

Sitting on pins and needles

A rapid assessment of labour conditions in Vietnam's garment sector

Commissioned by Anti-Slavery International

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Contributions

This research was conducted by Embode, an international human rights consultancy, specialising in labour rights in supply chains. The team consisted of Aarti Kapoor (Team Manager), Liva Sreedharan (Research Coordinator) and Hoa Nguyen (Research Consultant).

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Executive Summary

Vietnam is the largest garment producer in Asia after China. There are about 6,000 enterprises in the textile and garment industry in Vietnam, providing employment for an estimated 2.5 million people. Out of this, 2,500 enterprises serve the export market.¹ The United States, Japan and the European Union (EU) are the biggest markets for garments from Vietnam.² While the EU is Vietnam's third largest trading partner, Vietnam is the EU's 20th largest partner in the world, and the second largest in South East Asia after Singapore. The EU is not only a key trading partner for Vietnam but it is also Vietnam's largest non-Asian investor, investing a total of US\$ 1.5 billion in Vietnam in 2016. EU-Vietnam goods imports and exports grew at a double-digit rates in 2016, quadrupling over the past 10 years to reach a total value of approximately US\$ 49 billion.³ As Vietnam becomes a global giant in garment manufacturing, its records and responses to labour exploitation concerns garner increasingly more scrutiny.

This study assesses working conditions in export-oriented textile and garment industries in Vietnam, and the risk of labour rights violations, including forced labour, child labour and child slavery. To understand the context of the conditions and trends, this assessment also reviews government, corporate and other social frameworks and services for protection and standards of labour rights. Wherever possible, examples of positive business action on creating decent work conditions were assessed.

The analysis of data gathered highlights the risk of forced labour, child labour and child slavery. First and second hand accounts reveal indicators such as long hours of work, forced extension of work hours, denial of sick leave, and threat of employer retribution directed at workers who attempt to speak out.

Interviews with 21 workers across three Tier 1 factories in both the north and south of Vietnam reveal a lack of institutional protection of their rights at work. National laws are not properly enforced and as a result do little to facilitate workers' access to their rights at work. Workers' exposure and vulnerability to exploitation are worsened by a culture of fear, as well as intimidation and control that management assert over workers within the garment manufacturing industry. These factors prey on the workers' lack of alternative employment should they decide to exercise or assert their rights.

Trade Unions in Vietnam are authoritarian symbols and are perceived as either extensions of management or at best serving a social function. Independent democratic trade unions are not permitted to operate in Vietnam. Workers are unclear about how trade unions really support them at work. The role of NGOs in supporting worker wellbeing in factories and supply chains is also limited, as access is restricted to specifically agreed mandates, such as training or workshops.

Workers experience a high level of stress and encounter structural vulnerabilities at the prospect of not being able to survive if they lose their jobs. Many workers are internal migrants and come from a background of subsistence farming and scarce employment. The culture of fear, intimidation and secrecy also speak to the need for greater transparency in the operations of the garment manufacturing industry in Vietnam.

Vietnam's track record and context show that voluntary incentive-driven measures to promote business and human rights alone do not offer adequate protection to workers. Companies' codes of conduct and auditing processes have only a limited positive impact. Identified violations in Tier 1 factories, where international brands have visibility and conduct audits, and which are usually considered low risk, show the deficiency of voluntary approaches. To reduce the risk of forced labour in garment supply chains, mandatory due diligence legislation is needed to ensure a level playing field.

The EU has a critical role to play in reducing the risk of goods tainted by labour rights violations, including child and forced labour, from entering the EU market. A systematic, pan-European approach to tackling rights violations in global supply chains is currently absent from EU policy. Moving forward, the European Commission should introduce new EU legislation that sets out clearly the human rights obligations of businesses operating in the EU.

¹ Chi D.Q. (2017), The missing link in the chain? Trade Regimes and Labour Standards in the Garments, Footwear and Electronics Supply Chains in Vietnam, Friedrich-Ebert-Stiftung Vietnam, accessed 23 September 2018, <<http://library.fes.de/pdf-files/bueros/vietnam/13334.pdf>>

² The Lab (2017), From obligation to opportunity: A market systems analysis of working condition in Asia's garment export industry, International Labour Organization, accessed 23 September 2018, <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_579468.pdf>

³ European Parliament (2018), Briefing: International Agreements in Progress, accessed 12 October 2018, <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614702/EPRS_BRI\(2018\)614702_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614702/EPRS_BRI(2018)614702_EN.pdf)>

1. Introduction

The complex nature of global supply chains brings an increased risk of human rights violations, with forced and child labour being among the most serious. Some EU member states such as France, the Netherlands and the UK, have introduced, or are considering introducing, regulation on business and human rights. At the EU level, there is increasing momentum for EU legislation establishing mandatory due diligence requirements for business supply chains and operations. Calls for such legislation come from a wide cross-section comprising the European Parliament, numerous EU national parliaments, businesses and civil society.

As a key trade partner to the EU, Vietnam's business operations would be impacted by such EU regulations including mandatory due diligence requirements. Vietnam's manufacturing sector, particularly the garment industry, has come under increasing scrutiny over its failure to uphold labour rights. Labour exploitation and conditions in this female worker-dominated industry have been the research focus of a number of organisations like the Fair Wear Foundation and Blue Dragon Foundation. The issues identified raise questions about the role that regulations on human rights due diligence and supply chain transparency can play in mitigating the risks of exploitative working conditions, and improving businesses accountability. Other instruments, such as trade agreements, can encourage adherence to labour rights standards. This is of particular relevance in the context of the planned Free Trade Agreement (FTA) between the EU and Vietnam.

Anti-Slavery International commissioned Embode to carry out a rapid assessment of working conditions, documenting current trends and practices in the garment supply chains in Vietnam. The assessment focused on risks of human rights violations, in particular issues such as forced labour and child labour. Wherever possible, Embode assessed examples of positive action to create decent work conditions and how these could be enhanced and scaled up through mandatory EU due diligence regulation.

Anti-Slavery International advocates for the establishment of a systematic approach by the EU in eradicating forced and child labour in global supply chains. Through an EU Advocacy Initiative it aims to create a comprehensive and collaborative pan-European approach to tackling forced and child labour in supply chains by means of data collection and analysis, policy and legislative changes, and implementation that leads to improved supply chain transparency and traceability.

1.1 Country Profile

In the middle of the 19th century, French colonisation turned Vietnam's agrarian, village-oriented economy into a manufacturing economy in the North, while designating the South for agricultural production. The division of the economy between the North and the South stimulated internal commerce even though there was growing tension between the regions. In 1954, when north and south Vietnam were politically divided, they adopted different economic ideologies; Communist in the North and Capitalist in the South. From 1976 to 1986, plans were devised to spur national income, however, the economy remained dominated by small-scale production, low labour productivity, technological shortfalls, and insufficient food and consumer goods. Modest efforts were made between 1981-1985 to decentralise planning and improve managerial skills of government officials in order to enhance skills and productivity in Vietnam.⁴

In 1986, Vietnam experienced rapid economic growth after the *Đổi Mới*, also known as the major renovation of the Vietnamese economy, when the Government of Vietnam abandoned centralised planning to transition to a "socialist-oriented market economy".⁵ The government implemented economic reforms including devaluation of the currency (dong), decentralisation of government, recognition of private property rights and the promotion of open-door economic policies towards international trade and investment. This set Vietnam on the course of industrialisation, turning what was a poor country with a closed economy into one that is open and capable of competing globally. At the start of *Đổi Mới* in 1986, the value of Vietnam's economy stood at US\$ 26.3 billion.⁶ Its gross national income (GNI) per capita in 1990 was US\$130.⁷ By 2016, Vietnam's gross domestic product (GDP) had grown more than nine-fold to US\$205.28 billion and boasted a GNI per capita of US\$2,060.⁸ In the past 10 years, Vietnam's GDP growth rate averages at 6 per cent per annum.

Much of Vietnam's prosperity is supported by its external sector. Exports as a share of Vietnam's GDP have grown from 6.26 per cent at the start of its economic restructuring in 1986 to 93.62 per cent in 2016.⁹ The robust growth in exports is partly attributable to Vietnam's positioning as a global manufacturing hub. Manufacturing, which accounted for 33 per cent of Vietnam's GDP in 2016, is the second-largest industrial sector after services.¹⁰ Readymade garments, footwear and electronics are the three main export products. These export-oriented and labour-intensive industries have seen substantial direct foreign investment with foreign-invested enterprises contributing between 70 and 90 per cent of the total sectoral export value.¹¹ In the view of the government, Vietnam's comparative advantages are its large national labour force, cost competitiveness, and proximity to global supply chains.

⁴ US Library of Congress 1987, United States, accessed 30 September 2018, <http://countrystudies.us/vietnam/>

⁵ GNI per capita converted to US dollars using the World Bank Atlas method.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ GNI per capita converted to US dollars using the World Bank Atlas method.

¹⁰ PricewaterhouseCoopers (2017), Doing business in Vietnam, PwC, accessed 23 September 2018, <https://www.pwc.com/vn/en/publications/2017/dbg-2017.pdf>

¹¹ Chi D.Q. (2017), The missing link in the chain? Trade Regimes and Labour Standards in the Garments, Footwear and Electronics Supply Chains in Vietnam, Friedrich-Ebert-Stiftung Vietnam, accessed 23 September 2018, <http://library.fes.de/pdf-files/bueros/vietnam/13334.pdf>

Measured at more than 90 million people in 2017, Vietnam has the 14th largest population in the world, and a median age of 30.7 years.¹² One million Vietnamese enter the workforce annually, of which 70 per cent are aged between 15 and 64 years old.¹³ This provides investors with not only an available workforce, but also a sustainable one in terms of numbers. With a minimum wage rate for private enterprises set at between VND 2.76 million (approximately US\$118 per month) and VND 3.98 million (approximately US\$170) per month in 2018, Vietnam has one of the most cost competitive labour forces in Asia. Geographically, Vietnam's proximity to global supply chains, especially to the manufacturing heartland in southern China appeals to foreign investors with existing Chinese-linked operations. The country is also deeply integrated into global supply chains through FTAs, signed collectively as a member of ASEAN and bilaterally with countries with strong trading relations. Vietnam's bilateral FTAs have been signed with Hong Kong, China, Japan, Chile, and South Korea. As a member of the ASEAN Free Trade Area it has tariff-free access to all ASEAN countries, along with free trade links with Australia, New Zealand, India, Japan, and China. In 2018, Vietnam and the EU agreed on the final text for the EU-Vietnam FTA. The agreement is expected to remove 99 per cent of customs duties on goods when it comes into force.¹⁴ According to European Commission figures, the EU-Vietnam FTA could boost Vietnam's economy by as much as 15 per cent GDP and increase Vietnamese exports to Europe by more than a third.¹⁵

While Vietnam continues experiencing flourishing economic benefits from growing external trade, there are vast concerns regarding its human rights and sustainability practices. Political change in Vietnam has not been on par with its economic development. While laws (see Annex VII) are in existence to provide basic legal rights, Vietnam remains a one-party state intolerant of political dissent and freedom of expression. The independence of non-governmental organisations (NGOs) and trade unions remains restricted, and crackdowns on labour and human rights activists are commonplace. For these reasons, a climate of fear dominates Vietnam's civil society space.

