

# **Vietnam country study**



**2021**

***WEAR*** ***FAIR***

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# Introduction

Vietnam is becoming an increasingly important country in garment exports. The country currently ranks as one of the top five global garment-exporting countries, with the vast majority of its products going to the United States, the European Union and Japan. The textile and garment industry is one of the largest industries in Vietnam and a key contributor to the country's economic growth. The industry directly employs approximately 2.7 million people (75% of whom are women) and indirectly supports millions of others in the form of remittances sent to the families of workers around the country. However, the Vietnamese garment industry faces a number of labour challenges, including wildcat strikes, high employee turnover, gender-based discrimination, excessive overtime and low wages.<sup>1</sup>

There have been numerous attempts by the government of Vietnam, the Vietnam General Confederation of Labour (the national trade union), non-governmental organisations and international organisations to address these labour issues. For example, Vietnam is in the process of revising the current labour law to include provisions promoting collective bargaining and social dialogue. In a commitment to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA), Vietnam ratified International Labour Organization (ILO) Convention 98, which protects the right to organise and collective bargaining, and ILO Convention 105, which abolishes forced labour. With their ratification in 2020, Vietnam has adopted seven of the eight fundamental ILO Conventions. Vietnam plans to ratify ILO Convention 87 on freedom of association by 2023. These major changes in legislation are expected to significantly influence labour relations in the garment industry. Although these changes show substantial progress towards improved labour conditions, there is still a need for increased independent monitoring and effective guidance in implementing the new legislation. Moreover, the pressure on Vietnam to demonstrate political reform and to sign the free trade agreement with the EU creates a complex political climate for addressing sensitive topics such as freedom of association and violence and harassment in the workplace.

The outbreak and spread of the COVID-19 pandemic have had severe impacts on economies and societies across the globe. Vietnam is not an exception. The garment industry has widely participated in global value chains and, consequently, faces multiple difficulties and challenges, including falling export turnover, job loss, and social impact on the lives of workers.

Fair Wear will continue to provide updated information on Vietnam on a periodic basis at [www.fairwear.org](http://www.fairwear.org).

As interest from European garment brands continues to grow, Vietnam has expanded significantly in importance to Fair Wear members. In 2020, thirty-two Fair Wear members were sourcing from approximately 190 factories located across 30 provinces and cities in Vietnam.

Fair Wear has been active in Vietnam since 2006, and currently works with one full-time country representative, four Vietnamese auditors, four trainers and one complaints handler. The local complaints handler, who is based in Ho Chi Minh City, manages the local complaints hotline, addressing complaints from workers and other parties who submit labour rights violations. Fair Wear has established strong relationships with

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<sup>1</sup> Do, 'Vietnam country study'; Do, 'The missing link in the chain?'.

the Ministry of Labour, Invalids and Social Affairs (MOLISA), the Vietnam Chamber of Commerce and Industry (VCCI), the Vietnam Textile and Apparel Association (VITAS), the Vietnam General Confederation of Labour (VGCL), ILO Better Work Vietnam and a number of grassroots labour NGOs in Hanoi and Ho Chi Minh City.

The Workplace Education Programme Basic training module has been active in Vietnam since 2014, with around 20–25 factories joining the programme each year. This module introduces Fair Wear’s Code of Labour Practices and its complaints helpline. It is designed to help brands and factories take their first steps towards workplace awareness on labour rights. Management, supervisors and workers are trained in separate two-hour sessions that cover workers’ rights, their individual and collective responsibilities and the resources available to them.

Further, in 2019 Fair Wear started piloting the Workplace Education Programme Communication module in Vietnam. This is a one-year programme that is divided into small training courses. Each training course includes separate sessions for management and workers, as well as sessions where management and workers come together to discuss issues. Overall, these training sessions aim to engage factory managers and workers in safe and constructive dialogue with the focus of improving the production process and working conditions.

# 1. How to read this Fair Wear Foundation country study

This country study should provide a clear and concise picture of the industry, labour law, labour conditions and industrial relations within the textile/garment industry. The study is prepared through gathering information about national laws and local stakeholders' views on labour issues in the Vietnamese garment industry. If you would like to learn more about the stakeholders interviewed for this study, please [click here](#)

- › **Chapter 2, General country information**, provides an overview of the current economic, social, political and governance situations, as well as human rights concerns, in Vietnam. The overview is conducted using standard international indicators, as well as by comparing the country to other garment-producing countries.
- › **Chapter 3, 'Stakeholders'**, introduces the main stakeholders in the textile and garment industry in Vietnam. The focus is on stakeholders who have had an actual impact on labour conditions or who play an active role in monitoring the situation for workers in the industry. This chapter serves as a reference point for stakeholders and brands that want to connect with local stakeholders for additional information or help concerning their activities in Vietnam.
- › **Chapter 4, 'Garment industry'**, presents an overview of the garment industry in Vietnam, centring primarily on areas of production, products and prospects for the industry.
- › **Chapter 5, 'Industrial relations'**, describes the role of trade unions in the country, both in general and specifically in the garment industry. This chapter provides essential information for understanding how well challenges regarding working conditions could be handled through a national social dialogue.
- › **Chapter 6, 'Implementation of the Fair Wear Code of Labour Practices'**, assesses the implementation of every standard of the Fair Wear Code of Labour Practices through official statistics on compliance (where available), as well as in consideration of current laws and regulations and the view of different stakeholders regarding their implementation. It also contains, as is standard, the main Fair Wear audit findings over the last three years and examples of complaints received by Fair Wear. Auditors and brands can use this section as a reference to conduct their own monitoring activities.

## 2. General country information

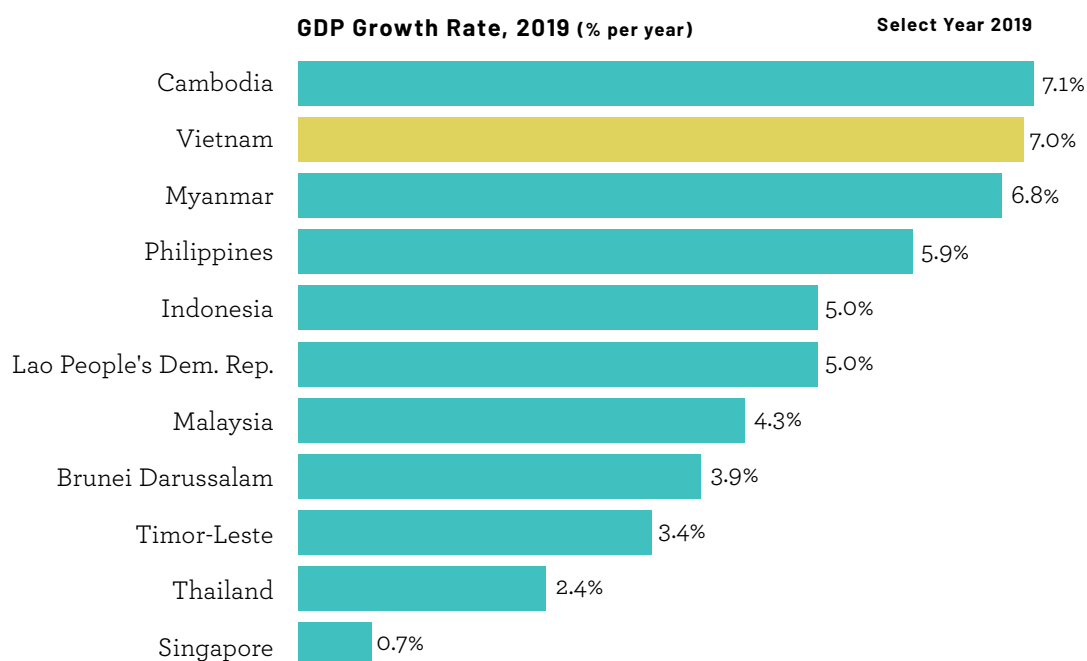
The Socialist Republic of Vietnam is the easternmost country of the Indochina Peninsula in Southeast Asia. With an estimated 96.9 million inhabitants<sup>2</sup>, it is the 14th most populous country in the world. The country is bordered by China to the north, Laos to the northwest, Cambodia to the southwest and the South China Sea—referred to in Vietnam as the East Sea (Biển Đông)—to the east.

The development of Vietnam over the past 30 years has been remarkable. Economic and political reforms under Đổi Mới, launched in 1986, have spurred rapid economic growth, transforming Vietnam from one of the poorest nations in the world into a lower middle-income country.<sup>3</sup>

### 2.1. ECONOMIC INDICATORS

In 2019, the Vietnamese economy, supported by robust domestic demand and export-oriented manufacturing, continued to show fundamental strength and resilience. Preliminary data indicate that real GDP grew by about 7% in 2019, close to the rate reported in 2018 and higher than the rate of the years 2015-2017. As illustrated in Figure 1, the Asian Development Bank found that Vietnam had one of the fastest growth rates in the region in 2019.

**Figure 1: Vietnam GDP growth rate in 2019 compared to other countries in the region**



Source: Asian Development Bank. Asian Development Outlook 2020 (april 2020)

<sup>2</sup> Dân số Việt Nam, 2019.

<sup>3</sup> World Bank Group, 2020.

In the first nine months of 2020, amid the COVID-19 crisis, the GDP growth rate of Vietnam was estimated to be 2.12%, the lowest nine-month growth rate in the past ten years, according to official data. The International Monetary Fund, which, in June, estimated the 2020 GDP growth rate of Vietnam to be 2.7%, has since revised its forecast to 1.6%. Despite this significant decrease in growth, Vietnam remains the only country amongst the major economies in the Association of Southeast Asian Nations (ASEAN-5) (Thailand, Malaysia, Indonesia, the Philippines, and Vietnam) expected to deliver positive growth this year.<sup>4</sup>

In 2019, the trade in Vietnamese goods totalled USD 517.26 billion, a 7.6% increase from 2018. When compared to the result of a year earlier, the total merchandise export value rose 8.4% to USD 264.19 billion, and the total merchandise import value grew 6.8% to USD 253.07 billion.<sup>5</sup> Accordingly, the trade balance of Vietnam in this period was in the surplus of USD 11.12 billion. While its traditional labour-intensive manufacturing exports, such as garments, footwear and furniture, continue to maintain a strong growth rate, the exports of high-tech and high-value products (cell phones, computers, electronics and automobile parts) have shown rapid growth and have now become the largest share of Vietnamese exports.

In the last five years, Vietnam has also managed to improve its macroeconomic stability, with headline inflation falling from 4.08% in 2014 to about 2.8% in 2019, as illustrated in Table 1.

**Table 1: Inflation rate in Vietnam compared to China, Indonesia, Thailand and India<sup>6</sup>**

Inflation, consumer prices (annual percentage)						
Country Name	2014	2015	2016	2017	2018	2019
Vietnam	4.08	0.63	2.67	3.52	3.54	2.80
China	1.92	1.44	2.00	1.59	2.07	2.90
Indonesia	6.39	6.36	3.53	3.81	3.20	3.03
Thailand	1.90	-0.90	0.19	0.67	1.06	0.71
India	6.35	5.87	4.94	2.49	4.86	7.66

## 2.2. SOCIAL, POLITICAL AND GOVERNANCE INDICATORS

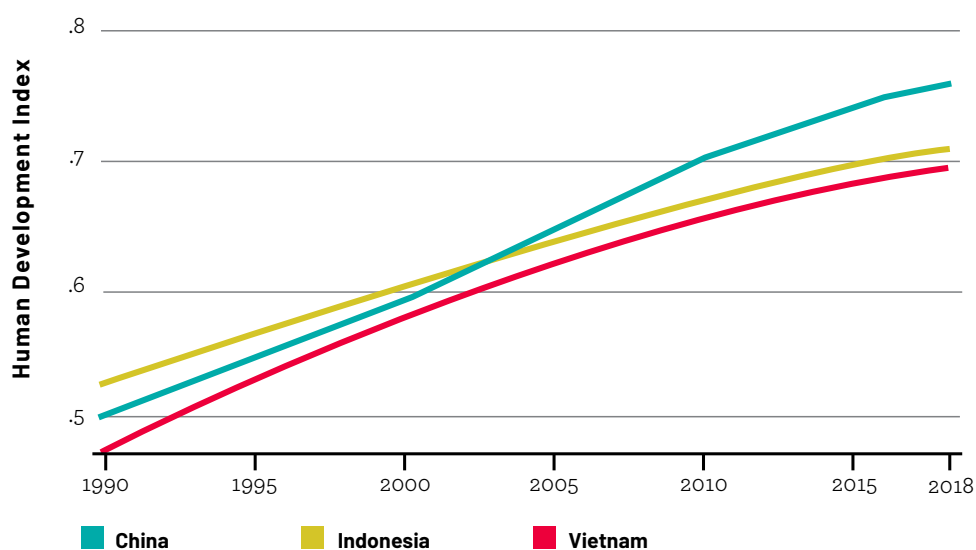
According to the United Nations Development Programme Human Development Report, the Human Development Index (HDI) rating of Vietnam for 2018 was 0.693. This is an average rating in the human development category and positions Vietnam at 118 out of 189 countries and territories. Compared with countries in the region, the HDI of Vietnam remains lower than those of China or Indonesia (Figure 2).

<sup>4</sup> 'IMF trims Vietnam GDP growth forecast to 1.6% in 2020', 2020.

<sup>5</sup> 'Preliminary assessment of Vietnam international merchandise trade performance in whole year 2019', 2020.

<sup>6</sup> 'World Bank Group', 2020.

**Figure 2: HDI trends for Vietnam, China and Indonesia, 1990-2018**



Source: UNDP Human Development Report 2019<sup>7</sup>

Vietnam scores low in terms of democracy. According to Democracy Index 2019 of The Economist Intelligence Unit, Vietnam is one of the four ‘authoritarian regimes’ in Southeast Asia, with a democracy index of 3.08 (the democracy index has a band score of 10). Vietnam ranks 136th, moving up three spots from 2018 and ranking below Cambodia (124th), Myanmar (122nd) and Indonesia (64th).<sup>8</sup>

Vietnam received an overall score of 0.49 from The World Justice Project Rule of Law Index. This ranking placed the country 81st out of 126 countries in 2019, which is a decrease of two spots compared to 2018. Vietnam ranks below Indonesia (62) and India (68). Within this index, Vietnam scored well in the following factors: absence of corruption in government (Factor 2), order and security (Factor 5) and regulatory enforcement (Factor 6).<sup>9</sup>

<sup>7</sup> UNDP, ‘The Next Frontier’.

<sup>8</sup> ‘Democracy Index 2019’, 2019.

<sup>9</sup> ‘The World Justice Project’, 2019.



**Table 2: The Rule of Law Index 2019**

The Rule of Law Index 2019	Bangladesh	China	India	Indonesia	Myanmar	Vietnam
Overall score	0.41	0.49	0.51	0.52	0.42	0.49
Global ranking (out of 126 countries)	112	82	68	62	110	81

**The framework of The Rule of Law Index 2019 is comprised of eight factors**

Factor 1: Constraints on Government Powers	0.42	0.33	0.61	0.66	0.45	0.45
Factor 2: Absence of Corruption	0.37	0.55	0.43	0.38	0.47	0.40
Factor 3: Open Government	0.44	0.42	0.61	0.54	0.35	0.46
Factor 4: Fundamental Rights	0.33	0.32	0.53	0.52	0.31	0.46
Factor 5: Order & Security	0.57	0.79	0.59	0.70	0.66	0.77
Factor 6: Regulatory Enforcement	0.42	0.48	0.48	0.55	0.46	0.45
Factor 7: Civil Justice	0.39	0.54	0.45	0.44	0.36	0.45
Factor 8: Criminal Justice	0.34	0.47	0.4	0.37	0.29	0.46

\* Scores range from 0 to 1, with 1 indicating the strongest adherence to the rule of law.

In addition, the World Bank evaluated Vietnam as politically stable and lacking violence/terrorism, with a percentile ranking of 53.81/100 in 2018. China and India were ranked 36.67 and 14.76, respectively.<sup>10</sup>

## Gender Development Index (GDI)

The Gender Development Index (GDI), a new measure introduced to the Human Development Report in 2014. It compares the female and male Human Development Index figures in the form of a ratio. Through this, gender equality becomes apparent in three areas of human development. These are: health (based on sex-disaggregated life expectancy figures), education (how long students will likely stay in school and years of schooling attained by adults), and economic standing (based on GNI, sex disaggregated and calculated per capita).<sup>11</sup>

The Human Development Report includes GDI data for 166 countries. In 2018, the female HDI value in Vietnam was 0.693 and the male value was 0.692. This equates to a Group 1 rating for Vietnam, with a GDI value of 1.003.

<sup>10</sup> 'Worldwide Governance Indicators: World Bank', 2018.

