aware of meaningful indicators for identifying genuine workers' representation and determining whether dialogue takes place. They should ensure offsite worker interviews are included in their audits (when workers are interviewed in the workplace they are less likely to be as open due to fear or reprisal).
- Based on the audit outcomes, determine the willingness at company level to include FoA issue in factory policies.
- Make sure internal and third-party auditors in Vietnam are informed and trained on the new code and regulations.

## Practical tips for doing business in Vietnam

- Not everyone is able to speak (good) English. Therefore, it is key to work with a trusted translator.
- Be aware that the union system in Vietnam is not comparable to the ones in the Netherlands. There is only one union, it is politicized, monopolistic, and works top-down.
- Trust building, understanding, and listening are very important in the Vietnamese culture.
- Brands should be careful with their wording. Do not use words or phrases like freedom of speech, FoA, democracy, CSO, multi-party, human rights, political reform<sup>31</sup>. It is better to talk about improved business performance, quality of life, the country's competitiveness, etc.
- Another important subject to address with suppliers is the business case. This is key for factory managers. See the general fact sheet on FoA and CB for more information on the business case.

Try to find and connect with other brands that are also sourcing in Vietnam. Learn from each other, seek leverage, join webinars (organized by CNV Internationaal, Mondiaal FNV, Fair Wear Foundation and ETI) and perhaps join multi-stakeholder initiatives.



<sup>31</sup> More about freedom of expression: <https://www.hrw.org/world-report/2020/country-chapters/vietnam>



## GOOD EXAMPLES OF FOA, CB, AND SOCIAL DIALOGUE IN VIETNAM

### 1 **Vietnam MCCBA**

In Vietnam, there have been three multi-company collective bargaining projects implemented by VITAS (the Textile Apparel Association), ILO-VGCL, and CNV-VGCL. CNV's experience is shared here below:

#### **Cooperation between CNV and VGCL**

Between 2018 and 2020, three Multi-Company Collective Bargaining Agreements (MCCBAs) were signed in three districts in Vietnam (Van Lam, Thu Duc, Tan Binh). This was the result of a unique cooperation between VGCL and the Dutch trade union CNV, employers' associations, and public authorities in Vietnam. More MCCBAs are expected to be signed.

The existing agreements benefit 15 garment factories, which together employ 7,000 workers, mostly young women. The plan is to scale up the existing MCCBA project to new regions and new sectors in the country and to conclude 32 new MCCBAs by 2023. CNV is keen to see how this work can be accomplished together with Vietnamese and international partners.

For suppliers and brands, MCCBAs and the processes towards these MCCBAs, can reduce supply chain risks and increase benefits. These include:

- Fewer labour disputes and fewer strikes
- Retaining skilled employees and creating a more stable workforce
- Better mutual understanding and communication between employers and employees/trade unions, which provides practical, cost-effective and easy-to-implement solutions to problems in the garment factories
- Opportunities for higher productivity and better quality due to better training provided for the workers.
- Opportunities for doing business with new buyers and partners and meeting expectations of new consumers
- Reducing competition on labour costs between MCCBA participants
- Opportunities to attract new workers

- Better cooperation with regional authorities
- Contributing to a fair and decent clothing industry and a stable society

Please see this [video](#) about this initiative.



### 2 **Better Work Vietnam's initiative to reform enterprise union leadership**

With the goal of promoting the international labour standards, BWV has conducted a number of initiatives to improve labour-management dialogue and FoA. One of these was the PICC (Performance Improvement Consultative Committee) model, which has been set up in all member companies to facilitate labour-management dialogue on work-related issues. The members of PICC include not only management and union representatives, but also worker representatives elected by the rank-and-file workers at production line level<sup>32</sup>. The idea behind the PICC model is to encourage more participation of the

<sup>32</sup> For more information about PICC model, see: [https://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_233415/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_233415/lang--en/index.htm)



rank-and-file workers apart from the official union officers. Research has shown that this remains challenging.

In a further step, since 2016, Better Work Vietnam has also urged their member factories to increase the proportion of rank-and-file workers in the union executive board and gradually remove managers from the enterprise union. Specifically, the chairperson of the enterprise union should be a worker rather than a manager. Initially, the initiative was met with strong opposition from the management as well as the VGCL officials who argued that rank-and-file workers may not be capable enough to serve as the union chairpeople. However, with the request from the brands and Better Work's plan of publicizing member factories' violations, there has been improvement among the members to remove management from the enterprise unions<sup>33</sup>.

### 3 **Example from Fair Wear Foundation**

Very often in Vietnam, enterprise union officials are part of the management structure. For example, Fair Wear audits sometimes identify the HR officer as the union chairperson. In one of the factories Fair Wear member

brands worked with, following an audit result like this, they were able to facilitate democratic elections. Representatives from the workforce were selected to be part of the union board and participated in a social dialogue structure. This dialogue is still very much management dialogue with little space for negotiation by workers, but at least it is a first step towards having workers' voices being more independently represented.

The Workplace Education Programme improves capacity for dialogue and strengthens communication between factory workers and management via series of training days over the course of 1-1.5 years. The programme was started in 2019 with the participation of 13 suppliers who employ 17,400 workers. The dialogues have allowed many action plans for improving working conditions to be implemented.

<sup>33</sup> [Better Work Vietnam Annual Report 2017](#) and Better Work Vietnam. Annual Report 2019. A Decade of Empowering Workers and Driving Business. ILO and IFC.

## USEFUL CONTACTS

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### **Fair Wear Foundation**

For Fair Wear members, please contact your brand liaison for more support.



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