1.2 Labour Standards

Vietnam has seen significant improvements on legislation for addressing forced and child labour in recent years although many adults and children are still at risk of labour exploitation. In 2016, Vietnam increased the national minimum monthly wage from approximately US\$110 to approximately US\$161. The last five years also saw the government implementing a wide range of decrees supplementing the labour code. These include Decree No. 85/2015/ND-CP dated 1 October 2015 stipulating, in detail, a number of articles of the Labour Code in relation to policies for female employees, and Decree No. 45/2013/ND-CP dated 10 May 2013 stipulating, in detail, a number of articles of the Labour Code in relation to working time, rest time, occupational safety and occupational hygiene.¹⁶

¹² Asian Development Bank (2017), *Viet Nam by the Numbers*, accessed 20 September 2018 <<https://data.adb.org/dashboard/viet-nam-numbers>>

¹³ PricewaterhouseCoopers (2017), *Spotlight on Vietnam*, PwC, accessed 23 September 2018 <<https://www.pwc.com/vn/en/publications/2017/spotlight-on-vietnam.pdf>>

¹⁴ European Commission (2018), *Countries and Regions. Vietnam*, accessed 12 October 2018 <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/>>

¹⁵ European Parliament Think Tank (2018), *International Agreements in Progress: EU-Vietnam Free Trade Agreement*, European Parliament, accessed 23 September 2018 <[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2018\)614702](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2018)614702)>

¹⁶ Liberty Asia and Blue Dragon (2018), *Legal gap analysis of anti-trafficking legislation in Vietnam*, accessed 23 September 2018 <http://freedom.collaborative.prod.s3.amazonaws.com/uploads/GapAnalysis_Vietnam_20180531.pdf>

There has also been an increase in collaboration between the government and agencies such as the ILO and the EU on legislative reforms. The EU is particularly interested in seeing the ratification of the ILO Declaration on Fundamental Principles and Rights at Work by the Vietnamese Government and is funding the ILO to assist with this effort.¹⁷ The EU has also initiated a programme on responsible value chains which will be implemented by the ILO and the Organisation for Economic Cooperation (OECD) focusing on three sectors in Vietnam (including the garment sector).

Other efforts include a nationwide complaints mechanism for workers by Fair Wear Foundation (FWF); a non-profit organisation that works with brands, factories, trade unions, NGOs, and sometimes the government, to verify and improve workplace conditions for garment workers. Workers can contact FWF's helpline to voice grievances. The complaints are channelled directly to the brands, who then contact the suppliers for investigation and further action.¹⁸ Complaints received commonly include outstanding salary payment upon termination, and discrepancy in payment for overtime.

Better Work Vietnam, a partnership between the International Labour Organization (ILO) and the International Finance Corporation (IFC), a member of the World Bank Group, has been under way since 2009. Better Work Vietnam engages workers, employers and governments to improve working conditions and boost economic competitiveness of the garment industry in Vietnam. It operates on the understanding that collaboration with national government bodies is essential to creating effective labour regulations for a sustainable impact.

Some local NGOs also play an important role in disrupting forced and child labour in Vietnam. Notable efforts by organisations like the Blue Dragon Foundation, Life Centre and Pacific Links Foundation are important in creating awareness on the issues of labour exploitation, including forced and child labour. Services provided, such as education opportunities and shelters, as well as reintegration programmes for trafficked women and children, also serve as a prevention tool for re-victimisation of forced and child labour survivors.

While these efforts are commendable and ongoing, observations show that there is a tight grip on both local and international NGOs in Vietnam, which are not allowed to operate beyond what is mandated by the Government of Vietnam. For fear of losing access to factories, local and international NGOs have no choice but to carry out specific donor-driven, government-approved activities within factory settings. This restricts the much-needed labour rights interventions from which workers can benefit.

¹⁷ Interview with Delegation of the European Union to Vietnam, Trade and Economic Affairs, August 2018

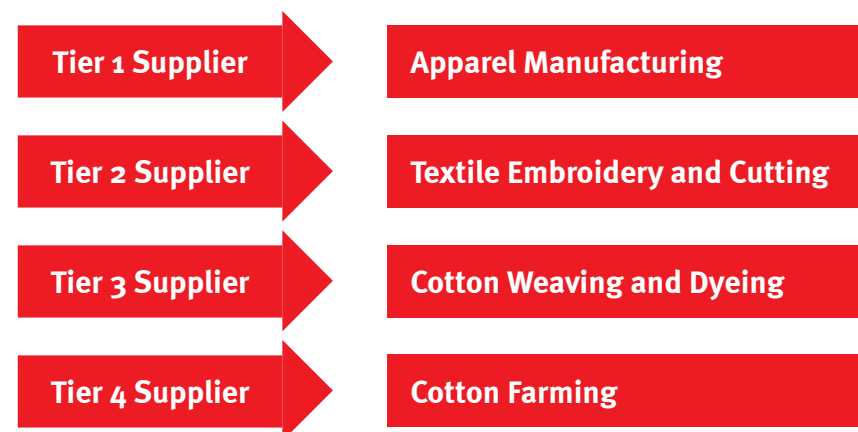
¹⁸ Interview with FWF, phone interview, 28 August 2018

2. Vietnam's Garment Industry

In 2017, Vietnam exported US\$31.16 billion worth of textiles and garments, an increase of 10.2 per cent year-on-year.¹⁹ There are about 6,000 enterprises in the textile and garment industry in Vietnam, providing employment for an estimated 2.5 million people. Of these, 2,500 enterprises serve the export market (ILO, 2017).²⁰ Factories in Vietnam supply to several well-known international brands, including Nike, Puma, Levi Strauss, Gap, H&M and Zara. Foreign firms play a pivotal role in the development of the industry. In Vietnam, 75 per cent of garment exporting factories are owned solely or partially through joint ventures by foreign firms (ILO, 2017).²¹

More than 65 per cent of garment manufacturers in Vietnam produce on Cut-Make-Trim (CMT) contracts, where the factory is responsible for cutting the fabric, and making and trimming the garments (ILO, 2017).²² Under the CMT model, buyers provide factories with product specification and inputs. Brands and vendors usually have a fixed CMT unit price, which applies to all suppliers in the same country or region. The CMT unit price is often unresponsive to rising operating costs of CMT suppliers. As CMT suppliers have limited control over the price of raw materials or inputs, factory managers control the variable costs, such as labour costs, to maintain competitiveness and profit margins. At its worst, control over labour costs has manifested in poor labour conditions: wage deductions, long working hours, excessive overtime and lack of opportunity for upskilling and training are common features of the garment manufacturing industry in Vietnam.²³

2.1 Value Chain of a Garment Manufacturing Company



Source: J.Safra Sarasin²⁴

¹⁹ Vietnam Chamber Of Commerce And Industry (2018), Vietnam's textile & garment industry expect big benefits from EVFTA, accessed 23 September 2019, <<https://english.vov.vn/economy/vietnams-textile-garment-industry-expect-big-benefits-from-evfta-372019.vov>>

²⁰ Chi D.Q. (2017), The missing link in the chain? Trade Regimes and Labour Standards in the Garments, Footwear and Electronics Supply Chains in Vietnam, Friedrich-Ebert-Stiftung Vietnam, accessed 23 September 2018, <<http://library.fes.de/pdf-files/bueros/vietnam/13334.pdf>>

²¹ The Lab (2017), From obligation to opportunity: A market systems analysis of working condition in Asia's garment export industry, International Labour Organization, accessed 23 September 2018, <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_579468.pdf>

²² Ibid

²³ Chi D.Q. (2017), The missing link in the chain? Trade Regimes and Labour Standards in the Garments, Footwear and Electronics Supply Chains in Vietnam, Friedrich-Ebert-Stiftung, Accessed 23 September 2018 <<http://library.fes.de/pdf-files/bueros/vietnam/13334.pdf>>

²⁴ J.Safra Sarasin (2014), Supply Chains in the Clothing Industry - A House of Cards? A report on the opportunities and risks in the supply chains of textile and apparel companies, accessed 20 August 2018 <<https://www.eticanews.it/wp-content/uploads/2014/09/Report-Bank-J-Safra-Sarasin-Supply-Chains-in-the-Clothing-Industry.pdf>>

Tier 1 companies are manufacturers that have a direct relationship with major brands and retailers. They specialise in export-oriented, low-skill, low-wage, labour-intensive, and high-volume manufacturing. They may outsource work to smaller production units (Tier 2 companies), and to little-known subcontracted factories and workshops (Tier 3 companies), which, in turn, may subcontract this work out to hard-to-track, home-based workers. The role that Tier 1 companies play in the struggle for better wages and labour rights is crucial as they have a direct relationship with the brands that buy from them. Despite the increase in large Tier 1 factories globally, the majority of the world's garment workers are employed by small, locally-owned (Tier 2 and Tier 3) enterprises, as well as home-workers, who experience very little legal protection, if any.²⁵

2.1.2 Working Conditions in Vietnam's Garment Sector

Culture of secrecy

There is little evidence available to show whether enterprises in Vietnam comply, or the extent to which they comply, with existing laws and frameworks to protect workers from forced and child labour in the garment manufacturing industry. Throughout the data gathering and assessment phase, multiple attempts to access those working within the industry were thwarted. The overall pattern of non-responses, lack of engagement and overall refusal to allow access to factories and workers was experienced as a barrier to effective communication and information sharing.