<sup>11</sup> UNDP, 'Inequalities in Human Development in the 21st Century', 2019.

## Gender Inequality Index (GII)

The 2010 HDR introduced the GII, which reflects gender-based inequalities in three dimensions—reproductive health, empowerment, and economic activity. Reproductive health is measured by maternal mortality and adolescent birth rates; empowerment is measured by the share of parliamentary seats held by women and attainment in secondary and higher education by each gender; and economic activity is measured by the labour market participation rate for women and men. The GII can be interpreted as the loss in human development due to inequality between female and male achievements in the three GII dimensions.

Vietnam has a GII value of 0.314, ranking it 68 out of 162 countries in the 2018 index. In Vietnam, 26.7% of parliamentary seats are held by women, and 66.2% of adult women have reached at least a secondary level of education compared to 77.7% of their male counterparts. For every 100,000 live births, 54 women die from pregnancy-related causes; and the adolescent birth rate is 30.9 births per 1,000 women of ages 15-19. Female participation in the labour market is 72.7% compared to 82.5% for men (see Table 3). In comparison, Philippines and Thailand are ranked at 98 and 84, respectively.

**Table 3: GII of Vietnam for 2018 relative to selected countries and groups<sup>12</sup>**

Country	GII value	GII rank	Maternal mortality ratio	Adolescent birth rate	Female seats in parliament (%)	Population with at least some secondary education (%)		Labour force participation rate (%)	
						Female	Male	Female	Male
Vietnam	0.314	68	54.0	30.9	26.7	66.2	77.7	72.7	82.5
Philippines	0.425	98	114.0	54.2	29.1	75.6	72.4	45.7	74.1
Thailand	0.377	84	20.0	44.9	5.3	43.1	48.2	59.5	76.2
East Asia and the Pacific	0.310	—	62.0	22.0	20.3	68.8	76.2	59.7	77.0
Medium HDI	0.501	—	198.0	34.3	20.8	39.5	58.7	32.3	78.9

\*Maternal mortality ratio is expressed in number of deaths per 100,000 live births and adolescent birth rate is expressed in number of births per 1,000 women ages 15-19.

## 2.3. INCOME AND POVERTY

Vietnam has seen incredible growth in the decades following the Vietnam War. It has evolved from a highly impoverished nation to become a lower middle-income nation. Part of this was due to a series of reforms in the mid-1980s. The World Bank offers some statistics to put this into perspective: ‘Between 2002 and 2018, GDP per capita increased by 2.7 times, reaching over USD 2,700 in 2019, and more than 45 million people were lifted out of poverty. Poverty rates declined sharply from over 70% to below 6% (USD 3.2/day PPP). The vast majority of the remaining poor of Vietnam – 86% – are ethnic minorities.’<sup>13</sup>

<sup>12</sup> UNDP, ‘The Next Frontier’, 2020.

<sup>13</sup> World Bank Group, ‘The World Bank in Vietnam’, 2020.

**Table 4: Gini Index – Indonesia, Thailand, and Vietnam, 2018**

Country	Vietnam	Indonesia	Thailand
Gini index	35.7	37.8	36.4

Source: World Bank Gini<sup>14</sup>

The Multidimensional Poverty Index (MPI), which identifies multiple deprivations in the same households in the areas of education, health and living standards, calculates the share of the population that is multidimensionally poor, adjusted by the intensity of the deprivations. The newest accessible census data on the MPI in Vietnam dates to 2013-2014. At the time, the MPI (the portion of Vietnam's population that is multidimensionally poor, with adjustments for the extent of deprivation) is 0.019. (This can be compared to an MPI of 0.003 for Thailand and 0.024 for the Philippines.) At the time of the census, 4.6 million Vietnamese (roughly 5% of the population) was considered multidimensionally poor.<sup>15</sup>

It is important to consider multidimensional poverty when looking at poverty because looking at income alone gives an incomplete picture. Income poverty, in this case, refers to the share of the population that has to survive on less than \$US 1.90 PPP daily. However, even those who fall above this income threshold may experience other forms of poverty, such as forms that are education, living standard, or health related. Compared to those people who only suffer from income poverty, 2.9% more people fall under the MPI count. Taken together, these various factors offer an overview of the poverty situation in Vietnam. The table below offers these figures alongside those for the Philippines and Thailand for comparative purposes.<sup>16</sup>

**Table 5: The most recent MPI for Vietnam relative to selected countries<sup>17</sup>**

Country	Survey year	MPI value	Head count (%)	Intensity of deprivations (%)	Population share (%)			Contribution to overall		
					Vulnerable to multi-dimensional poverty	In severe multi-dimensional poverty	Below income poverty line	Health	Education	Standard of living
Vietnam	2013/2014	0.019	4.9	39.5	5.6	0.7	2.0	15.2	42.6	42.4
Philippines	2017	0.024	5.8	41.8	7.3	1.3	7.8	20.3	31.0	48.7
Thailand	2015/2016	0.003	0.8	39.1	7.2	0.1	0.0	35.0	47.4	17.6

<sup>14</sup> 'Gini Index: The World Bank Group'.

<sup>15</sup> Data on the MPI comes from: UNDP, 'The Next Frontier,' 2020.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

## 2.4. GENERAL HUMAN RIGHTS SITUATION AND CIVIC SPACE

According to Amnesty International (Vietnam Country Study 2019), severe restrictions on freedoms of expression, association and peaceful assembly continue to be prevalent.<sup>18</sup> The state controls the media as well as all things judiciary, political and religious. The ITUC Global Index ranks Vietnam lowest ‘no guarantee of rights’ in freedom of association, given that the only allowed trade union remains part of the National government. The Vietnamese constitution, adopted in November 2013, was enforced after an unprecedented but heavily controlled consultation process lasting around nine months. The constitution provides a general protection of the rights to freedom of expression, association and peaceful assembly, but limits them by vague and broad provisions in national legislation. Only a limited guarantee of fair trial rights is included.

According to Amnesty International, the Vietnamese government adopted a controversial cybersecurity law in early 2019. This law had broad restrictions against propaganda that could be seen as detrimental to the state. The law introduced criminal penalties for a wide range of online activities and could severely impact freedom of speech.<sup>19</sup>

As of 2019, Vietnam has accepted over 80% of UN human rights recommendations.<sup>20</sup> According to the EU Roadmap for Engagement with Civil Society in Vietnam 2018-2020, civil society organisations face fluctuating circumstances and limited civic space, as the government tightens its reins. The government justifies this in light of cases of growing public disobedience, environmental crises, and other matters. In tackling both increased legal requirements, as well as administrative barriers, NGOs are searching for effective responses to the new situation.<sup>21</sup>

NGOs, both local and international organisations, do not fall under a single law, but fall subject to a number of regulations in various forms. This leads to administrative difficulties for NGOs operating in Vietnam, especially for those organisations that focus on lobbying and capacity building for civil society. However, local CSOs are making ground in influencing Vietnamese policies. Part of their success is due to the strategy of forming cross-sectoral coalitions to have a greater voice.<sup>22</sup>

According to the report ‘Benchmark: Assessment of civil society space in Vietnam’ that was conducted by independent researchers in Vietnam (2016), 61% of respondents believe that this space has been expanded considerably in recent years. The main reasons for this expansion include: the development of the internet and social media; the growth of civil society, particularly in response to external pressures such as bilateral dialogues on human rights and the signing of trade agreements; and the coordination amongst civil society groups and between CSOs and the public.<sup>23</sup>

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<sup>18</sup> ‘Vietnam 2019: Amnesty International, 2020.

<sup>19</sup> Ibid.

<sup>20</sup> ‘Vietnam active at UN discussions on human rights: Vietnam Law and Legal Forum’, 2020.

<sup>21</sup> ‘EU Roadmap for Engagement with Civil Society in Vietnam’, 2018.

<sup>22</sup> Ibid, 4.

<sup>23</sup> Le, et al., ‘Benchmark Assessment’, 2018, 16.

## 3. Relevant stakeholders

*In this section, a number of stakeholders active in the garment/textile industry in Vietnam are introduced. The focus is on stakeholders who are either actively part of creating or monitoring the labour conditions for industry workers.*

### 3.1. GOVERNMENTAL INSTITUTIONS

The Ministry of Labour, Invalids and Social Affairs (MOLISA) oversees the regulation and enforcement of labour standards, inspections, market policies, migration policies, vocational training and social security policies.

[www.molisa.gov.vn](http://www.molisa.gov.vn)

The Institute of Labour Sciences and Social Affairs (ILSSA) is the research arm of MOLISA. ILSSA conducts annual surveys and studies on various labour issues from wages and occupational safety and health (OSH) to gender and social security. ILSSA also acts as the technical supporting body for the National Wage Council and is responsible for calculating the minimum level of basic needs, poverty lines and minimum wages.

<http://ilssa.org.vn>

The Centre for Industrial Relations Development (CIRD) provides advisory services and technical support to provinces in developing their labour relations master plans. CIRD also advises MOLISA on labour-related policies.

<http://quanhelaodong.gov.vn>

### 3.2. EMPLOYERS' ORGANISATIONS

The Vietnam Chamber of Commerce and Industry (VCCI) is one of two national employers' organisations (together with the Vietnam Collaborative Alliance, which mainly represents agricultural enterprises and cooperatives). VCCI has around 2,000 enterprise members and seven branches in the most industrialised provinces and cities. The VCCI Bureau of Employer Affairs (BEA) is in charge of representing the employers' interests with regards to national policy and legislation to the state and vice versa.

<http://www.vcci.com.vn/>

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. VITAS has 15 branches across Vietnam with a total of 635 members, accounting for 70% of the total capacity of the industry. VITAS promotes business and investment cooperation, as well as information exchange, amongst members, between members,

and outside stakeholders. Furthermore, VITAS consults relevant state and governmental bodies, representing its members in policy campaigns and advocating for mechanisms relating to the development of the Vietnamese textile and garment industry. VITAS also represents the Vietnamese textile and garment industry to international organisations and encourages cooperation among textile and garment industries worldwide. In line with that, VITAS supports foreign companies looking to work with Vietnamese textile and garment producers.

The following international organisations are VITAS members:

- › International Clothing & Textile Bureaus (ICTB)
- › International Apparel Federation (IAF)
- › ASIAN Apparel Federation (AAF)
- › ASEAN Federation Textile (AFTEX)
- › ASIAN Fashion Federation (AFF)
- › International Textile Manufacturers Federation (ITMF)
- › Sustainable Apparel Coalitions (SAC)

<http://www.vietnamtextile.org.vn/>

### 3.3. TRADE UNIONS

The Vietnam General Confederation of Labour (VGCL) is the only recognised trade union organisation in Vietnam. Established in 1929, the VGCL is organised by both geographical regions and sectors. VGCL is affiliated with the Vietnamese Fatherland Front, a pro-government collective aligned with the Communist Party in Vietnam. By 2019, the VGCL claimed a total membership of over 10 million.

<http://www.congdoan.vn/home>

The Garment and Textile Industry Union is a branch of the VGCL and reports directly to the national union VGCL. It is responsible for managing and overseeing the union activities of state-owned garment and textile companies all over the country. Previously the union of the state-owned garment and textile corporation, the Garment and Textile Industry Union was established in 1996 with a membership of primarily state-owned and equitized garment and textile companies. Recently, a small number of private companies have joined the union. In 2008, total membership of the union was approximately 100,000. This is low in comparison to VGCL membership, considering that most members are mainly state-owned enterprises (SOEs). With the government pushing for the privatisation of SOEs for the past decade, there are currently only a few SOEs remaining.

<http://www.congdoandetmay>

### 3.4. LABOUR NGOS AND SOCIAL ENTERPRISES

Oxfam Vietnam is an international NGO specialising in rural development and poverty reduction. Since the 2000s, Oxfam Solidarité, has worked 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, particularly for the rural migrant workers in their factories and suppliers in Vietnam.

<https://www.oxfam.org/en/countries/vietnam>

Friedrich-Ebert-Stiftung (FES) is one of the first international non-profit organisations to work in Vietnam. FES is part of the German democratic labour movement and focuses on promoting its values and interests abroad. FES believes that in order to create a social dimension to economic development, competent and responsible trade unions that represent the genuine interests of their members are needed. In light of this belief, FES is especially committed to building collaborative working relationships with trade unions worldwide. Therefore, in Vietnam, the VGCL and its sectoral industrial unions are key partners of FES.

<https://www.fes-vietnam.org>

The Center for Child Rights and Corporate Social Responsibility (CCR CSR) focuses on improving the rights of children and the impact businesses have on the wellbeing of children. It carries out risk assessments, with a special eye for child labour, and offers tools for youth workers. One of the goals is to encourage the development of supply chains that are ‘family-friendly’.

CCR CSR has several projects on the go in Vietnam. These include ‘Work: No Child’s Business,’ a programme that looks to eliminate child labour in the Vietnamese footwear and apparel sectors and UNICEF’s ‘Children’s Rights in the Workplace Programme for Garment Manufacturers’.

<https://www.ccrcsr.com/projects/vietnam>

The Centre for Development Integration (CDI) was established in April 2005 as a non-profit and non-governmental organisation with the objective of promoting sustainable socio-economic development and good governance. CDI provides consultancy and research services in the areas of gender equality and women’s rights, migration, labour and corporate social responsibility.

<http://cdvietnam.org>

The Research Centre for Employment Relations (ERC) is an independent research and training company. ERC was established in 2007 and not only provides consultancy services but also conducts research on labour issues and quality training in labour relations for employers, workers and international and domestic organisations and agencies.

<http://www.quanhelaodong.com>

### 3.5. INTERNATIONAL ORGANISATIONS AND PROJECTS

Officially launched in 2002, the International Labour Organization (ILO) Office in Hanoi is the coordinating agency for all the ILO projects and programmes in Vietnam. Its main areas of focus include: providing technical assistance across a range of key labour market development issues, creating more and better jobs through enterprise development, ensuring basic social services for promoting industrial relations and social dialogue. Additionally, the ILO Office in Hanoi works closely with the tripartite constituents, including the MOLISA, VGCL, VCCI, and the Vietnam Collaborative Alliances (employers), to provide technical assistance to law-making projects related to labour and social issues.

<http://www.ilo.org/hanoi/lang-en/index.htm>

Better Work Vietnam (BWV) is a partnership between the ILO and the International Finance Corporation (IFC). It was launched in August 2006 in order to improve labour standards and competitiveness within global supply chains. BWV advises and monitors labour standards in nearly 400 export-oriented garment companies located in both southern and northern provinces within Vietnam. BWV also works with VGCL, VCCI and the MOLISA to contribute to national policy debates.

<https://betterwork.org/where-we-work/vietnam/>

The ILO programme ‘Developing a New Industrial Relations Framework in respect of the ILO Declaration on Fundamental Principles and Rights at Work’ supports Vietnam in building the legal and institutional foundations for a new industrial relations framework based on ILO Declaration on Fundamental Principles and Rights at Work, with a special focus on Convention 87 (Freedom of Association and Protection of the Right to Organise) and Convention 98 (Right to Organise and Collective Bargaining).

