



Targeted Surveys on application of core labour standards Vietnam

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Targeted Surveys on application of core labour standards, Vietnam

This report has been developed to provide a picture of the application of core labour standards in Vietnam. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

Progress

- Fundamental labour law reform (ongoing)
- Collective bargaining – several initiatives to expand scope and coverage of CBAs.
- Trafficking – new criminal provisions
- Child labour – still a concern, but declining incidence and improved policy framework
- Gender discrimination – strong legal framework and numerous initiatives

Challenges

- Severe restrictions on freedom of association and trade union autonomy
- Withdrawal of US from TPP has reduced US-led funding / assistance for labour law reform process and related promotional activities (but government affirms progress on reforms)
- Broad restrictions on political / civil freedoms
- Lack of clarity on possible forced labour in drug rehabilitation centres and prisons

Key context

Vietnam is a one-party state under the leadership of the Communist Party of Vietnam (CPV). The CPV formally retains control over the only permitted national trade union federation, the Vietnam General Confederation of Labour (VGCL), to which all unions must affiliate. This unitary trade union system severely restricts freedom of association. Vietnam's external relations, especially trade relations, also have significant implications for core labour standards. Recently concluded trade agreements with Pacific countries (CPTPP) and the European Union (EVFTA) contain strong labour rights commitments.

Although the state remains a prominent economic actor – state-owned enterprises accounted for almost 30% of GDP in 2016 – reforms since the mid-1980s have partially opened the country to private interests and foreign investment. Transition towards a market-oriented economy may require adjustment of Vietnam's industrial relations model to reflect the more competitive nature of labour-management relations in a market economy. Moreover, Vietnam's successful efforts to encourage FDI have resulted in multinational enterprises establishing manufacturing operations across the country. Although FDI enterprises are important contributors to growth (18.6% of GDP in 2016), they have also become the focus of allegations of labour rights abuses.

More than three-quarters of the labour force are employed in the informal sector, where enforcement of labour laws is especially difficult. Many reports of labour rights concerns – including freedom of association, child and forced labour, and discrimination – relate to workers in the informal economy. Vietnam's labour market profile also indicates gender-

based horizontal and vertical segregation in employment (women clustered in low-paid sectors and more junior positions overall) and a persistent gender pay gap.

In general, Vietnamese legislation provides inconsistent coverage of core labour standards, with limited protections against forced labour, freedom of association, and collective bargaining. Freedom of association is a particular concern, effectively precluded by Vietnam's unitary trade union system. However, the government has reaffirmed its intention to pursue comprehensive labour law reform in these areas.

There are a range of concerns about the enforcement of labour rights, especially in the large informal economy. Limited resources, gaps in official awareness/expertise, broad mandates for labour authorities, and inconsistent interagency coordination are identified as constraints. However, there are also areas of progress, including ongoing labour law reform and various programmes and initiatives to address specific areas of concern.

Freedom of association and collective bargaining

Vietnam has not ratified ILO C87 or C98, and freedom of association and collective bargaining are severely constrained by law and in practice. The law establishes the VGCL as the sole national trade union federation, to which all unions are required to affiliate, and formally places the VGCL under the leadership of the CPV. Moreover, the law fails to distinguish between workers and management, allowing managers to serve as union officials and reportedly interfere in union affairs for the benefit of employers. Procedural requirements for strikes, permitted only in non-essential industries, are prohibitively complex and result in frequent illegal strikes. There are reports anti-union discrimination on the part of employers, especially against independent workers' representatives.

The law permits collective bargaining for non-state employees at the enterprise, sectoral, and multi-employer levels, but it is silent on the right to collective bargaining in the public sector. However, most collective agreements simply replicate legal minimum conditions, although there has been recent progress in this area. However, inadequate consultations between employers and unions, the limited participation of grassroots members, and the lack of sectoral employers' associations are among constraints identified by stakeholders. In the context of trade negotiations, the government has pledged fundamental reforms to bring national legislation into line with international standards, including with respect to freedom of association and collective bargaining.

Forced labour

Vietnam has not ratified C105. However, extant legislation provides adequate protection against forced labour, albeit with some exceptions – there is no express prohibition on bonded labour, while anti-trafficking provisions do not clearly prohibit all forms of human trafficking. Concerns persist about the forced labour of detainees in state-run drug rehabilitation centres, although the government indicates such practices no longer occur. The government plans to ratify ILO C105 on completion of ongoing labour law reform.