Direct communication attempts were made to reach out to relevant government officials at the national level. However, most of these agencies did not respond to requests for meetings. Those who responded refused to engage with the research team, citing that the research was a 'sensitive' topic without elaborating on the reasons. The Vietnam General Confederation of Labour (VGCL), which is the only recognised national trade union centre in Vietnam, was approached for the purpose of the research. VGCL did not respond to the research team's request for a meeting despite multiple requests.

The team subsequently, through personal connections, was able to secure an appointment with a trade union official, on the condition that he could speak off the record. The meeting was hurried and lasted only a couple of minutes. He reasserted that he was unable to speak in his capacity as a trade union official and was dismissive about the research team's attempt to raise labour rights issues. These institutions, rather than facilitating the sharing of knowledge and experience, were erecting barriers to having a meaningful conversation about rights at work. The perceived sensitivity surrounding the topic of rights at work is indicative of a patriarchal governance structure, with duty bearers unwilling to project institutional weaknesses to outsiders. In many ways, the garment factory is a microcosm of the national political climate, which allows no safe space to challenge authority and restrictions on basic rights, including freedom of speech, opinion, press, association, and religion.

²⁵ Clean Clothes Campaign (2014), *Living Wage in Asia. European Instrument of Democracy and Human Rights*, accessed 30 September 2018 <<https://cleanclothes.org/resources/publications/asia-wage-report>>

The research team also made attempts to engage with two multinational retailers who source from Vietnam. One of the companies granted the team an interview but did not turn up at the agreed time. No explanations were offered for the absence and subsequent attempts by the team to rearrange the interview were met with no response. In an attempt to engage with a second corporation, communications went cold after several tries at setting an appointment date. This experience seems to suggest that despite declarations of commitment to upholding human rights, for which both the corporations contacted by the team are known and lauded, these principles may not be as embedded in local and regional offices as frequently assumed.

Interviews with workers offered the clearest and most direct pathway to revealing what is behind a veil of seeming secrecy in the garment manufacturing industry. Even so, workers took care to avoid being seen speaking to outsiders near factory grounds. Workers were identified using snowball sampling, initially through personal contacts with community leaders in specific localities. Workers were met at neutral and public locations, such as cafes and restaurants, and assured of confidentiality of their identities to put them at ease. Interviews were typically conducted early in the morning before the workers left for work or at night after workers returned from the factories because workers were not permitted to take time off work for this purpose. Some workers invited the researcher into their homes in order to highlight their living conditions. Some stakeholders expressed surprise at the access obtained with the workers, citing their experiences: “We have tried many times, but workers just don’t open up to us, let alone invite us into their homes.”

In Vietnam, 21 garment manufacturing workers from three Tier 1 factories were interviewed to get direct insight into their working conditions. There were 13 female and eight male participants from HCMC (South), Hai Duong (North) and Bac Giang (North). The female-male ratio is consistent with the overall gender breakdown of workers in the garment manufacturing factories in Vietnam.²⁶

Although more than 60 per cent of workers in the sector are made up of women, there are clear gender-based divisions of labour, with women excluded from more highly remunerated and technically skilled tasks, a finding confirmed by the government-commissioned Vietnam Migration Survey.²⁷ In addition, female workers reported having less leisure time than men, while retaining full-time responsibilities at home. Women’s average hourly wages (excluding bonuses) are just 85 per cent of those of men due to the fact that women tend to be sewers and helpers, while men are usually in higher paid occupations working as cutters and mechanics. Men are also three times more likely than women to be supervisors in garment manufacturing factories.²⁸

²⁶ Nguyen Thi L. H., (2017), Vietnamese textile and apparel industry in the context of FTA: the labour and social impacts, accessed 23 September 2018 <<https://www.unescap.org/sites/default/files/DA9%20Viet%20Nam%20Session%207%20-%20textile%20and%20apparel%20industry.pdf>>

²⁷ Institute of Labour, Science and Social Affairs (2017), Ministry of Labour, Invalids and Social Affairs, Vietnamese Textile and Apparel Industry in the Context of FTA: The Labour and Social Impacts, accessed 12 September 2018 <<https://www.unescap.org/sites/default/files/DA9%20Viet%20Nam%20Session%207%20-%20textile%20and%20apparel%20industry.pdf>>

²⁸ Ibid

Table 1: Research Participants Demographics

Male	Female	Factory location	Estimated factory labour capacity*	Internal migrants	Origin of migrant workers
2	7	HCMC	1,000-2,000 workers	9	Hau Giang, Binh Phuoc, Nghe An, Ca Mau, Tien Giang, Thai Binh
6	4	Hai Duong	10,000-13,000 workers	10	Bac Giang, Yen Bai, Thai Binh, Hung Yen, Thanh Hoa, Ha Noi, Nghe An
0	2	Bac Giang	8,000-9,000 workers	0	N/A

The workers interviewed were between 18 and 43 years of age, with four workers aged below 20 and eight workers aged above 31. Out of the 21 workers interviewed, all of them attended school up to at least 9th grade. The youngest worker interviewed, an 18-year-old woman, had worked in the garment factory for five months, while the oldest, a 43-year-old woman, had worked there for 19 years. Out of the eight male workers interviewed, one worked in cutting and trimming, three in ironing, two in material distribution, and two as sewers. Of the 13 female workers interviewed, all worked as sewers. According to a human resources manager of a garment factory, the reason more sewers are women is because they work more diligently and are more skilful in this task because they show patience with the fabric. Other jobs such as trim, cut, iron and material distribution are more likely to be ‘heavy work’, therefore, there were more male workers employed in these areas.

Table 2: Jobs of the Interviewed Workers in Garment Factories

	Cut & Trim	Material Distribution	Sewers	Iron
Male	1	2	2	3
Female	0	0	13	0

During the initial stages of the interviews, workers were cautious about revealing too much information for fear of repercussions from the factory management, even though they were approached outside their work settings. The workers explained that this fear stemmed from experiencing intimidation by management who explicitly threatened them with job loss if they spoke to the media, researchers or any other outsider about their working conditions. This kind of engagement was deemed to be against company protocol. These threats are significant to the workers, many of whom are family breadwinners and rely on employment in garment factories as the sole source of income. Many workers feel unequipped to gain alternative employment outside the industry because of their lack of education and skillset.

* Estimates by workers

The level of caution exercised by workers towards perceived outsiders speaks not only to the importance of social networks in conducting research in a closely-guarded industry but also how its culture of secrecy seeps throughout the system and is internalised by workers. The interactions with the workers revealed how they consciously self-monitor and self-regulate their social engagements, extending the control exercised by employers to the world outside factory grounds.

There was limited participation by institutional stakeholders such as trade unions and factory managers. Those who did participate gave fragmented and ambiguous answers to questions about labour conditions in the industry, reinforcing the culture of concealment already noted during interviews with workers.

In contrast, stakeholders who do not directly operate in the industry were open and candid about their roles and programmes targeted at improving labour conditions in Vietnam. Representatives of NGOs and foreign governments engaged with for the research demonstrated a willingness to discuss how programmes may help to improve labour conditions in the garment manufacturing industry in Vietnam. Of note, their more positive views were from outside the industry looking in.

Representatives of the Government of Vietnam chose not to participate in the research. Some of the non-state stakeholders who were interviewed indicated that the government's engagement with non-governmental actors varies between organisations. It was noted by some stakeholders that government officials may have declined to participate because they did not welcome the attention to these issues.

“If I have a choice, I will not stay and work here. I just don't know if I am capable of doing a different job.”

Sentiment of a worker in HCMC, echoed by 19 other workers spoken to.

2.2 Risk of Forced and Child Labour in Vietnam's Garment Supply Chains

Interviews with the workers revealed patterns of exploitation, including indicators of forced labour in garment manufacturing factories in Vietnam.

Workers who were interviewed consistently reiterated that they are coerced to work through the use of threats and intimidation. In particular, all workers expressed that they had been threatened with potential loss of employment or wage deductions if they took sick days off, made mistakes at work or did anything contrary to the expectations of the management. Indicators of forced labour such as deception, restriction of movement, intimidation and threats, abusive working and living conditions as well as excessive overtime were prevalent. Workers also indicated that the companies do not adhere to occupational safety and health (OSH) standards. Workers were not provided with OSH training, and experienced strong smells from chemicals²⁹ and dust with minimal protective gear. Even though masks are provided to workers, some are still exposed to strong smells from chemicals used on garments at the factories.

Fear is the dominant control mechanism used by employers to regulate worker behaviour in garment factories in Vietnam. Employers take advantage of workers' fears of losing employment to keep them in conditions that violate rights at work because many of the workers are internal migrants³⁰ and rely on employment at garment factories as their sole source of household income. The way this fear is experienced as 'forced labour' needs to be seen in the light of the structural vulnerabilities faced by the workers.³¹ Having originated from contexts where they worked the land as subsistence farmers, migrant workers, in particular, see their situation in factories as one of survival. They do not feel equipped to find alternative work and so leaving is not a matter of choice for them.

Workers who experience distressing situations at work fear retaliation from managers if they file complaints or attempt to exercise their labour rights. Although factories provide complaint boxes on every floor in factories for workers to channel feedback to management, they are not usually used. Only three out of the 21 workers interviewed had used the complaint boxes. Anonymity of making a complaint was not guaranteed as there are close circuit television cameras (CCTV) all around the factory with some located outside complaint boxes.

Strong union presence in all three factories ought to provide workers with reassurance of a safe complaints mechanism. However, workers were not confident that the unions could be trusted or approached for assistance. Workers see unions as subordinate to the management, representing employers to keep workers in check rather than protecting workers' interests. This is because union leaders in all three of the garment factories are not elected by the workers but are appointed by the management.

²⁹ Workers expressed concern that the chemicals used were hazardous but did not know for sure and did not feel they could ask.

³⁰ It was asserted by a factory manager that internal migrant workers were preferred over local workers as they were thought to be more hard working and easier to manage.

³¹ Lebaron, G. (2018), 'The Global Business of Forced Labour: Report of Findings', SPERI & University of Sheffield

2.2.1 Labour Violations throughout the Employment Cycle

Recruitment

Stakeholders reported that workers in Vietnam's garment manufacturing factories come from 58 different provinces and five municipalities throughout the country. Workers in Tier 1 garment factories in Vietnam are typically recruited from non-industrialised provinces, such as Nghe An, where there is less work available. Factories coordinate with vocational training centres and job placement agencies to source workers. Specific criteria are provided to the recruitment centres, for example, one requirement is that workers sourced should be below the age of 35. The recruitment centres source candidates for the garment manufacturers who then interview them. Once selected, the company will pay a recruitment fee, per worker, to the placement agency. The use of billboards, posters, flyers, television and word of mouth are common and effective ways of sourcing workers. It is unclear as to what workers are told, expect, or know about their prospective jobs during their recruitment.