<https://betterwork.org/where-we-work/vietnam/>

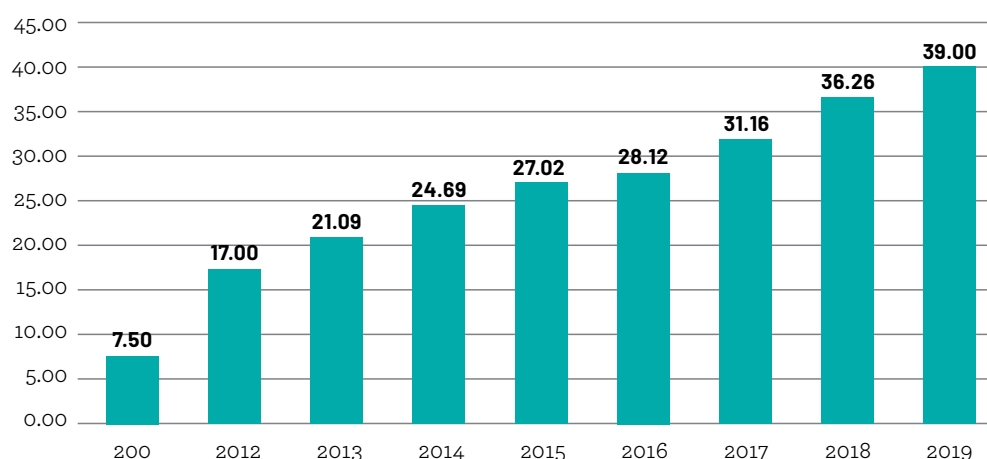


## 4. Garment industry

### 4.1. ORGANISATION OF THE GARMENT INDUSTRY

Vietnam is becoming an increasingly important country in garment exports. The country currently ranks as one of the top five global garment-exporting countries, with the vast majority of its products going to the United States, the European Union and Japan. In 2019, Vietnamese textile and garment exports had increased 7.55% year over year to approximately USD 39 billion in total, accounting for 15% of the GDP and 18% of the total exports of the country. The Vietnamese textile and garment industry aims to reach a total export value of USD 60 billion by 2025, according to the Chairman of the Vietnam Textile and Apparel Association (VITAS). Figure 3 illustrates Vietnamese growth in GDP over recent years.<sup>24</sup>

**Figure 3: Export Value (USD billion)**



Source, VITAS

According to Better Work, 'the sector employs approximately 2.7 million people (75% of whom are women) and supports millions of others in the form of remittances sent to the families of workers around the country.'<sup>25</sup>

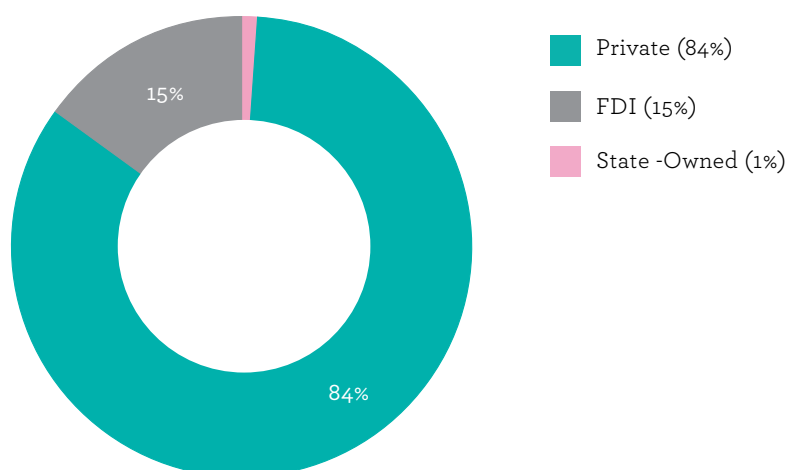
Much of the garment production occurs at companies that are owned by foreigners. There is a high occurrence of Korean and Taiwanese ownership. Yet this is not to say that local garment product is non-existent, but this production tends to be smaller scale. Better Work estimates that there are more than 6,000 garment firms active in Vietnam, most of which are 'cut-make-trim' operations that focus on sewing garments together.<sup>26</sup>

<sup>24</sup> Chung, 'Doanh nghiệp FDI chiếm 60% kim ngạch xuất khẩu hàng dệt may của VN: Vinanet', 2019; 'Năm 2019, ngành dệt may Việt Nam dự kiến tăng trưởng 7,55%: VGP News', 2019.

<sup>25</sup> 'Better Work Vietnam: garment industry 10th compliance synthesis report', 2019, 8.

<sup>26</sup> Ibid.

**Figure 4: Enterprise ownership structure (Number of enterprises: ~6,000, including textiles)**



Source: BetterWork Annual report 2019<sup>27</sup>

The garment and textile industry in Vietnam focuses on CMT for exporting. However, it is growing and diversifying. It can be broken down into three subsectors aimed at fibre creation, the production and dyeing of fabric, and garment production. While cotton is one of the main fibres used, much of this is imported. Other important fibres include filament yarn, wool, and silk.<sup>28</sup>

## 4.2. MAIN EXPORTS FROM THE GARMENT INDUSTRY

The main export market of the industry is the United States (U.S.). Among the other ASEAN countries, Vietnam has been the largest exporter of garments to the U.S since 2019. According to VINATEX reports, in 2019, garment exports to the U.S. increased 8.9%, totalling USD 15.2 billion and comprising 38.97% of the total garment exports of Vietnam. Figure 5 illustrates other major markets for garment exports, including the European Union (USD 4.4 billion), Japan (USD 4.2 billion) and South Korea (USD 4 billion).<sup>29</sup>

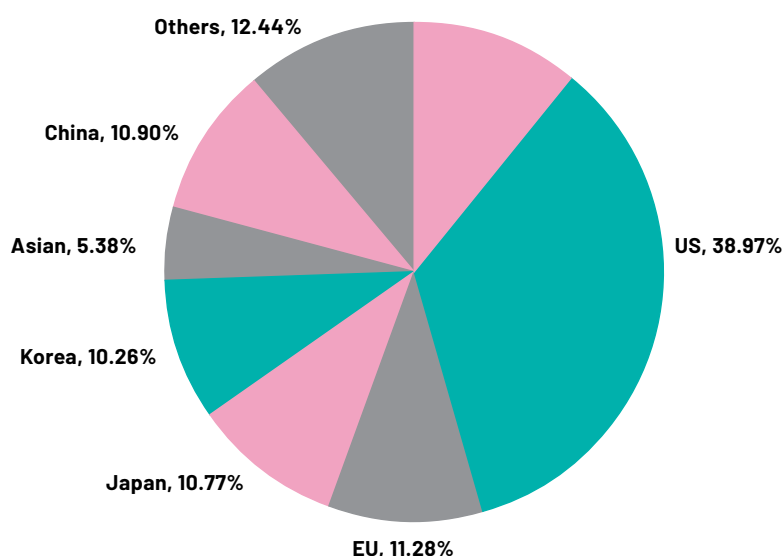
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<sup>27</sup> Ibid.

<sup>28</sup> 'Report on Vietnam Textile and Garment Industry', 16.

<sup>29</sup> Ibid.17.

**Figure 5: Main export markets for Vietnamese apparel**



Source: VITAS, 2019<sup>30</sup>

The most common garment export items include: shirts, trousers, jackets, t-shirts, polos, sports and outdoor wear, children's wear, underwear and swimming wear, and work clothing.<sup>31</sup>

### 4.3. MAIN AREAS FOR GARMENT PRODUCTION

According to the VINETEX report, 'around 58% of Vietnamese textile and garment enterprises are located in the north-east, with 27% located in The Red River Delta area, 7% in the Northern Central Area and central Coastal Area, 4% in the Mekong River Delta area and the final 4% in the Northern Midland and Mountain Area and highlands.'<sup>32</sup>

### 4.4. SOCIAL COMPOSITION OF THE GARMENT WORKFORCE

Women dominate the garment industry, making up 81.6% of the workforce. The average age of garment workers is low, at 28. Comparatively, the average age of garment workers in China is 36. The labour force is also young, with 75% of workers under 30 years of age. Migrants from rural areas also dominate the garment labour force with 83.7% of workers originating from rural areas in Vietnam<sup>33</sup>

<sup>30</sup> Vitas, 'Xung đột Mỹ-Trung tác động mạnh, xuất khẩu dệt may "lỡ hẹn" 40 tỷ USD', 2019.

<sup>31</sup> International Development Systems, 'Report on Vietnam Textile and Garment Industry', 17.

<sup>32</sup> Ibid., 17.

<sup>33</sup> Fontana and Silberman, Discussion Paper 13, 2012.

## 4.5. GARMENT INDUSTRY POST-COVID-19

The outbreak and spread of the COVID-19 pandemic have had severe impacts on economies and societies across the globe. Vietnam is not an exception. The textile and garment industry has links across global value chains and consequently faces multiple difficulties and challenges, including: falling export turnover, job loss and social impact on the lives of workers.<sup>34</sup>

### Falling export turnover

According to VITAS, the Vietnamese textile and garment industry has been doubly affected by the COVID-19 pandemic. First, the shortage of raw materials and auxiliary materials imported from China in the first quarter resulted in a serious decline in demand from major markets such as Europe, the U.S. and Japan. This decline, resulting from the strict measures applied by these countries to combat the pandemic, accounts for an over 60% decrease of total export turnover in the garment industry. Secondly, a series of orders have been cancelled or delayed and there have been interruptions in delivery schedules and payments, presenting significant challenges to textile and garment firms. In consideration of the low margins and the cost of labour and materials, order cancellations and interruptions resulted in mass layoffs and/or workers losing wages.<sup>35</sup>

It is estimated that in the first six months of 2020, export turnover reached USD 15 billion, down 16.65% in comparison to the same period of 2019. With the complicated situation presented by the COVID-19 pandemic, it is forecasted that the total export turnover by the end of 2020 will fluctuate between USD 32-33 billion, which is about USD 8.5 billion lower than what was projected before the onset of the pandemic.<sup>36</sup>

### Job loss

COVID-19 has had a devastating impact on employment. Some main impacts in the textile and garment industry in Vietnam include:

- ▶ About 30% of garment and textile workers, many of them in small and medium-sized enterprises, lost their jobs completely or were unemployed between February and June.
- ▶ The remaining labour force is now working at only 50–60% of its capacity and therefore, their income has been reduced significantly. On average, workers have seen about a 40% reduction in income compared to the average income before the pandemic.
- ▶ Garment workers risk losing their severance pay and, without an adequate social security system, have no remedies to cope with the loss of income.

### Social impacts

A quick impact assessment of COVID-19 on five industries in Vietnam, including wood, seafood, tourism, electronic and garment showed that:<sup>37</sup>

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<sup>34</sup> Vitas, 'Xung đột Mỹ-Trung tác động mạnh, xuất khẩu dệt may "lỡ hẹn" 40 tỷ USD', 2019.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> ILO, 'Quick impact assessment of COVID-19', 2020, 1.

Women workers are significantly hard-hit. According to an ILO study, 83% of women employees reported experiencing a loss of income or job less. A third of these have entire families dependent on them for survival, as these women are the primary breadwinners. In addition to job loss, women workers are facing a lack of insurance or sick pay coverage, an increased burden of unpaid care work, additional barriers to accessing sexual and reproductive health services and increased risk of gender-based violence.<sup>38</sup>

- » The situation is further aggravated for migrant (domestic) workers. Not only do they face vulnerability in terms of job security and income, but COVID-19 measures have meant that many have been physically isolated from family for long periods.
- » More than eight of ten workers report some form of mental health effects due to the pandemic, be it anxiety, insecurity, etc. This has also led to a spike in domestic issues, and, in the case of close to 5% of respondents, domestic violence.

## 4.6. LABOUR ISSUES IN THE GARMENT INDUSTRY

According to VGCL, there were 214 strikes nationwide in 2018.<sup>39</sup> This is a 35% decrease compared to 2017. The textile and garment industry remains the most strike-hit sector, accounting for nearly 40% of all incidents.

**Table 6: Strikes by industry in 2018**

Industry	Number of incidents	Percentage
Textile and garment	84	39.25
Footwear and leather	44	20.56
Electronics	21	9.81
Wood processing	12	5.61
Other industries	53	24.77
Total	214	100

A reported 67% of the strikes or stoppages were related to salaries and bonuses.<sup>40</sup> Some of the main concerns included: unpaid wages, incorrect payment of wages, incorrect overtime pay, and inequality in paying Tet bonuses, amongst others.

Other reasons workers went on strike included changes to the allowable product standard, wage adjustments and payroll adjustments aimed at reducing the income of workers, overtime requirements that exceed hourly regulations, unsatisfactory labour safety and hygiene conditions, low-quality shift meals and firms avoiding paying social insurance and health insurance for employees.<sup>41</sup>

<sup>38</sup> CARE, 'Gender Implications of COVID-19', 2020.

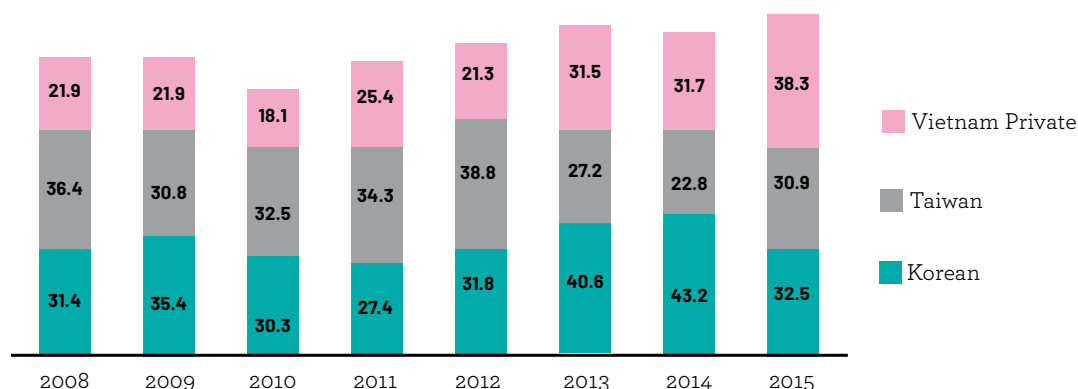
<sup>39</sup> 'Các cuộc ngừng việc, đình công trong toàn quốc giảm 35%', Dantri, 2019.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

Figure 6 compares the occurrence of strikes in Vietnamese-owned companies with that in Korean and Taiwanese-owned companies in Vietnam.

**Figure 6: Strikes by enterprise ownership as a percentage of national strike incidence, 2008-2015**



Source: VGCL unpublished strike statistics, 2016

Wildcat strikes have become an effective weapon for workers to protect their own rights and bargain for better interests.<sup>42</sup> As captured above, the Korean and Taiwanese-owned enterprises remain the most strike-hit groups, accounting for over 60% of strikes in Vietnam. According to provincial unionists, strikes primarily occurred in new Korean and Taiwanese firms. The more established firms, on the other hand, have been able to prevent labour conflicts by creating channels for labour-management communication and grievance-handling, as well as coordinating workers and management dialogue in wage adjustments. Considering the growing foreign direct investment (FDI) from Korea, Taiwan and, recently, China, it is necessary to promote the sharing of good labour relation practices between the older and younger firms of the same nationality and/or in the same region, as well as to strengthen unions at local levels to deal with emerging issues in newly established FDI companies. Although most strikes occur in FDI companies, there is a growing trend of strikes in the private owned enterprises (POEs). The incidence of strikes in POEs has increased from 18.1% of national strikes in 2010 to 38.3% in 2015. Again, this trend signals growing labour relations problems in the POE sector, which is much more difficult to track due to the fragmentation and small labour force sizes of this sector.

<sup>42</sup> Do, Quynh Chi and van den Broek, 'Wildcat Strikes', 2015; Clarke, et al. 'From Rights to Interests', 2007.

## 5. Industrial relations

### 5.1. ORGANISATION OF EMPLOYERS AND TRADE UNIONS IN THE GARMENT SECTOR

#### Trade unions

‘The historical background of the VGCL and its long-lasting alliance with the ruling party granted the VGCL a special position in the political regime.’<sup>43</sup> It is one of the socio-political organisations subordinate to the party-controlled ‘Fatherland’s Front’.<sup>44</sup> The special role and status VGCL holds as the sole representative of all workers in Vietnam is underlined in Article 10 of the revised State Constitution of 2012. In the process of constitutional reform, there had been attempts to bring trade unions under Article 9 of the constitution, similar to all other mass organisations, including Fatherland’s Front. This move could have allowed workers to create unions that are not necessarily affiliated with the VGCL. However, the leadership of the VGCL managed to block this initiative, maintaining the unique political position of the organisation as the only national union organisation within the framework of the constitution. At this time, VGCL did not use its power to advocate for some standard labour rights, such as the right to strike, to be included in the constitution.

‘The VGCL chairman has a seat in the powerful Central Party Committee, and each of the key union officials at national and local level is given a party position. The national union reports directly to the Central Party Secretariat (Ban Bi thu) and submits its major plans and strategies to the party leaders for approval before they are publicised.’<sup>45</sup>

According to figures provided by the VGCL, their total membership increased from 6.7 million to 9.6 million workers between 2008 and 2013.<sup>46</sup> The union density was 43.8% in 2016. However, the union density in the private and foreign-owned sector was only 33% in 2014, much lower than the union density of 76% in the SOEs. Since the Vietnamese government is gradually ‘equitizing’ SOEs and this will be reinforced by the upcoming free trade agreements that may create a more equal level playing field between state-owned, private Vietnamese and foreign enterprises, pressure on VGCL is growing for workers to learn how to organise in non-state enterprises.

The structure of the VGCL is rather complicated, with branches in all 63 provinces and spread across districts, larger cities and more. Additionally, there are sectoral trade unions in 22 sectors, as well as enterprise unions in state conglomerates either reporting directly to the VGCL in Hanoi or to federations of labour in industrial zones. All of this combined makes industrial action and representation of unions in important industries quite difficult. For the garment industry, there is the Vietnam National Union of Textile and Garment Workers (VNUTG) under the VGCL, which operates as a national sectoral trade union. As such, the organisation was only established in 2007 since it was part of a larger general union before. Its membership comprises about 130,000 workers. About 80% of its membership comes from the state-owned VINATEX conglomerate and only the remaining 20% are in private Vietnamese companies, nearly none in the FDI segment.

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<sup>43</sup> Do, ‘Employee participation in Vietnam,’ 2012, 5.