All the workers interviewed who were accepted for jobs in all three garment manufacturing factories confirmed that they were given contracts to sign. All the workers interviewed had at least basic literacy levels and understood the contents of the contract, but many do not remember the details of the terms and conditions of their employment. This may be for a variety of reasons, such as keeping their contracts with other family members for safekeeping, or because they may not have been given a copy by their employer. A key element of forced labour is that employers take advantage of workers' vulnerability and lack of awareness.

Management Control and Grievance Mechanisms

It is pertinent to note the sheer size of garment manufacturing factories described by the workers. By their estimates, factories employ between 1,000 and 13,000 workers. These factories produce massive amounts of garments for numerous buyers and require a significant level of organisation and systemic approaches to manage all processes. This necessarily involves the development of a culture and approach that function to manage thousands of workers every day. Managers in a given factory are assigned to oversee different parts of the garment production process, such as sleeves stitching, ironing and cutting sections. One manager oversees each section, consisting of between 30 and 100 workers. Treatment is harsher towards young workers with limited experience, skill and knowledge. Threats of expulsion are particularly commonplace with young workers. A 20-year-old male sewer interviewed experienced daily threats from the factory management to increase his daily production to above 50 per cent or face consequences.

Many of the workers see management as inducers of stress. Managers are constantly present on factory floors, seen by workers as a form of mobile and active surveillance techniques to constrain movements and actions of workers in the factory. Managers threaten workers with potential terminations and salary deductions for behaving in ways that do not meet the management's expectations.

Workers interviewed claimed that they are not allowed to speak to one another while working. They are sometimes forced to resort to whispering to one another in order to communicate. Workers are also not allowed to use mobile phones while working. According to workers in one factory, several people from management sit in a tall glass tower in the middle of the factory

so that they can monitor workers without having to leave their rooms. These indicate that the management techniques are aimed at extracting the most productivity for the least cost, employing a familiar hybrid of stress and surveillance techniques with more indirect forms of psychological control.

Workers who were interviewed offer different opinions and perspectives on the role of managers in relation to expressing grievances about working conditions or accessing their rights at work. Some feel they were able to complain to floor managers about working conditions while others were fearful that the slightest dissatisfaction expressed would make them vulnerable to termination of their employment. While sentiment about the role of managers differs among interviewees, none of the workers interviewed during the research indicated that complaints made to managers about working conditions would lead to substantial improvements.

There are comment boxes on each floor where workers can make complaints including those related to the management. While workers are aware that these feedback loops exist, many do not make use of them for fear that they would lose their jobs. As mentioned, above, three workers have used the comment boxes but only two experienced a positive outcome and had management assist with addressing their grievances. In general, however, the complaint mechanism, rather than empowering workers by providing them with a process that they can use to address real concerns, has a disempowering effect. This is because it highlights and reinforces the power imbalance between the worker and the management.

It should also be noted that companies across industries often point to the lack of complaints lodged in their internal grievance mechanism as an indicator of worker wellbeing. It is argued, however, that the case is more indicative of the opposite; that the lack of a grievance mechanism should raise a red flag about how effective or accessible it is as a process for workers.

Wages as discipline and punishment

Wages were highly dependent on productivity, skill, overtime hours and the impact of high and low seasons. Depending on experience, workers who were interviewed earn anything between VND 4.2million (approximately US\$180) and VND 14million (approximately US\$600) per month, including payment for overtime work performed. From the depiction of workers interviewed, their salaries function both as the proverbial carrot and stick for regulating worker behaviour. Arbitrary salary deductions are the most overt and common disciplinary method for mistakes made on factory production floors. Workers who were interviewed reported that they are punished for mistakes as minor as stitching lines not being "straight enough". When this happens, the worker is issued a letter signed by the manager at the end of the working day, stating that they will receive a salary deduction for the day based on the mistakes made. As with their contracts, a copy of the deduction letter is not provided to the workers.

Workers who were interviewed said that salary deductions are a constant worry and reported that they have to remain alert all the time in spite of tiredness and boredom from the routine of the specific job scope. This finding is consistent with a survey conducted by the United Nations Development Programme on female garment workers in Vietnam.³² The amounts deducted from workers' salaries vary based on the severity of the mistakes and are allegedly arbitrarily determined by the management. According to the worker interviews, deductions of VND 93,275 (approximately US\$4) for each mistake are common for workers throughout all factories.

³² UNDP, 2006, accessed 30 September 2018 <[http://www.undp.org/content/dam/vietnam/docs/Publications/4877_Policy_paper_2006-2%20\(1\).pdf](http://www.undp.org/content/dam/vietnam/docs/Publications/4877_Policy_paper_2006-2%20(1).pdf)>

Of the 21 workers interviewed, nine experienced salary deductions for taking sick leave. The other workers interviewed were aware that such practices exist, but they had not experienced these deductions themselves. Sometimes, the clinics at the factory's premises would grant workers days off due to illness. However, if workers did not recover within the day and took additional days off, they would experience further salary deductions. One worker expressed that the management had threatened to fire him if he took a sick day off.

On the other hand, workers are incentivised to come into work daily. According to the workers interviewed, a 'diligence bonus' of VND 820,000 (approximately US\$ 35) is awarded to workers who attend work daily and do not take days off in a month. These diligence bonuses, however, are retracted if the worker receives salary deduction letters for mistakes made.

Whether the salary structures used in garment factories in Vietnam are for disciplinary or reward schemes, they strike at the heart of the worker's vulnerability, for whom it is a matter of survival, due to the lack of alternative livelihood options. Recognising this vulnerability, some brands are working with Fair Wear Foundation to create an incubator on a living wage; and developing tools on how costing is calculated. Nonetheless it is noted that programmes such as these, which operate under the aegis of factory management, require improved levels of worker empowerment in order for them to participate more fully.

Long working hours, forced overtime and paid leave

Normal work hours for the 21 workers interviewed were about nine hours per day. This exceeds the legal working hours in Vietnam of no more than eight hours a day or 48 hours a week.³³ Workers typically start work at 7.30am daily and finish at 5.30pm, with a one-hour lunch break from 11.00am to noon. Work is performed six days a week, Monday to Saturday. If workers are required to work overtime, they typically work for an additional two hours a day, which occurs at minimum two times a week. During peak production seasons, workers may be required to work until 10:30pm; four hours beyond their regular working hours.

All workers who were interviewed worked overtime, with 19 workers having experienced forced overtime work. Although workers are compensated for overtime, they indicated that there was little to no room for them to decline work when assigned by management. One worker complained that although he was told that overtime work would end at 6.30pm, he was only allowed to leave work an hour later. Many workers complained that pressure from overtime work and long hours of work have resulted in them experiencing exhaustion and burn out. Workers shared that they are too afraid to make a complaint to the board or the union about the manager deceiving them about overtime required from them for fear of repercussions and job security concerns. Some workers said that they worked up to two or three Sundays a month without a paid day off, particularly during peak seasons.

Throughout summer or at the end of the year when demands from buyers are high, interviewed participants reported how the management push the workers to work harder and for longer hours. During peak production periods, work hours are regularly extended to 8.30pm and sometimes to 10.30pm. The workers are able to obtain additional income but many are unhappy with the fact that they do not have a say as to whether they want the overtime work. The hourly rate for overtime payment is generally 1.5 times the regular rate. One worker

³³ Ministry of Labour, Invalids and Social Affairs (2013), Labour Code 2012, Labour-Social Affairs Publishing House Vietnam, accessed 23 September 2018, <<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>>

interviewed said that she received double her hourly rate when she undertook overtime work. The process by which workers become entitled to paid leave is unclear. According to one worker, they are entitled to 14 days of paid leave, which is taken during Tet (Vietnamese New Year) and public holidays. Any other time off required by workers is unpaid.

Meals

Lunch is provided to the workers by the factory and those who work overtime are provided with dinner. Workers in all three factories take a one-hour lunch break between 11am and noon. Workers are given a portion of rice, meat and vegetables and, twice a week, some fruit accompanies the meal. All the workers interviewed complained about the quality and quantity of the food provided to them at work. Portions are not only small but workers complain that the food often smells bad and tastes spoilt, with one worker saying that the food provided is "fit for consumption by pigs".

The Case of BG

BG is a 19-year-old female garment worker. She is single and migrated to Hai Duong for work from Nghe An province, one of the poorest in Vietnam. BG has been working in the garment factory for six months. The garment factory in which she works is a Tier 1 factory, which produces clothes for export markets to the EU, US and Japan. The labour capacity of the factory is between approximately 10,000 and 13,000 workers. Most of the workers in the factory are internal migrant workers.

Before coming to Hai Duong to work in the garment sector, BG was working in her mother's hair salon in her hometown. BG knew about job availabilities in the garment factory through her brother who worked in the same factory. She obtained an interview with the factory management and was given a job in the sewing department. She describes her tasks on a daily basis, "I am working at the sewing machine to make clothes. I work 9-13 hours a day. The lunch break is from 11.00am-noon. I also work overtime twice a week."

Whenever she is asked to work overtime, the management tells her that they will extend her work till 6.30pm, however she is only allowed to stop work at 7.30pm. Her main complaint about working in the garment factory is the deception by the management and forced overtime work. Her manager often goes out of his way to catch people for mistakes they make at work. He then proceeds to file an official punishment document, which is a document used to justify salary deductions. BG says that her work environment is very high pressured as it is target driven.

BG complained about the quality of the air in the factory citing that it is dusty and uncomfortable for working even though she wears a mask. She also said that the food provided at lunch is of very low quality. When asked about her future in the garment factory she said that she had to continue working to earn an income. However, she wishes that the company would pay the workers a higher hourly rate for overtime performed. More importantly she said, "I hope they reduce the amount of work they give to us and provide us with more edible lunches."

The Case of TT

TT is a 29-year-old female garment worker. She is married with a six-year-old son who attended school for the first time in September 2018. She says that “life is hard as I am alone (working in a garment factory in the South) taking care of my son. My husband has to go to the North to earn income for us”. TT started working in the garment factory when she was 15 years old. She followed her mother to the factory to work. The factory manager accepted her to work there because her mother had a good relationship with the manager. Before coming to HCMC to work in the garment sector, TT was in school. She left school because her family did not have enough money to cover her school fees. Like many garment factory workers who are internal migrant workers, TT and her family migrated to HCMC (South) for work from the North of Vietnam.

TT has been working in the garment factory for 14 years. The garment factory in which she works is a Tier 1 factory, which produces clothes for export markets to the EU, US and Japan. The labour capacity of the factory is about 1,000-2,000 workers. The factory is a supplier for several well known brands. Even as a sewing worker for famous brands, TT struggles to live in HCMC. TT has to sell face masks to earn an extra 500,000 VND (approximately US\$ 22) a month to cover her expenses. She said that “a full-time sewing worker’s salary in the factory does not earn me and my family enough money to live”. Her salary ranges from 4 million to 7 million VND (approximately US\$ 200 to US\$ 350) a month. When asked to describe her daily tasks, she said, “I sit at the sewing machine all day, which is a very tiring and boring job”. She works between 9 and 13 hours a day. Her lunch break is from 11.00am-noon. She also works overtime two to three times a week. TT said, “sometimes I have to work on Sunday also”, which she does not like as she prioritises her weekend time with her son.

When asked about her relationship with her supervisor, she expressed that it is tense and she is under a lot of pressure. If she tells her supervisor that she does not like to work at the weekend, she might lose her job. TT says that her factory management does not care about the very high pressure they put on their workers - what they care more about is hitting the factory production target, at almost any cost.

TT’s main complaint about working in the garment factory is not only the deception and forced overtime work, but also the fact that the payment and salary she receives is not commensurate with the hard work that she puts in on the production line.

TT brings face masks into the factory to sell to workers because she says that the quality of the air in the factory is dusty and uncomfortable for working. The factory management provides all workers with face masks but they are of low quality. When asked about her future in the garment factory she said that her dream is to get out of the industry and start her own business. She intends to eventually open a small shop or move to where her husband works. She wishes that the management would increase her salary so that she would have enough money to pay for her son’s education.

2.2.2 Occupational Safety and Health Hazards

“My work is dangerous. My salary is not high enough for the level of risk I am facing every day at work.”

Male worker, 33, from HCMC.

Upon being recruited, workers go through three months of probation, without training. It is common practice for workers to learn about the job and usage of equipment from workers sitting next to them. Almost every worker we interviewed admitted to wanting proper training but said that they never received it. Workers in the garment industry often experience neck, shoulder and back pains because they sit in a single position and do not leave their workstation until the meal break or the end of the working day. Workers do not know and were not taught body postures and techniques to lessen physical aches that stem from their occupation.

While workers generally felt that the factory was quite safe, many of them complained about the factories being dusty. Though they are provided with safety gear such as boots, masks and hats, some felt that these were not good enough to protect them from the dust. Some workers suggested to the researcher that management should purchase and use vacuum cleaners to lessen the effect from inhaling dust. On being asked whether they had given this suggestion to the company, the workers said no, citing again their fear of it impacting their job security. Workers were asked what they felt about the use of chemicals to dye fabric. The workers said that it smells bad but they did not readily see the link between chemical usage and health.

Four out of 21 workers who were interviewed experienced some kind of occupational injury at the factory. Three experienced burns and one a cut from a machinery accident. All four of them received medical attention but nothing was done to improve the safety of the workplace.

“Other people have been cut from the machinery too even though we wear metal gloves but the machines are too powerful for these gloves.”

Male worker, 33, from HCMC.

Workers are covered by insurance, however, those who require emergency assistance do not qualify for the coverage as it takes the insurance company several days to approve the treatment cost before treatment can be pursued. One worker reported that he had his hand cut and was rushed to the hospital but he had to pay for his own medical bill due to the delay in insurance approval. After approaching his employer multiple times, they finally relented and agreed to cover half his medical cost. The worker further reported feeling heightened anxiety since the event, experiencing insomnia and night sweats.

According to all the workers interviewed, all three factories have a clinic that offers basic healthcare services for ailments such as flu and fever. The workers claimed that often only one staff worked in the clinic. They are unsure as to whether this staff member is a nurse or a doctor. The HR manager interviewed confirmed that the factory management often contracts doctors from outside to come in to the factory twice annually to provide health checks and medical care for workers, thereby confirming that there is a lack of comprehensive medical care available for bigger occupational hazards such as workplace injuries.

The Case of NP

NP is a male migrant garment worker. This year NP is 33 years old and has 13 years of experience working in the garment factory. NP said that he had finished grade 10 in school. “I left school, and was not doing anything prior to working in the garment factory.” NP knew about the availability of jobs in the garment factory because one of his friends from his village had been working in one of the factories. He sent in an application when the factory was receiving them and he got the job.

The main reason NP decided to migrate to HCMC and work in the garment sector is “because I had to earn money to support my family”. The garment factory that NP worked in is a Tier 1 factory producing mostly clothes and fashion accessories for exporting to main markets such as Europe, US and Japan. Labour capacity of the factory is about 1,000-3,000 workers, most of who are internal migrants.

NP described his job in the garment sector as a bitter experience. “I am working in cutting. I operate a cutting machine with electric engine, which is quite powerful. I start work normally at 7.00am and finish at 5.30 pm.” He told the researcher that he works under a lot of pressure and his job is dangerous. He feels that his salary is not high enough for the level of risk he takes on a daily basis at work. NP’s salary ranges from 4 million to 6 million VND a month (approximately US\$ 170 to US\$ 255). When asked if he underwent any training he said no. This is the source of his frustrations.

A few years ago, NP had an accident at his workplace. While operating the cutting machine, his hand was cut. “I had to take several days off to heal from the injury but my salary was deducted even though I had a doctor who certified for my leave due to my medical issue.” What made things worse for him was the fact that the company refused to pay his medical bill. NP is covered by medical insurance, however, it takes several days for the company to approve treatment. Due to the severity of NP’s injury, he could not wait several days before seeing the doctor so he had to use his own money to make the payment. When he asked his company to reimburse him for it, they refused. NP ended up agreeing to pay half of his medical bill while the company took care of the other half. According to NP, this is the worst experience he has ever been through.

NP says that he has no other choice of employment but this. “I have been in this job for more than 10 years, I don’t know if I am capable of doing a different job.... because I need the income for my family.” There is a sense of hopelessness when speaking to NP. He goes to work daily in fear of his safety. Up to this day, the factory in which NP works has not provided him or other workers with any occupational safety and health training sessions. “I am not the only one who has been injured by the machinery.”



The home of one of the garment factory workers

2.2.3 Living Conditions

“We stay at a very basic and small rented place so we don’t want you to come and visit.

Female worker, 29, from HCMC.”

Workers in the garment factories mostly come from northern, central and highland provinces in Vietnam. Workers do not typically receive housing assistance but sometimes if they do, it is a very small amount and is insufficient to cover basic housing rental. A migrant worker shared that some workers received housing assistance but only for the first three months. Reasons as to why only some workers receive housing allowance and not others is not known.

Of the 21 workers interviewed, 19 were married and had children. Only one worker was able to move their children closer to them. The workers interviewed said if they take a day off to visit their families, they will not get paid or part of their salary will be deducted. None of the workers interviewed had taken any time off work to visit their families. They typically used public holidays or sick leave days to visit their families.

Of the interviewees, 19 workers rented their housing in locations near the factories. The rental amount paid by workers in HCMC was double compared to that paid by workers interviewed in the northern region. Workers perceived the difference in cost to be due to the fact that HCMC is a big city while Hai Duong and Bac Giang are smaller localities. Workers in HCMC, however, received lower salaries, some as little as half of what was received by workers in the north. A reason for this could be due to the fact that labour is more readily available in bigger cities therefore making supply higher than demand.

Workers in HCMC expressed embarrassment about their living conditions due to how small these spaces were. Workers in Hai Duong province, however, were more open to having people visit their homes. Workers, especially in HCMC, live in very poor and small housing. Two to three people typically share housing in a 12 m² area which includes the bathroom and indoor kitchen area. Due to the cramped spaces without adequate storage or furniture, workers are forced to sleep on the cold, hard, tiled floor with poor ventilation. This is detrimental to their health, with symptoms such as respiratory problems, body aches and infection. Rent can range from anything between VND 1.6 million (approximately US\$ 68) to VND 2 million (approximately US\$ 86) a month, a significant sum, especially for workers who earn only VND 4.2 million (approximately US\$ 180) per month.

Migrant workers said that they often had to borrow money to equip themselves with a motorcycle to travel to their workplace, which is located at a distance of between two to five kilometres from their homes. Many also had to borrow money to purchase cooking utensils, a washing machine, and a refrigerator.

2.2.4 Role of Trade Unions

“We are here to represent the workers.

A trade union official.³⁴”

All workers are mandated to be members of a trade union, paying a joining fee of VND 40,000 (approximately USD 1.72), as confirmed by all interviewees. There are no democratic independent trade unions in Vietnam and consequently no trade unions from the country are affiliated to the International Trade Union Confederation.³⁵ Union leaders, however, are appointed by factory management from among the workers who have been working in the specific factory for at least five years. The union leader is not paid a salary and if they want to solve a problem, they depend on the management, rather than the industry-wide unions to assist.

Workers do not have a clear understanding of the role of a trade union within the workplace and the labour intervention functions it ought to carry out. Stakeholders interviewed noted that it was difficult to assess the role of trade unions within the garment industry and the type of activities they carry out. According to the workers and stakeholders interviewed, trade union leaders have a strong but informal social function and less of a labour function. Workers reported that union leaders visit them when they are unwell, organise festivals for the workers and their children, assist in funeral preparation of family members of workers, and attend weddings of workers. Trade union fees paid by members go towards gifts for community activities such as Women’s Day.

Seven workers interviewed expressed that they felt comfortable approaching the union to air their grievances. The other workers, however, were suspicious of the union and saw them as an extension of the management. None of the 21 workers interviewed saw the role of the union as one of protecting the labour interests of workers. None were able to give an example of a trade union leader assisting workers with exercising their labour rights. The limited labour intervention role of a trade union leader is the result of the factory’s disempowering structure. Institutions meant to empower and protect workers’ interests are overtly co-opted into management. Union leaders are likely to perceive themselves as being answerable to employers who appointed them as union leaders, rather than to workers whose interests they are meant to safeguard. Workers that were appointed as union leaders expressed disappointment about it as they felt it simply gave them more responsibilities. As union leaders are themselves workers and often part of the management team, they share the same concerns over their job security and fear of dismissal for exercising their rights to organise and bargain collectively to improve working conditions. There will always exist a conflict of interest, and usually, the protection of worker’s rights becomes secondary.