<sup>44</sup> Vietnam Fatherland’s Front refers to a number of ‘mass movements’ that can be considered pro-government. It includes organisations like the Women’s Union, Peasants’ Union, VGCL, etc. The Vietnam Fatherland’s Front is connected to the Communist Party of Vietnam.

<sup>45</sup> Do, ‘The Regional Coordination of Strikes,’ 2017, 1056.

<sup>46</sup> Report by VGCL to foreign guests of the 11th VGCL Congress, Hanoi, 28 July 2013

Apart from the VNUTG, there are three provincial garment sectoral unions in Hanoi, Ho Chi Minh City and Binh Duong, which all have different memberships and report to the provincial Federation of Labour. Most of the garment and textile enterprise unions, however, are directly affiliated with district or provincial chapters of the VGCL. Therefore, trade union representation in the textile and garment sector is fragmented and divided among various provincial federations of labour and the VNUTG without any coordination among these branches. This makes trade union representation in the textile and garment sector, one of the most important industries in Vietnam, quite ineffective.

As membership in garment sectoral trade unions, either at the national or provincial levels, is concentrated primarily in the state-owned (or formerly state-owned) sector, the motivation for genuine social dialogue has been weak. The state-owned garment companies have duly conducted quarterly labour-management dialogues and annual workers' congresses as required by the law, but they have mostly been carried out as a formality. The demand for social dialogue has been most pressing amongst the strike-prone companies, which have primarily been foreign-invested companies. As the FDI garment companies are mainly affiliated with their regional FOLs, there have been notable attempts by the local unions to promote social dialogue. For instance, under the New Industrial Relations Framework Project of the ILO, the FOLs of Binh Duong, Dong Nai, HCMC, and Hai Phong have organised dialogues between employers and the trade unions on a quarterly basis to discuss issues such as social insurance policy, collective bargaining, wages and work safety.

VGCL is affiliated with the World Federation of Trade Unions (WFTU) which is the international union organisation of socialist countries. In 2011, the chairman of the VGCL was elected the vice chairman of WFTU. VGCL is not an affiliate of the International Trade Union Confederation (ITUC), the largest international union organisation in the world. The ITUC has long criticised Vietnam for its lack of guaranteed labour rights, including freedom of association.<sup>47</sup>

## Employer associations

As Vietnamese law does not allow foreign-owned companies to join industrial business associations as official members, the business associations in the garment industry only include Vietnamese companies (both private and SOEs). The foreign-owned companies that are involved, if any, are associate members that do not have any decision-making rights. Therefore, foreign-owned firms are more closely associated with the business associations of their own countries. The most prominent foreign business associations include JBAH, which represents Japanese firms and has a total of 893 members across five southern provinces; KORCHAM, which represents Korean firms and has a total of 650 members located in the central and southern regions of Vietnam; and CTC, which represents 1,600 Taiwanese companies located in the southern provinces of Vietnam. These foreign business associations often have headquarters in Ho Chi Minh City and/or Hanoi and have sub-committees for their members located in each province. The foreign business associations are currently most active in Ho Chi Minh City, Dong Nai, Binh Duong, Long An, Ba Ria-Vung Tau, Tay Ninh, Hai Phong, and Ha Noi. The sub-committees of JBAH, KORCHAM and CTC meet on nearly a monthly basis to discuss various issues, including coordination in adjustment of minimum wages, land rent, security, taxes and customs, and human resource management. They also agree to certain common policies. For instance, all Korean firms use the same bank (Shinhan) and the bigger Korean compa-

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<sup>47</sup> 'ITUC Survey of Violations of Labour Rights in Vietnam', 2013.



nies outsource to smaller Korean firms in the same industrial zone or district. Further, the Japanese and Korean business associations agree upon the same wage package for rank-and-file workers and to avoid labour poaching by not recruiting workers from other member companies. The sub-committees also send representatives to policy discussions with the provincial authorities and consult with their members on policy, lobbying and advocacy issues. Binh Duong provincial committee meets with the foreign business associations twice per year, whereas DOLISA and the FOL met with them occasionally, such as when an urgent issue emerges (i.e. an adjustment of MWs). The foreign business associations generally have a strong influence over their membership. The Japanese Business Association is probably the most structured and influential since it has branches in a number of provinces and industrial zones. Other business associations, such as KoCham, EuroCham and AmCham, are more focused on policy advocacy on behalf of their members. These associations have tried to influence government policy through such means as joining the Vietnam Business Forum, conducting meetings between investors and the prime minister and arranging meetings between foreign investors and provincial leadership, amongst others.

VCCI is the umbrella organisation representing employers at the national level. In the past five years, VCCI has been active in coordinating with foreign business associations, especially AmCham and EuroCham, to advise the business community on legal changes, including revisions to the Labour Code in 2007 and 2012. VCCI is a member of the National Wage Council; yet, VCCI has not been active in encouraging social dialogue at the regional and enterprise levels.

## 5.2 COLLECTIVE BARGAINING AGREEMENT (CBA) COVERAGE IN VIETNAM

According to the MOLISA report from May 2019 on the implementation of the 2012 Labour Code, collective bargaining has also improved markedly compared to previous years.<sup>48</sup> The percentage of enterprises that have established grassroots trade unions that have signed CBAs reached 60% at the time of reporting. To ensure their quality, CBAs are required to be consistent with the provisions of the law and to be more beneficial to employees than the law. CBAs have been made at the sectoral and multi-company group levels, such as: the Textile and Apparel Industry Agreement (nationwide), the Textile Industry Labour Agreement in Binh Duong province, the Textile and Garment Industry Labour Agreement in Hanoi City, the Confederation of Tourism Enterprise Group Labour Agreement in Da Nang province (provincial level), the Hai Phong Electronic Enterprise Group Labour Federation Agreement (industrial park level) and the Garment and Textile Enterprises Federation Labour Agreement in District 12, Ho Chi Minh City.

The process of signing CBAs tends to yield positive results. However, the quality of the CBAs can be low, often simply mirroring the labour law, and the implementation of their processes can be complicated. According to a report by the Vietnam General Confederation of Labour, 27,866 CBAs have been signed since the end of October 2017, accounting for 21% of enterprises with more than 10 employees and 67% of trade unionised enterprises. More specifically, from 2013 to 2018 5,302 new CBAs were signed. All SOEs have trade unions and have signed CBAs. In the foreign-invested enterprise sector (FDI), the rate of signing of CBAs increased from 60.51% in 2013 to 66.05% in 2018

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<sup>48</sup> MOLISA, 'Hô sơ đề nghị xây dựng Bộ luật Lao động', 2018, 21.

The MOLISA report highlighted certain limitations. It observed that CBAs were mainly developed by SOEs, joint stock commercial banks and enterprises with many employees and large orders, due to customer and enterprise partner requirements and the approval of labour regulations by state agencies. The remaining enterprises do not have CBAs.

CBAs have been stipulated in the Labour Code since 1994, but it was not until 2012 that the Labour Code specified the process and procedures for collective bargaining. According to many businesses, the process of collective bargaining procedures stipulated in the law is complicated, strict and lacking transparency, making it difficult to implement. Thus, only a small number of enterprises have signed CBAs, and of those that have been signed, their quality is low, with a large amount of redundant content, general content and copied content. The rate of enterprises negotiating and signing CBAs in the correct order and via the appropriate procedures remains low, and most businesses do not implement the collective bargaining processes stipulated. The formulation and promulgation of a formal CBA tends to be in response to inspection or customer requests. The main content of CBAs focuses on social welfare such as sickness benefits for employees, bonuses for holidays, and so on. The negotiation of wages and allowances is very limited. In general, CBAs are a formality, a copy of the law. They do not reflect the true nature of industrial relations and are not the result of real collective bargaining efforts between parties. In some businesses, the human resources department actively develops the content of the agreement, while the trade union does not conduct collective bargaining, but only provides advice during the final implementation process.

## VITAS collective bargaining agreement

The VITAS collective bargaining agreement is the first multi-employer CBA in Vietnam, signed between the Vietnam Textile and Apparel Association (VITAS) and the Vietnam Textile and Garment Union. The enterprises covered by the agreement are all former SOEs that are members of VITAS. So far it has seen four phases. The first phase ran for one year from April 2010, the second phase for two years from June 2011, the third phase covered three years until 2017 and the current one is running until 2020. The current phase covers 80 enterprises with a total of 120,000 workers, which is a reduction from the third phase, which included 100 enterprises with a total of 140,000 workers, or about 6% of the total garment and textile workforce.

The CBA is composed of 16 articles, including eight articles related (directly and indirectly) to wages and incomes. Article 10, concerning the lowest wages for workers in normal working conditions, has been revised regularly in order to comply with the frequent changes in regional minimum wages and developments in the garment and textile sector. The third and the current phases of the pilot CBA agreed on the lowest compensation rates, which were between 17 and 26% higher than the government provisions in 2014, depending on the region. In 2017, however, the member companies only committed to paying employees 14% higher than the applicable MWs. It should be noted that the lowest compensation is not the basic wage but rather the total income, which includes basic wages, allowances, bonus and other cash-based benefits an employee receives as part of his or her salary. Thus, this fractional increase is, in fact, just slightly higher than the compensation rates of other MWs.

## Experiments

ILO-VGCL pilots on multi-employer bargaining agreements (MEBAs):

Genuine collective bargaining is rare in Vietnam. According to the VGCL, over 60% of unionised enterprises have been covered by CBAs. However, a survey by FES and VGCL in 2015 found that only 15% of the effective CBAs result from real negotiations.<sup>49</sup> One of the reasons for the shortage of genuine collective bargaining is the weakness of the enterprise unions. Therefore, since 2014, ILO Vietnam and VGCL have started the pilot projects on multi-employer bargaining, which aim to use the upper-level unions (provincial, district or industrial-zone unions), which are supposedly stronger than the enterprise unions and independent of the employers, to negotiate with the employers. By 2016, there had been three successful pilots: the agreement of seven electronic companies in Hai Phong; the agreement of four tourism companies in Da Nang and the agreement of four garment companies in District 12 of Ho Chi Minh City. In the agreement of garment companies in District 12, the Federation of Labour of District 12 represented the enterprise unions of the four companies in negotiations with the management.<sup>50</sup>

The four companies in the District 12 pilot included two Korean firms and two Vietnamese private companies. The pilot agreement covered 3,352 employees and had a term of one year. However, the benefits gained for the workers from this MEBA were not significant. The key provisions of the agreement included an attendance allowance of 500,000 VND per person/month (or USD 22 per person/month) and meal allowance of at least 13,000 VND per person/day (or USD 0.60 per person/day). These provisions were the same as or slightly higher than the allowances already paid in these four companies. There was no agreement on wages, bonuses and other working conditions.<sup>51</sup>

### **CNV-VGCL pilot project on multi-employer bargaining:**

In 2018, CNV International and VGCL jointly started a pilot project to promote social dialogue and multi-employer bargaining in the garment companies in the Van Lam district of Hung Yen, a neighbouring province of Hanoi. The project used a bottom-up approach in which each participating company nominated a core group, including three representatives from management, enterprise union leadership, and rank-and-file workers. The core groups received training from CNV and VGCL on how to conduct dialogue. Van Lam district unionists also visited the garment companies to encourage effective dialogues. After the first phase, the project managed to persuade five companies (made up of four private Vietnamese companies and one Japanese one) to join the multi-employer bargaining agreement. The agreement covered nearly 4,000 workers and stipulated the following benefits for workers: a 13th-month wage bonus; a bonus for initiatives and emulation; a 'Shifts Meal Allowance'; breaks during shifts; monthly menstruation allowance for female employees; the improvement of legal knowledge for employees; the organisation of sightseeing, tourism and extracurricular activities. The project is expanding to Ho Chi Minh and Dong Nai. Fair Wear suppliers in those provinces are encouraged to join.

### **Better Work Vietnam aims to reform enterprise union leadership:**

Better Work Vietnam (BWV) is a project by ILO and IFC. In Vietnam, the project focused first on the garment sector and has since expanded to the footwear industry. BWV now has over 400 garment compa-

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<sup>49</sup> Do, 'Multi-employer Bargaining Agreements', 7.

<sup>50</sup> Ibid., 8

<sup>51</sup> ILO, 'Evaluation of Industrial Relations Pilots', 2016.

nies as members, accounting for nearly 30% of the labour force of the industry. With the goal of promoting international labour standards, BWV has conducted a number of initiatives to improve labour-management dialogue and freedom of association. The first was the PICC (Performance Improvement Consultative Committee) model, which has been implemented in all member companies to facilitate labour-management dialogue on work-related issues. On top of the management and the union representatives, the members of PICC also include worker representatives elected by the rank-and-file workers at the production-line level.<sup>52</sup> The PICC model encourages increased participation of the rank-and-file workers separate from the official union officers. However, it should be noted that there has been criticism about how the PICCs are actually formed and managed in Better Work companies. Some research has found that the Korean managers of Better Work factories joined PICC meetings because of pressure from buyers rather than their own needs.<sup>53</sup> Researcher Mark Anner ascertained that most of the worker representatives of PICCs have not been properly elected, represented, protected and empowered, which has affected the positive impact of this model on labour relations.<sup>54</sup>

In a further step, since 2016, Better Work Vietnam has also urged its 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 management, as well as the VGCL officials, who argued that rank-and-file workers may not be capable enough to serve as union chairpeople.<sup>55</sup> However, since brands have requested compliance and Better Work plans to publicise member factories' violations, there has been improvement among its members to remove management from the enterprise unions.<sup>56</sup>

### 5.3 LOCAL GRIEVANCE MECHANISMS FOR WORKERS

Each company develops its own complaint process, which ranges from suggestion boxes to labour-management meetings. If the internal grievance mechanism fails, the complainant can request the assistance of the district labour mediator to resolve the grievance (as stipulated in Chapter 14 of the 2012 Labour Code). If the grievance cannot be resolved through mediation, the complainant may bring the case to the local civil court.

### 5.4 STATE ROLE IN INDUSTRIAL RELATIONS

The state provides the mechanisms for mediation and arbitration of collective labour disputes. Collective labour disputes are categorised into rights-based disputes (i.e. disputes over violations of labour rights) and interest-based disputes (i.e. disputes over demands for higher-than-law benefits) in accordance with the Labour Code. A rights-based dispute is first referred to the District Labour Mediators for mediation. If mediation is unsuccessful, the dispute is referred to the Chairman of the People's Committee at the district level. If a settlement is reached at this level, the dispute is resolved. In the case of failure to resolve the dispute, the dispute is referred to the People's Court.

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<sup>52</sup> For more information about PICC model, see: ILO, 'Better talk leads to better work', 2014.

<sup>53</sup> Do, 'Vietnam Labour Relations Report', 2017.

<sup>54</sup> Anner, 'Wildcat strikes and Better Work Bipartite committees in Vietnam', 2017.

<sup>55</sup> Interview with Better Work Vietnam representative, August 2016.

<sup>56</sup> Better Work Vietnam, 'Garment industry 8th compliance synthesis report', 2017.

An interest-based dispute is also referred to the District Labour Mediators for mediation. If unsuccessful, the dispute is referred to the Labour Arbitration Council. In the event of unsuccessful settlement, a union may initiate the process to go on a strike after three days.

Starting on 1 January 2021, when the new Labour Code comes into effect, a rights-based dispute is no longer required to be referred to the Chairman of People's Committee at the district level, but can be referred directly to the Labour Arbitration Council.

## Mechanisms for social dialogue (national/sectoral)

The 2012 Labour Code and the 60/2013/ND-CP Decree on Grassroots Democracy made regular labour-management dialogue compulsory. All enterprises with 10 or more employees are required to publish the grassroots democracy regulations, and to organise quarterly labour-management dialogues and an annual workers' congress. Grassroots in this context refers to the factory union, as opposed to 'bottom up' or worker led. According to the MOLISA report on the implementation of the 2012 Labour Code, 60% of the unionised enterprises have developed grassroots democracy regulations.<sup>57</sup> A survey of 139 enterprises by the MOLISA in 2016 showed that 30% of the surveyed companies have organised dialogues every month; 52% have organised dialogues every quarter; 4% have organised dialogues every six months and 14% have organised dialogue once a year. However, the quality of these workplace dialogues has not met expectations, according to the MOLISA, as many enterprises conducted dialogues as a formality without actually engaging workers.<sup>58</sup> The enterprises found the provisions on workplace social dialogue rigid and difficult to implement, as social dialogue requires different forms and frequency depending on the needs of each company. As a result, Decree 60/2013/ND-CP was replaced by Decree 149/2018/ND-CP, which grants enterprises the freedom to decide the forms and frequency of dialogues in their own grassroots democracy regulations.