³⁴ Interview with trade union official off-the-record

³⁵ Survey of violations of Trade Union Rights - Vietnam, <https://survey.ituc-csi.org/Vietnam.html?lang=en>

The bias that trade unions have towards management and employees was also noted within the trade union office. One trade union official interviewed was only willing to speak off the record and was uncomfortable with having a lengthy conversation about his role or the working conditions in garment factories. When a case of workplace injury, in which a worker who had his hand cut in the factory had to pay for half of his own medical bill, was raised with him, the trade union leader said, “Oh, sometimes if workers make mistakes themselves, then they should pay half. It must be his mistake. The factory won’t pay full.” That a trade union official condones wage deductions for treatment of workplace injuries is a sign that workers’ representatives have internalised employers’ perspectives on the responsibilities of trade unions, as well as using wage structure as a disciplinary mechanism.

2.2.5 Child Labour

In 2016 the US Department of Labour listed the Vietnamese garment industry as a sector that uses forced and child labour. Just under 50,000 workers in Vietnam are aged less than 18, according to the ILO-MOLISA Survey on Child Labour, with 1.2 per cent of these aged between five and 11 (the majority working in unregistered factories).³⁶

Up until 2018, a local NGO confirmed that they are still conducting rescues of children in Tier 4 garment manufacturing operations. The conditions described by the NGO indicate that these children were made to work in slave-like conditions, and in line with the “worst forms of child labour”. These children are not allowed out of the building and sleep at the sewing machines. These Tier 4 garment operations provide piece-work for larger factories, though the NGO was not able to confirm the names of these factories. It is also unclear whether the supply chain this linked to was for the domestic or international market. Recruitment of children for work in Tier 4 garment operations takes place via agents known to communities. These agents deceive parents by promising schemes of vocational training for their children in the cities. Children, some as young as 10 years old, are recruited for work in these set-ups. Their phones are confiscated, and they are coached by agents to lie about their age to their potential employers. These children typically do not receive payment for the work and are again coached by agents to lie to their parents about the nature of their ‘vocational training’ and payment obtained from it. This organisation noted that there has been a decline in rescues conducted in recent years but they were unable to ascertain the reason for this. It is speculated that the modus operandi of agents may have changed, and children may be recruited to work in new locations.

Each of the 21 workers interviewed for this limited research report said that there are no known cases of child labour in the Tier 1 factories in which they work. However, on being questioned about the prevalence of child labour cases, a HR manager of a Tier 1 factory abstained from responding. Her refusal to comment, coupled with the reports from the local NGO, highlight a significant concern on child labour practices in the garment sector. Although no child labour cases were referenced by any of the workers in Tier 1, there needs to be further scrutiny on how widespread the practice of child labour is within the industry, especially further down the tier rungs.

³⁶ International Labour Organization, Institute of Labour Science and Social Affairs & Research Center for Female Labour and Gender, 2009, Working Children Situation in Eight Provinces in Vietnam, accessed 23 September 2018, <www.ilo.org/ipecinfo/product/download.do?type=document&id=13014>

3. Conclusion

Vietnam is working to become the world's leading garment manufacturing country. The country is a powerhouse of available workforce, with sufficiently developed technology. Multinational corporations are increasingly turning to Vietnam to source their garment, apparels and textile requirements, in an age of fast fashion and the insatiable clothing market.

The Vietnamese garment supply chain, divided across a number of tiers, employs 2.5 million workers. Tier 1 garment factories employ up to tens of thousands of workers in any one plant. In order to meet purchase orders and demands for the world's largest brands, it should not come as a surprise that production plants and manufacturing processes need to be as mechanised and efficient as possible; the extent to which it is impacting workers cannot be underestimated. The factories assessed through workers' perspectives in this assessment describes a strictly top-down, hierarchical system of management using power and control to maintain order.

First and second hand accounts highlighting indicators of labour rights violations and forced labour, such as long hours of work, forced extension of work, denial of sick leave, a lack of occupational safety and health training and threat of employer retribution directed towards workers who attempt to speak out, were prevalent. Interviews with the workers confirm that national laws are not properly enforced to adequately protect them across three Tier 1 factories in both the North and South of Vietnam. The culture of fear, intimidation and control that management assert over workers, coupled with the lack of alternative employment for survival, leave workers in a vulnerable position. Companies' codes of conduct and auditing processes also appear to have a limited impact on workers' wellbeing, as evidenced in the field research. Trade unions in Vietnam are government entities and are perceived as either extensions of the management or at best serving a social function. Workers are unclear about how trade unions really support them at work. The role of NGOs in supporting worker wellbeing in factories and supply chains is also limited, as access is strictly restricted to their specifically agreed mandate, such as training and conducting of workshops.

Meanwhile, workers experience high levels of stress and experience structural vulnerabilities with the prospect of not being able to survive if they lose their jobs. Many workers are internal migrants and come from a background of subsistence farming amid scarce employment. They feel ill-equipped to leave their employment and look for other work.

The culture of fear, intimidation and secrecy also speaks to the need for greater transparency in the garment manufacturing industry in Vietnam. Access to factories and their workers was not obtainable formally, raising a concern that factories have something to hide. Access to workers was eventually obtained through informal connections outside factory gates. Conversations with officials directly linked to the industry had to be undertaken off the record. Where there was access, conversations were often short and many questions were left unanswered. This culture of intimidation builds metaphorical walls around garment factories to prevent scrutiny. This system serves to isolate the workers further as company responsibility is not part of the psyche of the workers.

There is a concern that workers are also intentionally kept in a position of vulnerability, making them more pliable to threats and intimidation. Examples include the lack of training and being penalised for 'making mistakes', not being given copies of the contracts they have signed as well as disciplinary letters informing them of deductions from their salaries. Factory work is structured to ensure that workers remain stagnant at work and further ensures they lack confidence and capacity to find alternative work.

Meanwhile, there is significant concern that further down the tier rungs the labour conditions only get worse. Tier 2 factories and operations are inaccessible even for local stakeholders. Furthermore, an NGO report highlights shocking cases of child slavery in one Tier 4 garment operation.

While the national legal framework of Vietnam provides for some labour rights there was little evidence of how well these laws and frameworks are implemented and monitored. Furthermore, with the lack of free and democratic trade unions due to co-option by the factory management, there seems to be little recourse for maltreated workers. The ratification of key ILO Conventions such as Convention 98 on the Right to Organise and Collective Bargaining, Convention 105 on the Abolition of Forced Labour and Convention 87 on the Freedom of Association and Protection on the Right to Organise is important in this context to reduce the power imbalance that overwhelmingly privileges the interests of the companies over the wellbeing of the workers.

In order to ensure that workers are treated better in factories and supply chains, deeper systemic and cultural changes need to happen across the sectors. Companies will need to review their own practices and procedures for ensuring labour standards, including the way they purchase and agree on prices. They will need to work more collaboratively on sector platforms such as with governments, both their own and from supplying countries, about expectations regarding the role of each government in ensuring the practice of their own legal frameworks.

Against the backdrop of the increasing global debate about labour conditions in global supply chains, it is vitally important to bring the stories and experiences of workers to the foreground and engage them in dialogue about business and human rights frameworks.

The EU, as the world's largest trading bloc, needs to show the necessary leadership in tackling human rights violations in global supply chains, such as those stemming from Vietnam's garment manufacturing industry. In line with calls from the European Parliament and EU national parliaments, the European Commission should immediately move to introduce mandatory human rights due diligence in business supply chains and operations, including a specific focus on forced and child labour, for all businesses operating in Europe with a turnover greater than an agreed threshold. Furthermore, the EU and its member states should strengthen the EU's harmonised customs data framework by taking steps similar to those required by the US Trade and Facilitation Act, and move to exclude goods tainted with child and forced labour from EU markets.

4. Recommendations

All Stakeholders

- 1 Workers to be better consulted and their voices listened to by all stakeholders. Internal and external mechanisms for audits, as well as independent assessments, should review and consider how to best understand the experience of workers.
- 2 All audits to actively use worker voice tools. And given the culture of secrecy, other methods of accessing workers experiences outside of factory boundaries must be considered.

International Apparel Brands, Retailers, Supplier Companies

- 3 Apparel brands and buying corporations to review their purchasing and ordering practices. Currently, purchasing practices are incentivising suppliers to lower labour costs. Furthermore, sending orders to factories with tight timeframes pushes factories to overwork their labour force. Buying companies must consider how they can enable a race to the top rather than a race to the bottom.
- 4 Apparel brands and suppliers companies to review their relationship and approach to ensuring and maintaining labour sustainability standards. Relationships need a fundamental shift from a fear-driven compliance approach towards one that is more accountable and transparent. This should start with allowing better access to business operations and being more open and communicative about the challenges in the current procedures and practices.
- 5 Apparel brands and buying corporations to extend the platform for social dialogue with key stakeholders regarding Vietnam's internal dimensions of labour and business practice on working conditions, process characteristics, and worker attributes.
- 6 Apparel brands and supplier companies to build supplier capacity and achieve collective efficiency towards maximisation of their potential to create higher value-added jobs and decent work. Focus should be placed on developing local educational and training institutions in Vietnam to equip workers with the necessary skills.

EU and its Member States

- 7 The EU should move to introduce mandatory human rights due diligence in business supply chains and operations, with specific focus on forced and child labour, for all businesses operating in Europe with a turnover greater than an agreed threshold. This regulation should apply to all business (rather than confined to specific sectors) and include a monitoring mechanism and proportionate sanctions for non-compliance.
- 8 The European Union, and other governments of international markets, to consider incentives for international trade to bring better value to workers and stakeholders throughout the supply chain. Labour monitoring standards, that include effective worker voice tools, must be included in international trade agreements with garment manufacturing countries. Furthermore, companies should be incentivised to implement better monitoring and measuring labour standards in their supply chains.