According to recent empirical studies on social dialogue in the manufacturing sector, genuine labour-management dialogue and effective grievance handling are rare.<sup>59</sup> The weakness of the enterprise unions is mostly to blame for this. Enterprise unions are rarely engaged in dialogue with the management on workers' behalf, nor do they address worker grievances. The shortage of effective channels for labour-management dialogues and grievance-handling in these companies is also an issue. The management usually places responsibility on team supervisors to communicate with workers and handle their grievances, without providing a proper dialogue system.

The revised Labour Code, which goes into effect starting on 1 January 2021, requires workplace social dialogue to be organised once a year or when there is a request from either the employer or the employees. It also requires employers to consult with worker representative organisations in the following cases:

- » The employer unilaterally terminates the labour contract when the employee repeatedly fails to perform his/her work according to the criteria for assessment of the employee's fulfilment of duties established by the employer;
- » The employer changes its structure or its technology, or changes due to economic reasons;

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<sup>57</sup> MOLISA, 'Hô sơ đề nghị xây dựng Bộ luật Lao động', 2018,

<sup>58</sup> Ibid.

<sup>59</sup> Do, 'Vietnam Labour Relations Report' 2017.

- » The employer establishes its wage scales, wage policies, labour norms, bonus policies, and labour regulations;
- » The employer suspends an employee from work because they have violated company regulations; the violation is of a complicated nature and the continued presence of the employee at the workplace is deemed to cause difficulties for the investigation.

At the national level, there are two social dialogue mechanisms: one is the National Labour Relations Committee (NLRC); the other is the National Wage Council. The National Wage Council meets once per year to discuss the new minimum wage rate and evaluate the impacts of minimum wage on various policy areas such as economic development, employment and social equity, among others. The National Labour Relations Committee meets every quarter or when an emergency issue arises. The National Labour Relations Committee is focused on labour relations policy and legislation, labour relations in the workplace, and strikes. Both mechanisms are tripartite, with representatives from the MOLISA, VCCI/VCA, and the VGCL.

## 6. Implementation of the Fair Wear Code of Labour Practices

*The most challenging standards for garment companies in Vietnam to comply with are stipulations on freedom of association and collective bargaining, reasonable working hours (overtime) and payment of a living wage.*

### 6.1 EMPLOYMENT IS FREELY CHOSEN

*“There shall be no use of forced, including bonded or prison, labour”.*  
(ILO Conventions 29 and 105)



#### Official statistics on compliance

The Government of Vietnam does not publish any official statistics or reports on forced labour. According to the International Labour Organization<sup>60</sup> and the International Labour Rights Forum,<sup>61</sup> there were charges of forced labour in Vietnamese drug detention camps and among international migration programmes. However, there has not been a public report on forced labour in Vietnam's textile and garment industry.

#### Laws and regulations

On 8 June 2020, the National Assembly of Vietnam voted overwhelmingly in favour of ratifying Convention 105. Once it has deposited the required instructions, a revised labour code, the country will have officially ratified the convention. This fundamental labour standard will come into force after one year. The Labour Code will provide a regulation of labour contracts.

The revised Labour Code, which comes into effect on 1 January 2021, includes the following:

Types of employment contracts (Article 20) there are two types of employment contracts: indefinite-term contracts (for unlimited duration) and fixed-term contracts (for limited duration of maximum 36 months). If a worker continues working after the expiration of a fixed-term contract, both parties must sign a new employment contract within 30 days. Failing this, the contract will automatically become an indefinite term contract.

▶ The right of an employee to unilaterally terminate the employment contract (Article 35): An employee shall have the right to unilaterally terminate the employment contract without reason, but the employee must notify the employer for a period of 45 days/30 days/ three days depending on his/her type of employment contract. There are seven exceptions where prior notice is not required of an employee, namely when they: (1) have been assigned the incorrect job; (2) have not been paid in full or on time; (3) have been abused or beaten by the employers, have been the victim of abusive acts that affect their health,

<sup>60</sup> ILO, 'Stopping Forced Labour', 2001.

<sup>61</sup> 'Forced Labour in Vietnam: International Labour Rights Forum'.

dignity or honour, have been forced into labour; (4) have been sexually harassed; (5) have been prescribed termination of work by a doctor, for example, in case of pregnancy; (6) have reached the prescribed retirement age, unless otherwise agreed by both parties; (7) or have been provided with dishonest information by the employer regarding the implementation of the labour contract.

## Stakeholder views and implementation analysis

There are concerns regarding the issues of involuntary overtime and toilet access restriction in the Vietnamese garment industry. According to a VGCL informant, in some garment companies, the supervisors pressured workers to sign overtime consent forms, which are legally required to be voluntary. Supervisors have been found to manipulate workers to accept overtime, whether they want it or not (interview with Nguyen Minh Tien, Deputy Director of the VGCL Institute of Workers and Unions, Fair Wear Foundation country study 2015).

The ERC also found cases in which team leaders swiped identity cards of workers at the end of shifts, faking records of working hours while forcing workers to do overtime without their consent (ERC-VCCI Survey of Garment Industry, 2009). ILO Better Work Vietnam found no case of forced labour in its latest Compliance Report (2019).

According to the VGCL informant, there is no formal limit of toilet access but workers must have permission from supervisors to go to the toilet. To ensure the productivity of whole lines, the supervisors do not always allow workers to leave. Some garment companies, however, complained that workers went to the toilet too often and for too long, severely affecting production.

## Main Fair Wear audit findings over the last three years

Fair Wear auditors in Vietnam rarely find cases of proven forced labour, especially in the formal economic sector. This is a result of a shortage of cheap and skilled labour. Factory managers can usually present personnel documents showing the labour contracts signed by workers. Auditors do not usually find workers that have a debt with the factory. Wages are usually paid on time and by bank transfer. However, auditors do report problems of forced overtime in Vietnamese garment factories. In addition, some factories have restricted the freedom of movement of workers by using cards for toilet access, to prevent workers going to the toilet whenever they want.

## Worker complaints related to freely chosen employment

Since the activation of the Fair Wear complaints helpline, there have been 13 complaints of employers contravening the freely chosen employment required by the Labour Code. Some of these cases are linked to forced overtime; in such cases, workers were required to work overtime without their consent.

Some cases are linked to requirements around freedom of resignation stipulated in the Labour Code. Often factory supervisors and managers do not accept resignation requests from workers. In such cases, though it is not exactly forced labour, workers have to continue working if they want to earn a revenue, instead of following a resignation process that would allow them to look for another position elsewhere. Thus these situations also contradict the Labour Code stipulations on freely chosen employment.

Here are two examples of complaints related to freely chosen employment. These were reported by workers at factories that supply a Fair Wear member brand. One complaint is from November 2018 and the other from December 2018.



## 6.2 DISCRIMINATION IN EMPLOYMENT

*“In recruitment, wage policy, admittance to training programs, employee promotion policy, policies of employment termination, retirement, and any other aspect of the employment relationship shall be based on the principle of equal opportunities, regardless of race, colour, sex, religion, political affiliation, union membership, nationality, social origin, deficiencies, or handicaps”. (ILO Conventions 100 and 111)*



### Official statistics on compliance

In recent years, Vietnam has made progress in closing the gender gap in employment. In fact, Vietnam was ranked higher than other garment-producing countries such as China, India, Bangladesh or Cambodia in terms of gender equality in employment. The table below offers a comparison of gender equality indicators across Vietnam, China, and Bangladesh.

**Table 7: Gender Equality Indicators of Vietnam, China and Bangladesh**

Indicators	Vietnam	China	Bangladesh
The Global Gender Gap Index 2020 rankings <sup>62</sup>	88	106	50
Wage equality for similar work rank, 2018 <sup>63</sup>	71	74	105
Gender Inequality Index (2018 Rank) <sup>64</sup>	68	39	129

According to the annual Better Work report from 2019, gender-based discrimination remains a significant concern for the industry, in part because much of it remains hidden in the shadows and is highly difficult to uncover.<sup>65</sup> BWV has found that understanding of the issues is generally weak among both managers and workers, and misplaced assumptions and stereotypes—for example, about the effects of pregnancy on productivity—remain commonplace.

In total, 31 factories (9%) were found to be discriminating on grounds of gender, most commonly by indicating a preferred sex in vacancy notices or internal recruitment procedures (17 cases), by testing pregnancy status during recruitment (using quick sticks), and by requiring workers to sign non-pregnancy clauses as a condition for contract renewal. Meanwhile, six factories were cited as noncompliant for changing worker bonuses during pregnancy or deferring salary increases due to workers being on maternity leave. Many

<sup>62</sup> World Economic Forum, ‘Global Gender Gap’, 2020.

<sup>63</sup> World Bank Group, ‘Wage equality between women and men for similar work’.

<sup>64</sup> Conceição, ‘Beyond income, beyond averages, beyond today’, 2019.

<sup>65</sup> ‘Better Work Vietnam: garment industry 10th compliance synthesis report’, 2019.

factories justify this on the grounds of work time requirements, with pregnant and nursing workers disrupting production flows and damaging overall productivity for their whole line.

One form of discrimination that has become apparent recently is the development of policies and regulations by employees that negatively impact women who have taken time away from work for pregnancy or maternity. For example, production targets are equal for both male and female workers, while the latter are legally entitled to reduced working hours from the seventh month of pregnancy onwards, or when breastfeeding a child of less than one year old; attendance allowance is forfeited if women take leave for prenatal checks; 13th-month salary and wage increments are tied to actual attendance, and do not factor in six months of maternity leave. These practices have contributed significantly to the gender pay gap during motherhood and are considered discriminatory. Although Better Work is not yet flagging these practices as noncompliant because these issues have only recently been brought to the attention of employers, Better Work has made concerted efforts to raise awareness and drive behavioural change, through sensitisation workshops, industry seminars and direct advisory sessions with management and workers in affected factories.

Sexual harassment at work is a serious form of gender-based discrimination and a major area of concern in the garment industry. Although statistical information is treated sensitively in Vietnam, anecdotal reports and external research suggest that sexual harassment is a more widespread issue than commonly acknowledged, both in the garment sector and society at large. However, the nature and setting, social behaviour and existing legal regulations surrounding this issue make it extremely difficult to investigate and verify sexual harassment at the workplace.

## Laws and regulations

Under the Vietnamese constitution, male and female citizens have equal rights in all fields. No one is the subject of discriminatory treatment in political, civil, economic, cultural or social life.

Workers have the right to work and they can freely choose the type of occupation or employment they want to engage in. They are free to choose the vocational training they want to enrol in to improve their professional skills. Discrimination is prohibited on the grounds of sex, race, social class, marital status, belief, religion, HIV status, disability or participation in the union activities in the workplace. Discrimination because of being a member of a trade union is also prohibited, and any acts causing disadvantage to workers related to the establishment, participation in or operation of a trade union are also considered discrimination and thus prohibited.

Discrimination based on gender or marital status is also prohibited. Men and women must be treated equally in the workplace; employers must not discriminate between men and women for recruitment, employment, working hours, rest time, advancement in wage grades and remuneration. The 2019 amended Labour Code, which is effective as of 1 January 2021, has a chapter on women workers. Women workers have equal working rights, and it is the responsibility of an employer to create favourable working conditions for them (Art. 135&136). Necessary measures for ensuring gender equality and the prevention of sexual harassment in the workplace must be implemented. The Labour Code determines that employers are responsible for assisting in building day care facilities and kindergartens or covering a part of the childcare expenses incurred by employees. Employees who are breastfeeding must agree to working at night or overtime.

## Stakeholder views and implementation analysis

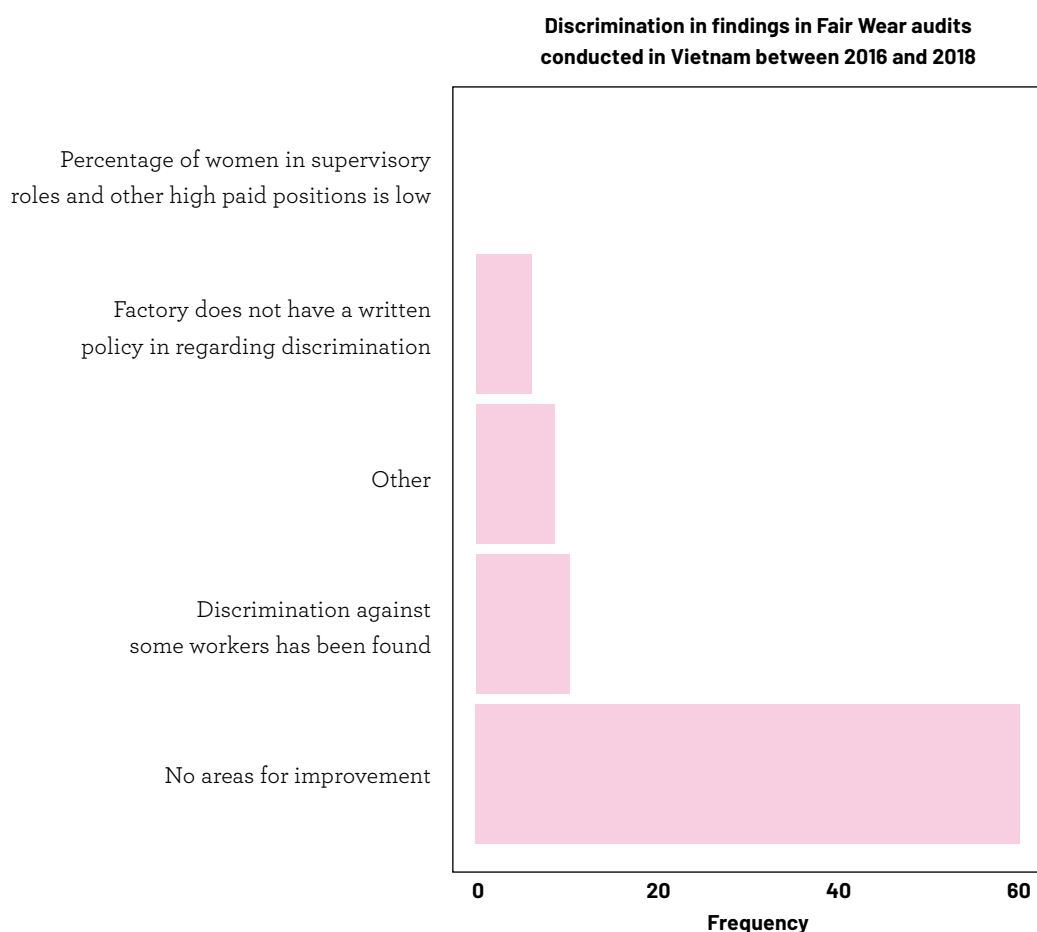
Gender-based discrimination: According to the 2015 Survey by Marie Stopes International (MSI), many factories provided an equal number of toilets for men and women workers even though the latter account for over 80% of the labour force of garment and footwear firms. Women workers, therefore, had longer waiting times for toilet access, which tended to affect their productivity. Consequently, a number of women workers admitted that they limited their own use of toilets, which resulted in an increase of gynaecological infections.

## Main Fair Wear audit findings (2016–2018)

Between 2016 and 2018, Fair Wear conducted 79 factory audits in Vietnam.

It is worth noting that most of the Fair Wear audits in Vietnam did not find violations to the anti-discrimination standard of the Fair Wear Code of Labour Practices (see ‘No areas for improvement’ in Figure 7). This was the case for 58 of the 79 factory audits.

**Figure 7: Discrimination in findings in Fair Wear audits conducted in Vietnam between 2016 and 2018**



One of the 11 cases of discrimination was unrelated to gender and instead involved a factory with a case of discrimination based on age.

The other 10 cases of discrimination were based on gender; factories required women to sign commitments to not get pregnant for a specific period of time after commencing their employment at the factory. This period ranged from six to 24 months. This discriminatory policy often required women take a pregnancy test before signing the employment contract.

Six of the eight factory audits with ‘other’ findings stated cases of factories not allowing women workers a 30-minute break during their menstruation and not providing childcare support. In one of the factories with an ‘other’ finding, in which Fair Wear auditors found a case of unfair disciplinary actions, a woman worker was fired because she nursed her baby during her break. In the eighth factory audited with an ‘other’ finding, there was discrimination that was not based on gender.

Six factory audits found that factories did not have a written policy regarding discrimination in employment. To address this type of noncompliance, Fair Wear drafts a ‘corrective action plan’ that requires factories to develop and implement a written policy on discrimination and to communicate it to all workers.

## Worker complaints related to discrimination in employment

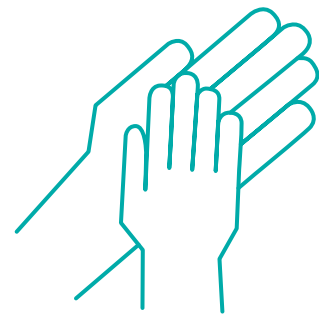
Since the activation of the complaints helpline, four complaints cases were filed related to this labour standard. One case was about the contract termination of a pregnant worker, and another was about a factory not allowing workers older than 35 to have contracts for longer than three months of employment.