Stakeholders in Vietnam

- 9 Vietnam-based industry representative bodies must consider how they can better represent the overall view of garment manufacturing companies. Industry representative bodies are in a unique position to raise issues about general trends in the industry. If they are not accessible for consultation, particularly by international independent inquiries, they are not able to adequately represent the important views of garment manufacturing factories.
- 10 Trade Unions must improve their representation of, and services to, workers. Trade Union officials must support their representatives in factories by raising issues directly with factory management and industry representative bodies. Meanwhile, Trade Union representatives should be elected by workers, not by company management.
- 11 The Vietnam Government should urgently develop mechanisms for better enforcement and monitoring of existing labour regulations. This will require a review and strengthening of systems that protect workers. Furthermore, all workers should be fully informed and made aware of their fundamental labour rights through public communications, announcements and services. Sanctions should be applied to companies discovered to be mistreating their workers.
- 12 The Vietnamese Government should ratify international labour rights conventions, specifically, ILO Convention 98 on the Right to Organize and Collective Bargaining, ILO Convention 105 on the Abolition of Forced Labour, and ILO Convention 87 on the Freedom of Association and Protection of the Right to Organise.
- 13 The Vietnamese Government should recognise independent trade unions under Vietnamese law.

ANNEX I: Research Methodology

The methodological framework used to undertake this assessment was devised by Embode in consultation with Anti-Slavery International and consisted of the following components:

Initial Briefings Meetings:

Initial briefing meetings were undertaken with key Anti-Slavery International staff to enhance the conceptual understanding of the research and its purpose as well as to consultatively develop the methodological approach and scope of the assessment.

Literature Review:

A review of selected literature was conducted in both English and Vietnamese which included industry reports, EU programmes, policies and trade agreements, non-governmental organisation (NGO) reports and independent scholarly articles on practices within the Vietnamese garment industry. A review of relevant laws and regulations both nationally and internationally was also undertaken. A full list of literature and documents reviewed can be found in the bibliography.

Stakeholder Consultations:

A series of consultations were held with strategic and relevant stakeholders based in Vietnam, including representatives from the United Nations (UN) and NGOs with mandates for protecting workers and children from exploitation and forced labour in the garment sector in Vietnam. Consultations were also conducted with a multi-stakeholder foundation working to improve workplace conditions in the garment and textile industry in Vietnam, as well as with representatives from the EU Delegation and British Embassy in Vietnam. These were mainly undertaken online, on the phone or by email.

It should be noted that several key strategic stakeholders declined consultation such as VITAS (Vietnam Textile and Garment Association), VCCI (Vietnam Chamber of Commerce and Industry), VAMAS (The Vietnam Association of Manpower Supply), MOLISA (The Ministry of Labour- Invalids and Social Affairs), and VGCL (Vietnam labour union), as well as a handful of multinational corporations with headquarters or operations in the EU, despite multiple requests to connect with each of them.

A full list of stakeholders interviewed can be viewed in Annex V.

Field Assessment:

The provinces of Bac Giang and Hai Duong in Northern Vietnam and Ho Chi Minh City (HCMC) in Southern Vietnam were selected for the field visits due to the higher density of garment factories in these locations. Furthermore, locations in both the North and South of Vietnam were selected in order to compare and analyse working conditions as well as protective frameworks existing in the different regions.

Visits to the vicinities of garment factories and communities with a predominance of workers was undertaken over a period of six days. Key informant interviews were conducted with 21

garment factory workers, employing a snowball sampling methodology. All interviews were undertaken in public places such as restaurants and cafes in the localities of their homes. An experienced native Vietnamese speaking researcher conducted the field visits and was able to establish trust and rapport with the factory workers, who were found to be ready and cooperative in participating in the assessment. Workers preferred meeting outside their workplace for fear of violating company protocol which forbids them from speaking to researchers and the media.³⁷

Two stakeholders, a national trade union official and a corporate sustainability officer agreed to provide off-the-record interviews. Both stakeholders were reluctant to be interviewed in their official capacity and only did so out of a sense of obligation due to receiving requests from their connections. A human resources (HR) manager from a factory in HCMC agreed to an interview but refrained from answering many questions so as to not "get into trouble".

ANNEX II: Conceptual Definitions

Child Labour

There is no universally agreed definition of child labour. This report adopts the International Labour Organization (ILO) description of 'child labour' as:

"...work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

It refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by:

- *depriving them of the opportunity to attend school;*
- *obliging them to leave school prematurely; or*
- *requiring them to attempt to combine school attendance with excessively long and heavy work."³⁸*

It is also generally accepted that child labour includes employment of a child (unless it is considered 'light work') below the minimum age for employment. International law³⁹ has set a general minimum age of work equal to the age up to which national law mandates compulsory education. This is considered to be, at minimum, 15 years of age. States can make an exception to where the national educational infrastructure is still in a development stage. However, the absolute minimum working age must be no less than 14 years.

³⁷ See sections on 'Ethical Considerations' and 'Limitations' for further details.

³⁸ International Labour Organization (2015), *What is child labour?*, accessed 23 September 2018, <<http://www.ilo.org/ipec/facts/lang--en/index.htm>>

³⁹ International Labour Organization (1973), *Minimum Age Convention, C138*, 26 June, C138.

Child Slavery

Slavery, and practices similar to slavery, are also defined by a number of different characteristics. For sake of consistency, this assessment has considered the following UN conventions to define ‘child slavery’. A child is defined as any person under 18 years of age.

Article 1 of the UN Slavery Convention (1926) defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Article 1 of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) further defines institutions and practices similar to slavery as including debt bondage, serfdom, servile marriage, and “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

Article 3(a) of the ILO Convention No.182 on the Worst Forms of Child Labour specifically includes ‘child slavery’ as a worst form of child labour, described as “all 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, including forced or compulsory recruitment of children for use in armed conflict”.⁴⁰

Forced Labour

Forced labour refers to situations in which “persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.”⁴¹

- Indicators of forced labour used for the purposes of this assessment include:
- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

The presence of a single indicator in a given situation may, in some cases, imply the existence of forced labour. In other cases, however, several indicators have to be taken together to point to a forced labour case.⁴²

⁴⁰ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention-182) available at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>

⁴¹ International Labour Organization (2012), *ILO indicators of forced labour*, accessed 23 September 2018, <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf>

⁴² Ibid.

ANNEX III: Ethical Considerations

The purpose of the research was explained to the target informants; the stakeholders consulted as well as the factory workers and officials interviewed. Formal and written consent for interviews was obtained from all 21 garment factory workers. Confidentiality of all informants has been respected throughout the data gathering and reporting phase. Identities of all stakeholders interviewed, including those who asked to be interviewed off the record have been preserved. An English version of the consent form can be found in Annex VI. Care was taken to respect any cultural sensitivity on specific lines of questioning and to ensure that the focus was on listening to and observing interviewees to best understand their responses. This research is in line with Embode’s child protection policy and Anti-Slavery International’s Safeguarding Policy for Children and Young People.⁴³

ANNEX IV: Research Limitations

The research was limited in a number of ways, both in terms of time and resources as well as access to informants and garment factories.

Access to informants and places

The initial aim of the assessment was to document working conditions in Tier 2 garment supplier chains linked to the EU. This was in response to findings that almost all compliance measures were focused on Tier 1 factories. Furthermore there is lack of robust assessments in areas such as employment rights and compliance with national labour laws, policies as well as industry standards within Tier 2 garment industry players, as well as further upstream. The research team, however, was not able to access any Tier 2 suppliers. Organisations and companies working in the sector were also not able to link the research team to workers from Tier 2 garment factories because they, too, lack access to these workers. On consulting with stakeholders, it was discovered that the lower down the tier rungs one goes, the more common it is for workers to be cautioned on speaking to researchers. We were, however, able to obtain some data on Tier 2, Tier 3 and Tier 4 suppliers through Skype interviews with NGOs based in Vietnam.

Despite multiple requests for interviews with local government agencies, most were met without any response and, in some cases, the research team was directly turned away. Due to this limitation, it has been a challenge to get a complete picture of how the Vietnamese Government entities are ensuring the protection of their labour standards in the garment sector. Some general information gleaned from consultations with the European Union Delegation Office, and the British Embassy in Vietnam provided some data about the role that the Vietnamese Government plays in supporting and enforcing international labour standards.

Two NGOs and two corporations did not participate in the assessment despite multiple requests.

⁴³ Anti-Slavery International (2017), *Anti-Slavery International Safeguarding Policy*, <<http://www.antislavery.org/wp-content/uploads/2018/02/Anti-Slavery-Child-Safeguarding-Policy-2017.pdf>>

Access to Factories

Multiple Tier 1 factories were contacted in order to gain access to workers and factory management for interviews. While buyers of Tier 1 garment factory products agreed to assist the research team with making the connections to Tier 1 factories, the management of the factories were reluctant to speak to the research team. One corporate sustainability officer agreed to provide an off-the-record interview. This was also somewhat mirrored by apparel brand companies who source from these factories. For example, one multinational corporation’s internal social compliance lead initially agreed to an interview but later did not show up for the agreed Skype call and was unresponsive to further communications. A sustainability lead for another large EU-headquartered corporation agreed to meet with the research team but became unresponsive when attempting to agree a suitable date for meeting. One Tier 1 factory manager agreed to an interview, however, refrained from answering many questions so as to not get into any problems with the company.

Time and Resources

The research team was only able to allocate six days in the field in order to access workers for interviews. Given the limited time and resources available to conduct field research in Vietnam, a decision was made to focus the fieldwork specifically on relevant workers and local NGOs. If more time and resources were available, the research team would have met workers representing a wider range of factories in both the North and South of Vietnam. Deliberate effort would have also been made to meet with more local and international NGOs on the ground to try and obtain access to Tier 2 garment manufacturing workers.

ANNEX V: List of Stakeholders Interviewed

No.	Organisation	Mode
1.	Blue Dragon	Skype
2.	Fair Wear Foundation	Phone
3.	Life Center	In person
4.	Better Work, Vietnam	Skype
5.	IOM – Crest Project	Skype
6.	A trade union official	In person
7.	A Tier 1 factory Human Resources Personnel	In person
8.	An officer from a global leading brand	In person
9.	European Union Office, Vietnam	Phone
10.	British Embassy, Vietnam	Email

ANNEX VI: Interview Participant Consent Form

Consent for Participation in Research Interview

I agree to participate in a research on working and living conditions of workers in Vietnam’s garment industry. I understand that the project is designed to gather information about my work experiences. I will be one of approximately 30 people being interviewed for this research. I also understand that this research will feed into a report that will be published and will be available in the public domain.

1. My participation in this project is voluntary. I understand that I will not be paid for my participation. I may withdraw and discontinue participation at any time without penalty. If I decline to participate or withdraw from the study, no one will be told.
2. I understand that the discussion and the information will be interesting and thought-provoking for the research. If, however, I feel uncomfortable in any way during the interview session, I have the right to decline to answer any question or to end the interview.
3. Participation involves being interviewed by an Embode designated researcher. Notes will be written during the interview. An audio tape of the interview will be made, only with my explicit permission. If I don’t want to be taped, the interview will not be recorded digitally.
4. I agree / disagree to photographs being taken during the course of the interview.
5. I agree/ disagree to having my photographs being used for the report.
6. I agree/ disagree to having my photographs being used for any publication.
7. I understand that, without my explicit permission, the researchers will not identify me by name, use any information obtained from this interview, or use any of my photographs in any reports, and that my confidentiality as a participant in this study will remain secure.
8. By signing the Consent Form attached, you (or your legally acceptable representative, if relevant) are authorising (i) collection, access to, use and storage of your personal information, and (ii) disclosure to, and use and storage by, authorised service providers and relevant third parties, for the purposes of the study, and any subsequent study.
9. For answers to pertinent questions about the research, email Hoa Nguyen at hoaadam@gmail.com
10. I have read and understood the explanation provided to me. I have had all my questions answered to my satisfaction, and I voluntarily agree to participate in this study.

My Signature

Date

My Printed Name

For study involving minors (subjects who are less than 16 years of age), consent from a parent or guardian is necessary

I give consent for my child as named above to participate in the study and agree to the consent as noted above.

Name of Parent

Signature

Date

ANNEX VII: Vietnam Legislation

Labour Code

The national labour code and penal code include prohibitions of both child labour and forced labour. The labour laws of Vietnam are primarily under the administrative jurisdiction of the Ministry of Labour, Invalids and Social Affairs (MOLISA). It includes provisions such as maximum working hours, minimum salary range, formalities for entering into an employment contract and requirements for terms and conditions, mandatory procedures for dismissal and an acknowledgement of the role of collective bargaining.⁴⁴

Key sources of the labour laws include the Labour Code, the Penal Code and various decrees. The Labour Code prohibits discrimination, sexual harassment, maltreatment, making false promises or conducting false advertising to deceive employees, and labour coercion (which is the use of force or other tactics to ensure an employee abides by the employer's will).⁴⁵

The Labour Code also seeks to protect minors by restricting the employment of people under the age of 18 to jobs suitable to their health "so as to ensure his/her physical, mental and personality development".⁴⁶ The employment of children below the age of 15 is prohibited, except for those over the age of 13 who are employed in "light work" in accordance with a list of approved jobs⁴⁷ issued by MOLISA.⁴⁸

The Labour Code in Vietnam is currently being revised to align its labour principles with internationally recognised standards. The push for the revision stems from Vietnam's commitment to signing several FTAs, including one with the EU. In the EU-Vietnam FTA, Vietnam has committed to moving towards ratification of the three non-ratified core conventions, on Freedom of Association and Protection of the Right to Organise (ILO Convention 87), Right to Organise and Collective Bargaining (ILO Convention 98), and Abolition of Forced Labour (ILO Convention 105).⁴⁹

Penal Code

The Penal Code includes several labour-related offences imposing criminal liability, in addition to any civil liability that might be imposed under the Labour Code. Of relevance in the forced labour context, the Penal Code includes the following offences:

- 1 (a) Article 162 Unlawful dismissal: any person who, for self-seeking purposes or other personal motives, unlawfully dismisses an employee or uses force or threats to cause an employee to resign and this act causes extreme hardship to the family of that employee or a labour force strike shall be liable to a fine of between VND10 million and VND100 million (approximately US\$439 and US\$4,390) or face a penalty of up to one year non-custodial probation or three to 12 months imprisonment. In addition, the offender may be banned from holding certain positions for a period of between one and five years. If aggravating factors are present, the sentence is increased to up to three years' imprisonment. Aggravating factors include the number of victims and the status of the victims (e.g. if the victim is a female raising a child under 12 years of age or is pregnant or if the offence results in the victim committing suicide).
- 2 (b) Article 216 Evasion of mandatory employee contributions: any person who is responsible for paying social, health or unemployment insurance for his employees but fails to do so for 10 or more employees for a period of six months or more and such evasion involves an amount of at least VND50 million (approximately US\$2,195) then such person may be liable for a fine of between VND50 million and VND200 million (US\$2,195 and US\$8,780), one year non-custodial probation and from three to 12 months imprisonment. In addition, the offender may be banned from doing certain jobs or holding certain positions for a period of between one and five years. If aggravating factors are present the fine may be increased up to VND1 billion (approximately US\$43,900) and the prison term increased to up to seven years. Aggravating factors include the amount of the insurance contributions not paid, the number of employees involved and if the offender claimed the contributions from employees but failed to then pay to the relevant authorities.
- 3 (c) Article 296 Unlawful employment of minors: any person who employs someone under the age of 16 to carry out hard or dangerous work or work involving contact with prohibited harmful substances which causes bodily harm to that person shall be liable to a fine of between VND30 million and VND200 million (approximately US\$1,317 and US\$8,780) or face a penalty of up to three years non-custodial probation or imprisonment of between six months and 36 months. An offence will only be committed if the child suffers bodily harm or death and the severity of the penalty imposed will depend on the extent of that harm. If aggravating factors are present, the sentence is increased to between three and 10 years imprisonment. Aggravating factors include the severity of the injuries caused and whether the offender is a repeat offender. The Penal code, however, does not regulate excessive working hours for children who do work in hazardous environments e.g. children working in the garment factory for 15 hours/day.
- 4 (d) Article 297 Forced labour: any person that uses violence, threatens to use violence or uses other similar methods to force someone to work and that work causes bodily harm shall be subject to a fine of between VND50 million and VND200 million (approximately US\$2,195 and US\$8,780), non-custodial probation of up to three years or six months to three years' imprisonment. If aggravating factors are present, the sentence is increased to between three and 12 years' imprisonment. Aggravating factors include the severity of the injuries caused, the number of victims, the age and status of the victims (e.g. pregnant, elderly or disabled or if the offender previously incurred a civil penalty or has a previous conviction for the same offence which has not been expunged). The lack of guidelines explaining forced labour and trafficking for labour exploitation results in low understanding and prosecution of such crime.

⁴⁴ Ministry of Labour, Invalids and Social Affairs (2013), *Labour Code 2012*, Labour-Social Affairs Publishing House Vietnam, accessed 23 September 2018, < <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf> >

⁴⁵ Ibid.

⁴⁶ Article 162, Labour Code 2012

⁴⁷ The list of approved jobs includes actor (including dancer and singer), athlete (if gifted), traditional jobs (such as ceramics, sewing clam shells and lacquer painting) arts and crafts jobs (such as embroidery and weaving), fine art craft from natural materials such as rattan, bamboo, coconut and banana, rearing silkworms and packing coconut candy.

⁴⁸ Ministry of Labour, Invalids and Social Affairs (2013), *Labour Code 2012*, Labour-Social Affairs Publishing House Vietnam, accessed 23 September 2018, < <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf> >

⁴⁹ International Labour Organization (2015), *Welcoming Viet Nam's Labour Rights Commitment, ILO Stands Ready for Support*, accessed 20 September 2018 < https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_427196/lang-en/index.htm >

While the Vietnamese labour code and penal code provide penalties for legal transgressions, the trade unions in Vietnam provide room for dispute settlement outside of court. There is one national trade union centre in Vietnam, the Vietnam General Confederation of Labour (VGCL). The VGCL operates under the oversight of the Vietnamese Government and all enterprise unions are required to affiliate with VGCL.⁵⁰ Trade unions play an integral role in protecting workers against exploitation by employers. Unions can provide representation for workers during dispute settlement, mobilise workers for strikes as prescribed by the law, request organisations or employers for immediate remedial mechanisms especially in instances where labour safety of workers is in question, and unions can guide workers on their rights and obligations.⁵¹ However, the subordination of trade unions to the VGCL potentially limits their independence and ability to act as a protective mechanism for the interest of workers.

In addition to national legislation and roles of trade unions, FTAs can play a role in raising standards in businesses, the garment manufacturing sector included.⁵² FTAs involve cooperation between at least two countries to reduce trade barriers and to increase trade of goods and services with each other. The EU and Vietnam are in the final stages of concluding an FTA which is expected to increase Vietnam's appeal to EU businesses. The agreement incorporates multilateral standards (ILO and the EU) committed at implementing and improving core labour rights. According to the EU Delegation in Vietnam, a core component of economic partnerships like these are the improvements made on social compliance.⁵³ The Vietnamese Government has vested interests in implementing labour reforms to improve labour conditions within the country and these agreements present a unique opportunity for advocating additional protective mechanisms for workers.

While labour standards provisions within the EU-Vietnam FTA reflect the EU's commitment to a value-based trade agenda, questions arise as to the practical implications of labour standards obligations under the FTA. It is unclear, for instance, how existing institutions can be better harnessed to improve labour conditions and monitor the protection of workers' rights in Vietnam. This limitation was acknowledged by the EU office in Vietnam who conceded to not having the mechanisms for systematic monitoring of labour rights and social matters on the ground.⁵⁴

Aside from state-led mechanisms, private corporations have attempted to address the risk of forced labour in their supply chains through supplier codes of conduct. Supplier codes of conduct are designed to uphold the concept of sustainability both socially, such as in relation to labour and other rights standards, or environmentally, such as in the amount of water usage of carbon emissions. Internal and external audits are typically undertaken by buyers to ensure compliance. Audits have limited value in identifying forced labour risks or practices and it is rare for a buyer or an auditing party to provide assistance to suppliers for improving or changing labour practices in their supply chains even where these issues are found.

⁵⁰ World Federation of Trade Unions (2018), accessed 23 September 2018 <<http://www.wftucentral.org/tag/vgcl/>>

⁵¹ Vietnam Trade Union Congress (n.d.), Charter of Vietnam Trade Unions, accessed 23 September 2018, <<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/94503/128468/F448597516/VNM94503%20Eng2.pdf>>

⁵² Amadeo, K. (2018) 'Free trade agreements, their impact, types, and examples' The Balance, 7 May, accessed 23 September 2018 <<https://www.thebalance.com/free-trade-agreement-types-and-examples-3305897>>

⁵³ Interview with European Union Delegation Office, Hanoi

⁵⁴ Ibid

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