Here is an example of a complaint related to discrimination in employment. This was reported in 2017 by a worker at a factory that supplies Fair Wear member brands.

### 6.3. NO EXPLOITATION OF CHILD LABOUR

*“There shall be no use of child labour. The age for admission to employment shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years.” (ILO Convention 138)*

*“There shall be no forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour. [...] Children [under the age of 18] shall not perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals”. (ILO Convention 182)*



## Official statistics on compliance

The Child Labour Index 2019 identifies 27 countries as having an ‘extreme risk’ in terms of child labour.<sup>66</sup>

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<sup>66</sup> ‘Progress on child labour flatlining: Verisk Maplecroft,’ 2019.

The purpose of the index is ‘to enable companies to identify where the risk of association or complicity with child labour is highest in their supply chains, and measures the frequency and severity of violations, a country’s adoption of laws and international treaties, and its ability and will to enforce them.’<sup>67</sup>

The highest ‘extreme risk’ countries are North Korea, Somalia, South Sudan, Eritrea, Central African Republic, Sudan, Venezuela, Papua New Guinea, Chad and Mozambique.

The ‘high-risk’ country list is much longer, comprising 82 countries, including important players in the garment industry India and China. Likewise, Vietnam has a high risk of child labour (due to economic needs). This has remained stable over the past years.

**Table 8: Child labour risk based on indicators for India, China, and Vietnam**

	India	China	Vietnam
Child labour Index 2019	47/198	98/198	81/198
Global Slavery Index 2018 rank <sup>68</sup> (ranking in terms of slavery prevalence)	53/167	111/167	77/167

According to the ‘Global Slavery Index 2018’, countries use various terms to describe modern forms of slavery. This includes how they describe slavery itself, but also other concepts such as human trafficking, forced labour, debt bondage, forced or servile marriage, and the sale and exploitation of children.<sup>69</sup>

## Laws and regulations

The minimum age for employment is 15 years. Children between 13 and 15 years of age can be hired to perform light work only. In order to hire workers between 13 and 15 years of age, the employer must sign a contract with legal representatives of the young worker and in agreement with the young worker; arrange the working hours as such that they do not affect the schooling of the worker’s schooling; and ensure that the working conditions, labour safety and hygiene is appropriate for the age of the young worker.

Employment of young workers is prohibited in the following jobs: carrying and lifting heavy objects beyond the physical condition of the underage person; producing and using or transporting chemicals, gases, explosives; maintenance of equipment and machinery; demolition of buildings and construction sites; heating, blowing, casting, rolling, stamping, and welding metals; diving, offshore fishing; and other work that may harm the health, safety or the ethics of the underage person. Employment of young workers is prohibited in the following workplaces: underwater, underground, caves and tunnels; construction sites; slaughter facilities; casinos, bars, discos, karaoke rooms, hotels, motels, saunas and massage rooms; and other workplaces harming the health, safety or the ethics of the underage person.

<sup>67</sup> Ibid.

<sup>68</sup> ‘The 2018 Global Slavery Index: The Walk Free Foundation’, 2018.

<sup>69</sup> Ibid.

The working hours of young workers (less than 15 years of age) cannot exceed four hours per day and 20 hours per week. Overtime and nocturnal work is prohibited for young workers. Also, young workers must not be employed to produce or trade in alcohol, wine, beer, tobacco, mind-altering substances and other drugs. Employers are required to provide opportunities for their young employees to take part in labour and cultural education.

## Stakeholder views and implementation analysis

A 2019 Better Work report noted having found two cases of child labour (i.e. workers under 15): one involving a teenager working for a catering service subcontractor (working in a Better Work factory), and another involving two teenagers recruited as temporary sewing assistants four months short of their 15th birthdays.<sup>70</sup> Both cases were handled in accordance with the ‘zero tolerance protocol’ of the programme, which involves immediate reporting to the MOLISA, followed by investigation and a process of remediation whereby the factory agrees to pay for the return of the child to education, the employee guarantees him/her a job upon reaching the legal age of employment, and the company makes improvements in their system to prevent future recurrence.

Similarly, three cases were found of workers between 15 and 18 years of age—juvenile workers—engaged in hazardous (i.e. prohibited) forms of work for subcontracted suppliers. Such issues stem from inadequate age-verification systems and a poor oversight of supplier compliance by first-tier factories, which in these cases led to the assignment of hazardous work roles to juvenile workers. Juvenile workers fall under protection of labour laws preventing them for example from doing hazardous work or working overtime.

While the incidences of child labourers or juvenile workers performing hazardous work remain scarce among Better Work factories (accounting for less than 1% of the total number of factories in the sample), their risk remains ever present. Approximately 7% of factories do not have a reliable system for age verification during recruitment of workers, while 6% do not establish adequate records of workers under 18 years of age. These lapses appear particularly common for temporary workers and can also lead to further violations under the child labour cluster, such as excessive working hours for young workers.

## Main Fair Wear audit findings from 2017–2020

Fair Wear audits have not revealed cases of child labour in garment producing companies in the formal sector, especially among export-oriented businesses. However, in some cases, juvenile workers were found to be employed with temporary contracts. In those cases, the juvenile workers should have been registered with the labour bureau and worked under the protection of legal provisions (for instance, without overtime hours). The use of fake documents during the application process for jobs in the garment industry is common. It is for that reason that, if a factory does not have an effective age-verification system, there is a risk of hiring young workers without providing them with legally-required special protections.

In 2018, one case of child labour was discovered in a garment factory. A Fair Wear member visited the factory in question. After investigation, Fair Wear representatives discovered that there was a 14-year-old worker at the factory, who, by law, was not allowed to work—as work in garment factories is not considered

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<sup>70</sup> ‘Better Work Vietnam: garment industry 10th compliance synthesis report’, 2019.

light work. The parents of the child worked at the factory and had convinced the manager to allow her to work. Fair Wear and its members brands agreed on a remediation plan which guaranteed (i) that the child would not work until she reached the legal age to do so, instead enabling her to visit a school/vocational training until her 15th birthday and allowing her to regain a position at the factory after her 15th birthday, should she wish to work in the factory again; (ii) her parents would be paid monthly compensation that amounted to the minimum wage from the date of the commencement of the employment of the child until her 15th birthday (paid to reduce the risk that the child be put back to work because of financial hardship within the family); and (iii) that the factory would improve its hiring policy with regard to legal working age compliance.

## 6.4. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

*“The right of all workers to form and join trade unions and bargain collectively shall be recognised.” (ILO Conventions 87 and 98) “Workers’ representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to carry out their representation functions”. (ILO Convention 135 and Recommendation 143)*



### Official statistics on compliance

Since there is only one national trade union organisation in Vietnam—the Vietnam General Confederation of Labour (VGCL)—statistics on unionised workers and factories do not represent applicable representation of freedom of association.

There were over 5,800 strikes in Vietnam between 1995 and 2018, none of which followed the legal procedures for strike organisation or were led by the official trade unions. The textile and garment industry had the highest incidence of strikes. In 2018, it accounted for 39.25% of total strikes nationwide.

### Laws and regulations

All trade unions in Vietnam must be affiliated with the Vietnam General Confederation of Labour. Article 10 of the 2013 constitution provides that VGCL has the mandate to represent all Vietnamese workers. Workers have the right to join a union; however, enterprise unions must be affiliated with the VGCL. This is an example of one of the most pervasive violations by employers in Vietnam, since workers are not given the right to establish a union of their choice.

However, under the pressure of the commitments to the CPTPP and EVFTA, the Vietnam government ratified ILO Convention 98 on the right to collective bargaining in June 2019 and committed to ratifying ILO Convention 87 on Freedom of Association by 2023. Although the ILO Convention 87 has not been ratified, the establishment of independent unions has been incorporated into the amended Labour Code of 2019.

At the enterprise level, workers have the right to establish, join and operate trade unions or a representative organisation. The establishment, operation or disbandment of a grassroots union should follow trade union law. The establishment of a Worker Representation Organisation (WRO) must be approved by the appropriate authorities. The guidelines for registration, operation and disbandment of a WRO will be issued in late 2020.

The District Federation of Labour and the Provincial Federation of Labour are WROs at the higher level. The VGCL is the only recognised, national trade union. The establishment of other WROs at enterprise level or at levels higher than district or provincial has not been allowed.

Employers are prohibited from discriminating against workers who establish or participate in WROs. Employers are also prohibited from interfering with or influencing the establishment, election, planning and operation of WROs. This includes the use of or the withdrawal of financial support or other economic measures to neutralise or weaken the functions of WROs, or the discrimination of the WROs. Employers have an obligation to recognise and respect the rights of lawfully established WROs.

## Stakeholder views and implementation analysis

Similar to China, at present there is only one legally recognised trade union organisation in Vietnam—the Vietnam General Confederation of Labour (VGCL).

The MOLISA conducted a survey of 139 enterprises in 2016 that showed that 30% of the surveyed companies have organised dialogues every month; 52% have organised dialogues every quarter; 4% have organised dialogues every six months and 14% have organised dialogues once a year.<sup>71</sup> However, the quality of these workplace dialogues has not met expectations, according to the MOLISA, since many enterprises conducted dialogues as a formality without actually engaging workers. The enterprises found the provisions on workplace social dialogue rigid and difficult to implement, since social dialogue requires different forms and frequency depending on the needs of each company. As a result, Decree 60/2013/ND-CP was replaced by Decree 149/2018/ND-CP, which grants enterprises the freedom to decide for themselves the forms and frequency of dialogue in their own grassroots democracy regulations.

According to recent empirical studies on social dialogue in the manufacturing sector, genuine labour-management dialogue and effective grievance handling are rare.<sup>72</sup> One of the main reasons for this is the weakness of the enterprise unions, which rarely engage in dialogue with management on the behalf of workers nor address worker grievances. Another reason is the shortage of effective channels for labour-management dialogues and grievance-handling in these companies. Management usually relies on team supervisors to communicate with workers and handle their grievances without providing them with a proper dialogue system to do so. (Fair Wear, Vietnam report on industrial relations, 2019)

There is a shortage of genuine collective bargaining in Vietnam, mostly because of the interference of factory management with the operations of grassroots trade unions. Grassroots trade union leaders are often human resource managers or hold high or middle-level management positions within the garment factories. The number of wildcat strikes which are not initiated by trade unions is high (over 6,000 cases

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<sup>71</sup> MOLISA, 'Hô sơ đề nghị xây dựng Bộ luật Lao động', 2018.

<sup>72</sup> Do, 'Vietnam Labour Relations Report', 2017.



from 1995 to date), showing that workers do not feel their rights and concerns are addressed through the existing trade unions system. According to the VGCL, over 60% of unionised workplaces were covered by firm-based CBAs by the end of 2018. Despite the high rate of CBA coverage, the quality of the firm-based CBAs has raised concerns from within and outside of the VGCL system. According to the Industrial Relations Department of VGCL, only 11.05% of the registered firm-based CBAs can be categorised as Type A—following the collective bargaining procedures and providing significantly higher wages and better working conditions for workers. The remaining CBAs were mainly copied from the labour legislation without engaging in a real bargaining process. Meanwhile, it should also be noted that the representation of employers is patchy and fragmented. Business associations cover a small number of local businesses that are of bigger sizes, while the small and medium-sized enterprises are not part of these associations. This further limits the scaling up of social dialogue efforts in the garment industry.

Better Work Vietnam, for instance, found a significant number of member companies that manipulated union activities (see Table 9). It is common for high-ranking managers such as HR managers or deputy directors to serve as union leaders or even union chairpersons. This occurs not just in the garment industry but in other industries across Vietnam.

**Table 9: Interference and discrimination against union activities and officials, ILO Better Work Vietnam, 2018**

Question	# Factories found noncompliance (out of 331)	Noncompliance rate by question
Is the employer involved in union decision-making, the formation of its constitution and rules, in union activities, administration, finances or elections?	101	31%
Are workers free to meet without management present?	5	2%
Has the employer tried to interfere with, manipulate or control the union(s)?	4	1%
Has the employer terminated the union officially, without the written agreement of the union board or the higher level union?	0	0%

Source: Better Work Vietnam Annual Report 2019<sup>73</sup>

Collective bargaining is widely regarded as a formality rather than the outcome of real negotiations between workers and employers. According to the VGCL informant, most workers do not know the contents of the active CBAs at their companies.

Better Work Vietnam also found that collective bargaining is an area of high level of noncompliance among their member companies. Forty-one percent of factories fail to comply in some manner with the legal requirements for collective bargaining. In addition, many factories do not make the CBA publicly available for workers or have failed to implement all the provisions of the CBA. A quarter of the assessed factories (80

<sup>73</sup> 'Better Work Vietnam: garment industry 10th compliance synthesis report', 2019.

out of 331) did not consult workers on at least one of the issues that are legally required to be discussed, such as the OSH plan, PPE regulations, internal work rules, salary scale and work norms, bonus regulations, discipline of workers or the annual leave schedule. Almost a fifth of factories (18%) were not able to prove that at least 50% of workers had voted to approve their CBA.

While collective bargaining often results in more favourable terms and conditions for workers, implementation of the resulting agreements remains problematic in many factories. Almost all factories observed for this report (98%) had one active CBA in place at the time of the assessment, and the vast majority of these CBAs contained provisions for benefits or protections that go beyond the law, such as a 13th month salary and/or additional bonuses and allowances for attendance, transport, housing, public holidays and family events.

Only 4% of factory CBAs did not define any higher benefit or protection levels than those afforded by law or contained provisions that were not compliant with the law. However, a larger number of factories failed to deliver the commitments made in their CBA (8%) or failed to make the CBA publicly available to their workers (8%). In both cases, factory neglect served to undermine worker empowerment and awareness of the rights and entitlements enshrined in these agreements.

The table below looks at the occurrence of noncompliance on the right to collective bargaining in Better Work Vietnam's study.

**Table 10: Noncompliance with the Right to Collective Bargaining, Better Work Vietnam, 2019**

Question	# Factories found noncompliance (out of 331)	Noncompliance rate by question
Does the employer consult with unions, where legally required?	80	24%
Has the CBA in force been approved by more than 50% of the workers it covers?	61	18%
Has the employer implemented all provision of the CBA(s) in force?	26	8%
Has the employer made the CBA publicly available to all workers?	25	8%
If there is a CBA, does it provide more favourable terms and conditions for workers than the law?	13	4%

Source: Better Work Vietnam Annual Report, June 2019<sup>74</sup>

The sectorial CBA signed between VITAS and the national garment trade union in May 2017 offered a few benefits for workers, though workers did not benefit significantly. For instance, companies are required to pay at least 1.14 times more than the minimum wage and the meal allowance for Region 1 ranges from 11,000 VND to 14,000 VND per person. According to information gathered by the ERC and ILSSA informants at the time, other companies not covered by the sectorial CBA are paying higher rates than these. For instance, manufacturing companies in Ho Chi Minh City are offering meal allowances of 16,000-18,000 VND per person (Interview with Nguyen Huyen Le, ILSSA).

<sup>74</sup> Ibid.

## Main Fair Wear audit findings over the last three years

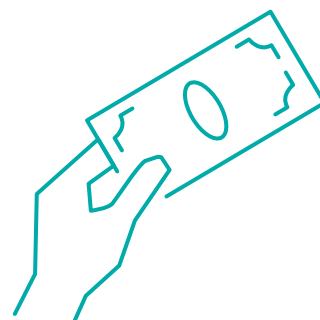
Fair Wear auditors have found unionised factories where the factory is part of the official trade union and approximately 90% of the workforce is a union member. Notably, these factory workers have, for the most part, not been allowed to form their own union. The union chairman is usually appointed by the factory management, who tend to appoint members of their own rank. Trade unions organise activities and gifts during national holidays. Though auditors have come across factories that hold regular dialogue meetings, cases of workers actively negotiating their rights is rare. Often there is low awareness among workers on trade union and collective bargaining rights. Recent audits have shown a gradual shift in workers' committees being formed by democratically chosen representatives.

## Worker complaints related to freedom of association and collective bargaining

Here is an example of a complaint related to this labour standard. This was reported in 2014 by a worker at a factory that supplies a Fair Wear member brand.

### 6.5 PAYMENT OF A LIVING WAGE

*“Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income” (ILO Conventions 26 and 131, the Universal Declaration of Human Rights, art 23(3) and art 25(1))”.*



*“Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted. Deductions shall never constitute an amount that will lead the employee to receive less than the minimum wage. Employees shall be adequately and clearly informed about the specifications of their wages including wage rates and pay period”.*<sup>75</sup>

## Official statistics on compliance

According to an ILO report in 2016, the rate of noncompliance with the minimum wage in the garment, textile and footwear sectors in Vietnam is the lowest among seven garment-exporting countries in Asia, at

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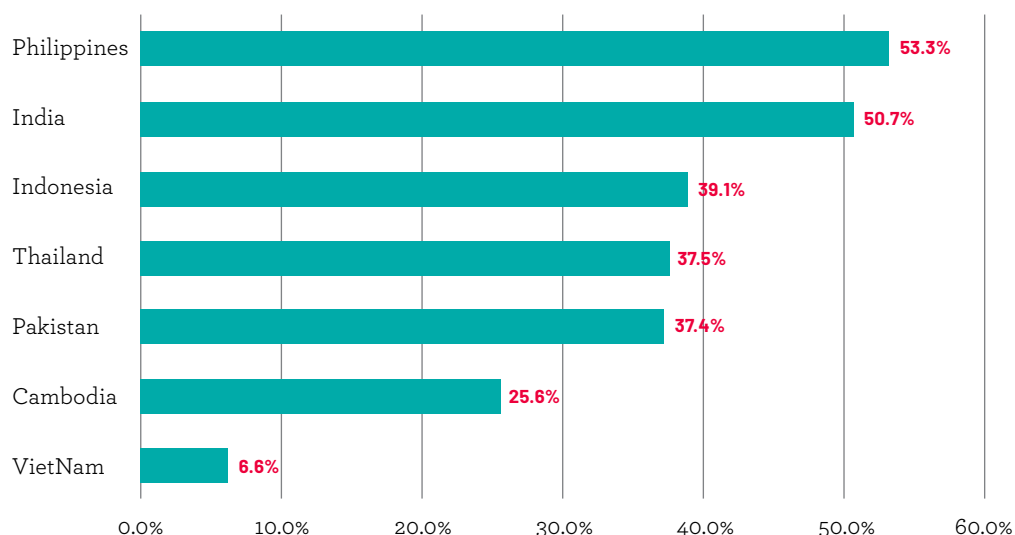
<sup>75</sup> 'International Labour Standards on Wages: International Labour Organization', n.d.

6.6%. This means that out of every 100 wage employees in this sector, 6.6<sup>76</sup> earn less than minimum wage.

This rate is far better than the noncompliance rate of the second lowest country in the list, Cambodia, which has a 25.6% rate. The 53.3% noncompliance rate in the Philippines is almost nine times higher than that of Vietnam.

Figure 8 below shows a comparison of minimum wage noncompliance.

**Figure 8 Non-compliance rates with the minimum wage in the garment sector (%)**



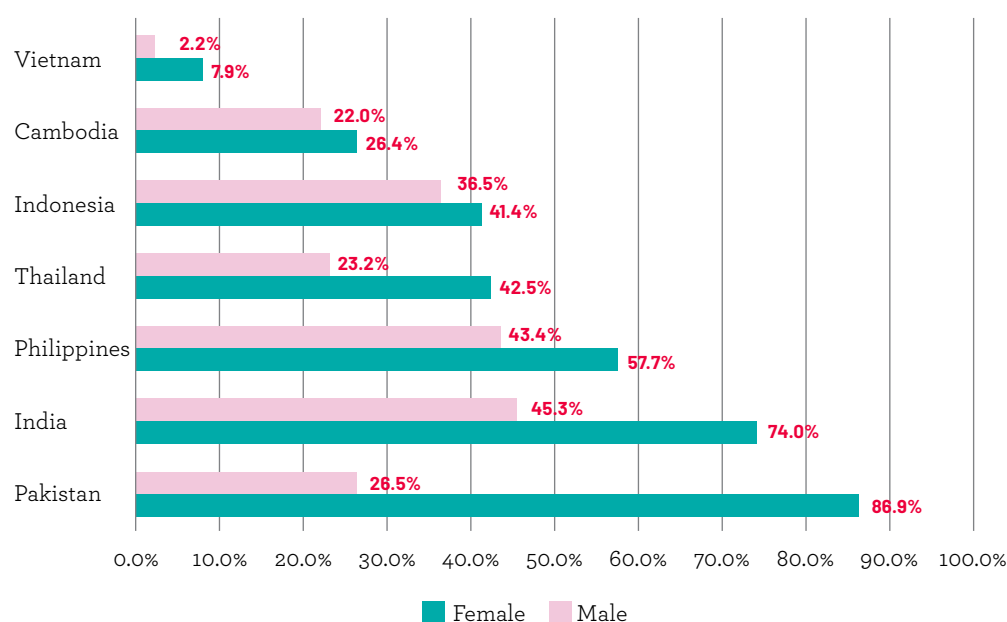
Source : Asia-Pacific Garment and Footwear Sector Research Note Issue 5 (ILO, August 2016)

Women are more likely than men to be paid below the minimum wage in the garment sector in each of the countries included in this brief (see Figure 9). This gender gap in compliance rates varies considerably between countries. The difference between noncompliance rates for men and women in Vietnam is relatively small, as seen in the figure below.

<sup>75</sup> 'International Labour Standards on Wages: International Labour Organization', n.d.

<sup>76</sup> Cowgill and Huynh, 'Weak minimum wage compliance in Asia's garment industry', 2016.

**Figure 9 Non-compliance rates with the minimum wage in the garment sector by gender, lower bound estimates (%)**



Source: Asia-Pacific Garment and Footwear Sector Research Note Issue 5 (ILO, August 2016)

## Laws and Regulations

Employee salaries must be equal or greater than the minimum wage. Minimum wage guarantees the fulfilment of minimum living standards for employees and their families and is based on the local social and economic conditions as well as the normal wage in the labour market.

Since 2013, the minimum wage announced by the government has been based on recommendations of the National Wages Council.

As 1 January 2020 onwards, the region-based minimum wage for unskilled workers will be as follows:

**Table 11: Minimum wages effective 1 January 2020<sup>77</sup>**

Region	Minimum Wage (VND/person/month)
Region 1	4,420,000
Region 2	3,920,000
Region 3	3,430,000
Region 4	3,070,000

<sup>77</sup> Governmental Decree 90/2019/ND-CP on regional minimum wages as of 2020

Wages can be determined by an agreement between the workers and the employer (employment contract) and through a CBA. However, wages cannot be lower than the legal minimum. The minimum wage of a trained worker must be at least 7 % higher than the regional minimum wage.

Payment of wages is to be made by employers based on time (on an hourly, daily or monthly basis), piece-work or completion of a task, provided that the chosen form of payment remains the same for a certain period. Employers must notify worker(s) at least 10 days prior to any payment change.

The 2019 Amended Labour Code determined that the government would no longer directly interfere in the wage policy of enterprises, giving enterprises full authority to establish their wage policies, for example in constructing their pay scales, payrolls and labour productivity norms. Stakeholders have voiced their concerns regarding this (see below).

## Stakeholder views and implementation analysis

According to the Better Work Annual Report for 2019, which compiled data from January 2017 to June 2018, most factories were compliant with minimum wage rules, with 9% of firms paying at least the legal minimum to their full-time and regular workers. Failure to comply is usually the result of minor technical oversights, such as the application of incorrect salary calculation formulas, or the miscalculation of minimum wage compensation for piece rate workers in months with less than 26 working days. In addition, with noncompliance rates of 2 and 3% respectively, most factories comply with the skills and hazardous allowance rules, while temporary workers are also paid as required in the vast majority of cases.

Three percent of factories made mistakes in the calculation of piece-rate wages when piece-rate earnings exceeded the minimum wage, 1% of factories failed to pay probationary workers at least 85% of the standard wage paid to a contracted worker in the same role, and 1% of factories failed to pay apprentices correctly in accordance with an apprenticeship contract. Aggregated, these violations generate a headline minimum wage noncompliance rate of 14%.<sup>78</sup>

The minimum wage of Vietnam is defined as ‘the lowest rate that is paid to the employee who performs the simplest work in the normal working conditions and that must ensure the minimal living needs of the employees and their families’ (Article 91.1 of the Labour Code).

Since 2013 the new minimum wage has been set by the National Wage Council (NWC) at the end of each year. The National Wage Council is a tripartite body with members from MOLISA, VGCL and VCCI/VCA. Each party consults its own members and develops a proposal for the new minimum wage. Then, at the annual NWC meeting, each party defends their proposal and negotiates the new minimum wage that will take effect at the beginning of the next year. The methodologies each party adopts to calculate their proposed minimum wage is as follows:

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<sup>78</sup> ‘Better Work Vietnam: garment industry 10th compliance synthesis report’, 2019, 25.

## VCCI

According to Vi Thi Hong Minh, Deputy Director of VCCI Bureau for Employers Affairs (BEA), VCCI uses the following ILO-proposed formula to calculate the percent of minimum wage (MW) increase:

$[\text{GDP growth rate} + \text{productivity growth rate}] - [\text{unemployment rate}] = [\text{percent minimum wage (MW) increase}]$ <sup>79</sup>

However, as Minh explained:

*‘The unemployment rate in Vietnam is unreliable due to the big agricultural and informal sector, so we only use [GDP + productivity]. Because the government set the target of minimum wage having to meet the minimum living needs by 2020, the minimum wage will increase slightly every year to close the gap between the minimum wage and the minimum living needs’.*

Based on this calculation, the proposal from the VCCI in 2019 was a 4% minimum wage increase. There was a lot of discussion within the association about this figure. Business associations such as VITAS, LEFASO and FDI believed that the productivity rate announced by the General Statistics Office was unreliable. Also, enterprises were already compensating workers for their productivity increase. The business associations therefore advocated for a minimum wage increase equal to the inflation rate.

## Trade Union (VGCL)

In 2019, the VGCL proposed a minimum wage increase of 6.52%. The VGCL conducts annual surveys of minimum living needs to determine their proposal for the new minimum wage. However, according to a VGCL informant, their proposals are influenced by political processes:

*‘There are a lot of political impacts on the calculation. Normally the leaders of VGCL agree upon a new MW increase rate. Then we conduct a survey. The survey outcome is then adjusted to validate the MW increase rate fixed by our leaders. For the survey, the VGCL contacts district trade unions in major provinces (covering all four regions). The district unions select companies (three FDIs, three garment factories, two electronics companies, etc.). They usually choose the bigger companies that are organised and pay well. Then we interview the companies to understand how much workers earn. Finally, we calculate the living needs of workers based on the food basket (see below) of the MOLISA, often calling on the local trade unions to quote local prices. The accuracy of such calculations is low’ (Interview with Nguyen Minh Tien).<sup>80</sup>*

## MOLISA

In principle, the Vietnamese government sets the national minimum wage based on the following four indicators:

1. The minimum living needs of a worker doing the simplest job under normal working conditions, who has children to feed. A system of minimum living needs includes staple foods and other foodstuffs calculated based on a shopping basket of necessary items that ensures an

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<sup>79</sup> ‘General Statistics Office of Vietnam’, n.d.

<sup>80</sup> Interview VGCL staff member

essential amount of calories for consumption by a worker, non-food needs calculated by taking a percentage of expenditure for non-food items in a family budget (based on statistics), and the necessities for children. Specifically, the current formula for calculating the minimum living needs is:

**Food:** 45% (including a basket of 54 essential foods) – to ensure the consumption of 2300kcal/person/day

**Non-food:** 55%

**Dependant:** 70% of adult food and non-food needs

2. Survey of the market wages paid to a worker without technical skills doing the simplest job under normal working conditions.
3. The national economic capacity (GDP) and the expenditure of funds by citizens.
4. Consumer Prices Index (CPI) compared to the general minimum wage at the time when it was last set.

A MOLISA informant, however, admitted that in 2019 they proposed a new minimum wage that is lower than the minimum living needs, to lessen the burden on enterprises. At the NWC meeting in 2019, the three parties agreed to an increase of 5.5% for 2020.

In 2020, the COVID-19 pandemic adversely affected the minimum wage negotiation process. The National Wage Council underwent two negotiation sessions, which saw big disagreements between its members. The VCCI and MOLISA proposed the postponement of the 2021 minimum wage increase. The VGCL proposed that negotiations be placed on hold until the beginning of the first or the second quarter of 2021 in case of disagreement, so that a decision could be made after July 2021, based on the actual situation at that time. However, the conference ended with nine of 13 NWC members voting in favour of postponing the increase adjustment. The representatives of VGCL refused to vote for this proposal. Consequently, the final proposal by the NWC to the government was to postpone the increase adjustment to 2021.

## Fair Wear main audit findings over the last three years

Many factories use a piece-rate system in which the monthly income of a worker is highly dependent on his or her productivity, skills and overtime hours. The impact of high and low seasons, therefore, has a big impact on wages. In some cases, workers only reach an estimated living wage when productivity bonuses and benefits have largely contributed to their monthly income.

In most cases, Fair Wear audits have found remuneration to be slightly above minimum wage. However, some factories do not pay the additional 7% required for trained or skilled workers or the additional 5% required for those working in heavy, hazardous or dangerous jobs. There is usually a big gap between living wage estimates collected by local stakeholders. The living costs vary immensely between different cities in North and South Vietnam and between rural and urban areas. Audits often uncover problems of leave and overtime payments not complying with local law. Most of the factories audited by Fair Wear paid the correct



overtime premium. Instead, the prevailing noncompliance that was found concerned incorrect payments of severance allowance, or the failure to pay resigned workers or workers whose contracts had been terminated for more than seven days, as required by law.

## Worker complaints, related to the payment of a living wage

Since the complaints helpline was activated in 2010, 30 complaints have been filed in relation to the payment of a living wage, making it one of the most important issues raised through complaints. In many cases, the complaints were linked to the legal binding of employment relationships, and, in particular, to severance payments and social insurance issues upon worker resignation. A less significant number of complaints cases were linked to overtime registration and payment issues, and various bonuses.

Here are some examples of complaints related to this labour standard. These were reported by workers at factories that supply a Fair Wear member brand. One complaint is from February 2018, another from June 2018, and the third from March 2020.

## 6.6. NO EXCESSIVE WORKING HOURS

*“Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven-day period. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate”. (ILO Convention 1)*



## Official statistics on compliance

According to the 2013 national survey on Labour by the Employment of General Statistics Office, 36.1% of workers were working more than 48 hours per week.<sup>81</sup> More recent official statistics on compliance regarding working hours are limited.

## Laws and regulations

The normal number of working hours is eight hours per day and 48 hours per week. Working hours can be determined on a daily or weekly basis, but the average working hours must not exceed 10 hours per day or 48 hours per week. The state, however, encourages employers to implement a 40-hour workweek. Working hours for employees involved in extremely difficult, dangerous or hazardous work must not exceed six hours per day.

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<sup>81</sup> 'General Statistics Office of Vietnam', n.d.

Employees may be required to work overtime provided they consent to the extra working hours and are paid the overtime premium rates. Employers are obliged to provide compensatory leave to employees who have worked overtime for several consecutive days a month (a maximum of seven days). The overtime premium is paid if the compensatory rest periods are not available.

The number of overtime working hours of an employee must not exceed 50% of the normal daily working hours; in case of weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours a day, and 40 hours a month; the total overtime working hours must not exceed 200 hours a year, except in the following cases:

- a)** The manufacture or processing of textile, garments, footwear, or electric or electronic products; the processing of agricultural, forestry or aquaculture products; salt production
- b)** The generation and supply of electricity, telecommunications or refinery operation; water supply and drainage
- c)** Work that requires highly skilled workers who are not available on the labour market at the time
- d)** Urgent work that cannot be delayed for seasonal reasons, due to the availability of materials or products, or due to unexpected causes such as bad weather, natural disasters, fire, hostility, shortage of power or raw materials, or technical issues in the production line

Overtime work is compensated as follows: at least 150% of the normal wage rate is provided on weekdays; at least 200% of the normal wage rate is provided on weekly days off; and at least 300% of the normal wage rate is provided on holidays and days off with pay (annual leave). Overtime payment for employees who receive time-based wages or piece rate wages is 300% of their regular wages for hours worked in addition to one full day of regular wages. In certain cases (force majeure, protection of life and property, national defence and security), the employee must work overtime upon request from the employer. The amended Labour Code, which comes into effect on 1 January 2021, extends the ceiling of overtime to 40 hours/month and 300 hours/year and adds one day of leave prior to or after Independence Day on 2 September 2021.

## Stakeholder views and implementation analysis

Excessive overtime remains a major violation of the Labour Code standard in Vietnam. The vast majority of factories do not meet legal requirements on overtime, which remains one of the leading and most long-standing compliance challenges in the textile and garment industry. In many cases, excessive overtime reflects the convergence of internal productivity and production planning weaknesses within factories, with external dynamics related to buyer behaviour and sourcing practices. The latest Better Work assessments showed that there is a failure to meet monthly limits (30 hours) among 77% of factories, the national legal limit of 300 overtime hours per year is exceeded by 69% of factories, and 40% of factories do not provide workers with at least four days of rest per month. A significant minority of factories (13%) also failed to guarantee women workers their statutory right to daily breastfeeding and menstruation breaks.

Double booking on overtime is also frequently found among garment workers. According to Nguyen Quoc Thuan from Better Work:

*‘Forty-five percent of BWV companies did not reflect the hours actually worked. This reflects an industry-wide problem of “double books” (i.e. keeping two sets of working time records) to conceal true working hours. It is known, however, that some factories conceal working time out of fear of reprisals from buyers, and to cover up the time taken to rectify errors and mistakes made on the production line’.*

## Main Fair Wear audit findings over the last three years

Excessive overtime is one of the biggest problems found during Fair Wear audits, particularly during peak seasons when working hours are structurally found to be between 65 and 75 hours per week, with occasional work on Sundays. Some factory employees work up to three Sundays a month and are paid 200% without the legally required compensation day off. The double book system is sometimes used to hide excessive overtime and work on Sundays. Auditors also found that some factories failed to provide a 30-minute dinner break when employees were working more than two overtime hours a day.

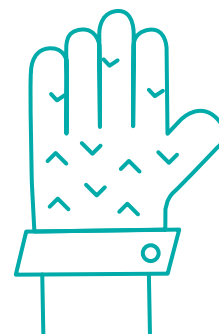
## Worker complaints, related to reasonable working hours

Since the activation of the complaints helpline, 17 cases relating to reasonable working hours have been filed. A number of cases matched the findings of the Fair Wear audits. There were also cases of involuntary overtime and many complaints about the registration of those overtime hours. Indeed, some workers claimed that they were made to check out of the system and then go back to their workstations for overtime. Such issues are closely linked to the issue of safe and healthy working conditions, with lunch or dinner breaks sometimes not being respected. Also, as described in the section on complaints regarding the payment of a living wage above, overtime working hours are sometimes unregistered, hidden, and thus unpaid.

Here are some examples of complaints related to this labour standard. These were reported by workers at factories that supply Fair Wear member brands. One complaint on reasonable hours of work is from December 2016 and the other is from August 2019. Examples of complaints related to both wages and hours of work are these examples from May 2018 and November 2019.

## 6.7. SAFE AND HEALTHY WORKING CONDITIONS

*“A safe and hygienic working environment shall be provided, and best occupational health and safety practice shall be promoted, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Appropriate attention shall be paid to occupational hazards specific to this branch of the industry and assure that a safe and hygienic work environment is provided for. Effective regulations shall be implemented to prevent accidents and minimize health risks as much as possible (following ILO Convention 155...) Physical abuse, threats of physical abuse, unusual punishments or discipline, sexual and other harassment, and intimidation by the employer are strictly prohibited.”<sup>82</sup>*



### Official statistics on compliance

According to the National Occupational Health and Safety Bureau, in 2017 there were 8,956 work-related accidents in Vietnam that left 928 dead. The garment industry accounted for 4.9% and the footwear industry accounted for 4.5% of the death toll.<sup>83</sup>

### Laws and regulations

Making the workplace safe is the responsibility of all parties involved; enterprises, agencies, organisations and individuals involved in labour and production must comply with labour safety and hygiene laws. It is also obligatory for employers to ensure a standardised working environment, to improve the healthcare and working conditions for workers, and to establish practices that minimise or eliminate health and safety-related hazards. In order to protect the health and safety of their employees, employers must comply with the standards of labour safety and hygiene when building or renovating new facilities or when purchasing equipment that has strict OSH requirements. Employers must ensure that national standards of labour safety and hygiene have been published and applied. Employers must assess the dangers and potentially harmful elements of the workplace, including machinery, equipment, workshops and warehouses, to improve the working conditions and healthcare for their employees. Employees must also be provided with health and safety measures in the workplace including the following: regulation compliance; procedures and rules on labour safety and hygiene related to the work and duties assigned; proper usage and maintenance of the personal protective equipment provided; and prompt reporting to the person responsible for health and safety upon detection of a risk of occupational accident.

<sup>82</sup> 'International Labour Standards on Occupational Safety and Health: International Labour Organization', n.d.

<sup>83</sup> 'Thông báo tình hình tai nạn lao động năm 2017', 2018.

The Labour Code requires that workers engaged in potentially dangerous and/or harmful work must have sufficient protective clothing and protective devices. The standardised Personal Protective Equipment (PPE), including clothing and devices, must be provided to workers engaged in potentially dangerous and/or harmful work. Workers are required to use PPE in accordance with the rules published by the MOLISA.

Specific PPE for the head, eyes and face, hearing, respiration, hands, feet and body, as well as protective equipment preventing falling from heights and preventing electric shock, are provided free of charge by employers. It is prohibited for employers to pay employees a cash sum rather than providing them with PPE, including cash sums paid to workers for them to purchase their own PPE. It is the duty of employers to instruct workers about the use of adequate PPE and to closely supervise its use. Employers must provide storage and maintenance facilities for the PPE which meet the instructions of its manufacturers or producers.

It is also the duty of employers to organise training on labour safety and hygiene for employees, trade apprentices and trainees upon recruitment and the restructuring of personnel (promotion, transfers). It is also the responsibility of employers and their management to provide guidance on labour safety and hygiene regulations to the persons visiting and working at their facilities.

The revised Labour Code, which comes into effect on 1 January 2021, determines that employees shall have the right to unilaterally terminate their employment contract without prior notice if they are maltreated, assaulted, physically or verbally insulted by the employer in a manner that affects their health, dignity or honour or are sexually harassed in the workplace. Employers are required to include procedures in their labour regulations for resolving sexual harassment cases.

## Stakeholder views and implementation analysis

According to Nguyen Quoc Thuan from Better Work, the biggest area of noncompliance in Occupational Safety and Health relates to the provision of changing rooms for women workers, showers, lockers for personal belongings and other such facilities. Many factories have none of these additional, legally required facilities, while others have only some or insufficient numbers in relation to the number of workers.

The most prevalent OSH violations found in Better Work factories included: the absence of a functioning OSH unit (50%); inadequate provision of and low usage of PPE as well as unsafe use of machinery (43%); poorly installed and maintained electrical wires, switches and plugs (37%); poor chemical labelling (44%) and storage (33%); inadequate training on chemical safety (34%); inadequate fire detection and alarm systems (35%) and obstruction of exits and escape routes (31%).<sup>84</sup>

The leading cause of noncompliance among gender-based issues in Vietnam is the failure to protect pregnant and nursing workers against health and safety risks. Twelve percent of the factories assessed were in violation of the law in this area, mostly because they failed to provide one paid hour off work per day to heavily pregnant workers (i.e. seven months and beyond). Noncompliant factories often argue that pregnant workers leaving their lines earlier than their colleagues is incompatible with lean production methods and can harm overall productivity. Some employers also fail to comply because they allow expecting and nursing mothers to work with harmful chemicals and dyes.

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<sup>84</sup> 'Better Work Vietnam: garment industry 10th compliance synthesis report', 2019.

Failure to provide time off for breastfeeding and menstruation breaks is another barrier to gender equality in the sector, with both issues affecting 9% of factories. Moreover, whilst the practice of stating gender preference in recruitment adverts has declined significantly in the last decade (and now currently stands at 0.6%), a small minority of factories (4%) still make gender or marital status and pregnancy a factor in hiring decisions.<sup>85</sup>

## Main Fair Wear audit findings over the last three years

In general, Fair Wear audits reported relatively high health and safety standards. Evacuation routes, clearly marked exits and machine protection gear were found to be compliant during local labour inspections at most factories. However, another audit finding was that training and awareness among factory workers on these topics is low. Fair Wear audits often came across issues regarding the use and storage of chemical materials, including health risks associated with the gluing process. Ergonomic hazards are prevalent in garment production. However, people are often not aware of them and tend to accept the situation as it is. Most factories provide workers with annual health checks but do not meet the requirement to provide a check every six months for workers doing heavy, hazardous or dangerous jobs. Factories do not often conduct a follow-up after a health check. Additionally, in many cases, pregnant and breastfeeding workers are allowed to work overtime despite the law requiring these workers to reduce their working day by one hour and eliminate overtime work.

## Worker complaints related to safe and healthy working conditions

Since the activation of the complaints helpline, five cases were filed relating to safe and healthy working conditions. Four of those cases were also linked to reasonable working, because overtime often puts the health of workers at risk. Working long hours, sometimes without a day off, leads to exhaustion and a higher risk of work-related accidents. On top of that, sometimes lunch and dinner breaks are not respected.

Here are some examples of complaints related to this labour standard. These were reported by workers at factories that supply a Fair Wear member brand. One complaint is from December 2018 and the other from April 2020.

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<sup>85</sup> Ibid.

## 6.8. LEGALLY BINDING EMPLOYMENT RELATIONSHIP



*“Working relationships shall be legally binding, and all obligations to employees under labour or social security laws and regulations shall be respected”.*



### Official statistics on compliance

According to MOLISA report on implementing the 2012 Labour Code, it is also common that the incorrect type of contract is drawn up, affecting the interests of the employee. For example, this may include signing a service contract instead of a labour contract to avoid paying social insurance; a contract for the supply of labour instead of labour outsourcing; verbal labour contracts or only signing contracts with a term of fewer than three months to do regular jobs of 12 months or more; or signing a fixed-term labour contract more than twice in a row.<sup>86</sup>

The content of the labour contract may be vague, lacking stipulations such as: work to be done, form of payment, allowances, occupational safety and conditions and working conditions, so when there is a dispute, there is a lack of a strong basis for resolving it.

### Laws and regulations

In Vietnam, workers are provided with five types of social security programme (these programmes are established by a statute that protects individuals against interruption or loss of earning, and provides for certain expenditures arising from marriage, birth or death). These programmes include: old age benefits, invalidity benefits, survivor benefits, sickness and maternity benefits, unemployment benefits, work injury benefits as well as family allowances. The old age pension is a combination of earnings-related pension and means-tested pension.

The statutory pensionable age (at which workers are entitled to old age benefits) is 60 years for men and 55 years for women. The percentage of the population 65 years or older is 6.6%, while the dependency ratio is 41.4%.

For old age, disability and survivor benefits, employer and employee contribution is 14 % and 8% respectively. For sickness and maternity leaves, a contribution is paid by employers, of which 3% is from the payroll. Work injury contribution (0.5%) is again paid by the employer only. Unemployment benefits are financed through 1% contributions from both employers and workers.

The MOLISA provides general supervision, while the Vietnam Social Security Agency administers all the programmes. The Ministry of Health provides general supervision for medical care.

A worker who has either suffered an injury during employment, before or after working hours, or while on assignment for the employer outside the workplace, or while commuting (at a reasonable time and on a reasonable route) is entitled to an employment injury benefit. Employment injury benefits are provided to workers who have lost 5% or more of their working capacity due to an employment injury.

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<sup>86</sup> MOLISA, ‘Hô sơ đề nghị xây dựng Bộ luật Lao động’, 2018.

Employees who have lost 5-30% of their earning capacity are entitled to a lump-sum benefit. Employees who have lost less than 5% of their earning capacity are provided with a benefit that is the equivalent of five months of the national minimum wage, followed by 0.5% of the national minimum wage for every additional percentage of lost earning capacity.

Employees who have lost their earning capacity by 31% or more are entitled to monthly benefits as follows: for 30% of the lost earning capacity, employees are paid 30% of the national minimum wage, then 2% of the national minimum wage for every additional percentage of lost earning capacity. Furthermore, employees are entitled to these benefits based on the number of years they have paid social insurance premiums.

If workers die in an occupational accident or because of a disease brought on by their occupation, their dependents are entitled to a lump-sum benefit equivalent to 36 months of the national minimum wage. Work injuries are divided into three categories: (i) permanent, total incapacity (ii) temporary incapacity and (iii) fatal injury leading to death.

In the case of permanent incapacity or disability, that is, a loss of 31% or more in working capacity, one hundred percent of the monthly minimum wage must be paid to the worker in addition to the disability grant. In the case of temporary disability, injured workers must be paid one hundred percent of the monthly salary of an insured worker from the first day of treatment until recovery or certification of permanent disability. In the case of fatal injury, half of the monthly minimum wage is paid to eligible dependents (widow or widower, children and parents) as a survivor pension and survivor grant. These benefits are paid to a maximum of four dependent survivors. The survivor grant is paid as a lump sum if an insured worker has made less than 15 years of social insurance contributions. Funeral grants are also paid as a lump sum of 10 months of minimum wage to the persons paying for the funeral of a deceased worker.

Emergency healthcare and considerate treatment is provided in the case of an occupational accident. In such cases, employers are required to pay all medical expenses for employees without health insurance. Different levels of insurance coverage are provided for different individuals. For some individuals, 100% of medical costs are covered; while for others, only 80% is covered.

Sick leave duration depends on the type of employment. 30 working days of sick leave are provided to those employed under standard working conditions with fewer than 15 years of health insurance contributions. For those with 15 to 30 years of contributions, that number is 40. For those with 30 or more years of contributions, it is 60. The duration of sick leave increases by 10-day increments for those working in heavy or hazardous occupations or projects.

Sick leave compensation is calculated as 75% of the wage the sick employee has declared to social insurance. Sick leave can be extended to 180 days in one year in response to severity of illness. If the illness continues after 180 days, the amount of compensation is lowered.

## Stakeholder views and implementation analysis

According to Better Work, the majority of noncompliance found regarding legally binding employment relationships was the failure to specify the complete terms and conditions of employment in contracts. The precise details lacking from contracts varied per factory. Most commonly, the processes for wage increases and occupational training and skills improvement, the specification of PPE usage, and details on wage payment forms were missing. Similarly, over half of the factories surveyed (52%) did not comply fully with



legal requirements for the communication of their internal work rules, which most commonly manifested as a failure to specify the provision of short breaks during regular working hours, as is legally required.

According to Better Work, roughly one fourth of factories were noncompliant with one of the legal requirements on social insurance. Most of these violations centred around the failure to pay compulsory social insurance contributions on time, as requested by local social insurance agencies, or the failure to enrol all eligible workers (i.e. all workers with an employment contract with a duration of one month or more) into the compulsory social insurance scheme. Where a contribution is more than two months overdue or in the case of a failure to register eligible pregnant workers in the compulsory social insurance, women workers do not receive the maternity benefits to which they are legally entitled.

## **Main Fair Wear audit findings over the last three years**

Fair Wear auditors frequently review employment contracts to verify their compliance with the labour laws and by-law regulations. Many factories did not write specific provisions (such as details of working and rest time, overtime, wages, allowances, etc.) clearly in contracts, as required per Decree No. 05/2015/ND-CP. Factories were absolved of this requirement on 1 January 2019, when Decree No. 148/2018/ND-CP replaced Decree No. 05/2015/ND-CP.

Workers do usually receive copies of their labour contract. Fair Wear audits often show structural problems related to payments and coverage of social security. In some cases, temporary workers were employed for several years without being offered benefits, or training periods were used extensively to avoid the signing of an official labour contract and payment of social security contributions.

## **Worker complaints related to legally binding employment relationships**

Since the activation of the complaints helpline, 39 complaints relating to legally binding employment relationships were filed. That makes it the most violated standard of the Code of Labour Practices. Although this standard is often selected when the Fair Wear helpline receives complaints, violations of this standard rarely stand alone. They are usually linked to at least one other Labour Code standard, since many instances of noncompliance are somehow linked to labour regulations and thus to labour contracts.

Complaints flagged under the standard of freely chosen employment are often cases of mishandled resignations. Often employers do not acknowledge resignations, with workers resigning by giving a written 45-day notice and employers ignoring their resignation letters. Workers get frustrated waiting for the approval of their resignation and end up quitting without respecting the legal procedure. This puts them in the unlawful position of a unilateral resignation. In such cases, workers are no longer entitled to all their due payments, including severance payments, and they may have difficulties claiming their social insurance files. On top of that, the factory management is entitled to contact the local labour authority, which fines workers for resigning unlawfully. Thus, in many cases, these complaints relate to the standard of legally binding employment relationships and the living wage standard.

Here are some examples of complaints related to this labour standard. These were reported by workers at factories that supply a Fair Wear member brand. One complaint is from July 2017, another from May 2019, and the other from October 2019.

# Sources used in this national study

*The information in this report is an update of the Fair Wear Foundation Country Study from 2015. Information was gathered by Dr Do Quynh Chi, a labour relations specialist from the Research Centre for Labour Relations (ERC). The study gathered information about national laws and the views of local stakeholders on labour issues in the garment industry of Vietnam. In addition to this, Fair Wear has gathered information from internationally recognised sources on the economic, social, political and human rights situation in the country.*

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