Enforcement of forced labour laws is inconsistent. Inadequate resources, poor interagency coordination, and limited understanding among officials about pertinent indicators, procedures, and legislation constrain enforcement and policy implementation. Pre-departure fees and deposit requirements for Vietnamese migrant workers increase their vulnerability to debt bondage and exploitation in third countries. However, important areas of progress include stronger anti-trafficking provisions in the new Criminal Code;

Action Plans on human trafficking; improved regulation of recruitment agencies and fees; various training and awareness-raising initiatives; and ongoing collaboration with international organisations such as the IFC-ILO Better Work programme.

Child labour

The legal framework concerning child labour is adequate and in line with international standards. However, there are concerns about enforcement, especially in the informal economy including children working in street situations and the hospitality sector. In the formal sector, adolescents may use using false identity papers to gain employment on the same terms as adults, exposing young workers to hazardous conditions. Resource constraints, a broad mandate for the labour inspectorate, and poor interagency coordination are cited as general factors contributing to enforcement issues.

To address child labour concerns, the government has adopted important legislative and wider policy measures, including new criminal offences related to child labour; targeted inspections; a National Action Plan; data collection; and awareness-raising for officials and communities. However, limited knowledge about child labour laws among families and employers, as well as broader structural factors such as poverty and internal migration (including unaccompanied minors), constraint efforts to eliminate child labour.

Discrimination

In general, Vietnam has developed a strong legal framework concerning employment discrimination. However, there remain some remaining gaps in coverage, including the omission of certain criteria from expressly prohibited grounds of discrimination – for example, political views, nationality, sexual orientation; restrictions on women's employment intended to 'protect' reproductive functions; and a lack of definitional clarity and specific penalties concerning anti-sexual harassment provisions.

In practice, non-discrimination laws are inconsistently enforced. There are reports of discrimination affecting recruitment, promotion, and pay, especially for women. The use of gendered language in job advertisements, the practice of asking female job candidates about family status and plans, and employers' negative bias against women in their 30s due to assumed family responsibilities, are among the discriminatory practices identified by stakeholders. Additionally, prevalent gender norms and stereotypes about the social roles and professional aptitudes of women and men continue to constrain women's equal access to and opportunities in employment.

Other working conditions

Beyond core labour standards, several factors affect wider working conditions in Vietnam. High levels of informality leave many workers with irregular and inadequate incomes, exposure to unsafe working conditions, limited opportunity for skills development, and without social or employment security. Precarious employment is also a concern in the formal and semi-formal sector due to the increasing use of on-site contracting, temporary agency work, and short-term casual work.

Occupational safety and health. OSH laws are generally adequate, but issues remain concerning application/enforcement. There is limited awareness and capacity to apply OSH standards among employers, especially in small businesses, and enforcement by

labour authorities is uneven. Most informal workers (including most rural workers) are not covered by occupational injury insurance.

Working time. Excessive overtime is a repeated concern across industrial sectors, especially export-oriented enterprises such as garments and electronics. The government has proposed extending overtime limits, a move strongly opposed by trade unions.

Employment protection legislation. Employers often omit full terms and conditions in copies of contracts provided to employees. Some employers may also 'recommend' the resignation of employees they wish to dismiss, thereby avoiding severance pay in cases where employees accept.

Social security coverage. There is limited coverage in the informal economy and within the 'missing middle' – those who fall between (contributory) social security and (non-contributory) social assistance. The government has frequently noted pervasive evasion of social security contributions by employers.

Status of ratification and reporting

Vietnam has ratified five ILO fundamental (core) conventions, excluding C87, C98, and C105. The ILO's Committee of Experts (ILO-CEACR) recently cited Vietnam's 'serious failure' to respect its reporting obligations on several conventions (ILO-CEACR, 2017). However, in the context of commitments under the CPTPP and EVFTA, the government has pledged to give serious consideration to ratification of C87, C98, and C105.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<i>Convention not ratified.</i>
	C98	<i>Convention not ratified.</i>
Forced Labour	C29*	(2017): Urged the government to ensure detainees in drug rehabilitation centres are not compelled to perform work; and that people working by virtue of military conscription laws only engage in work of a military nature [<i>repeat of 2014 Obs</i>]. Requested information on provisions allowing authorities to refuse resignations of civil servants indebted to the state; and the use of prison labour in private enterprises and compulsory labour for communal/national service. Urged the inclusion of forced labour as a criminal, not only administrative, offence [<i>repeat of 2014 DR</i>].
	C105	<i>Convention not ratified.</i>
Child labour	C138*	(2017): Urged the government to intensify efforts to eliminate child labour, noting its prevalence in Vietnam. Specifically, requested measures to strengthen the capacity of the labour inspectorate, particularly in the informal economy [<i>repeat of 2014 Obs</i>]. Noted Labour Code amendments raising the minimum age for children to engage in light work from 12 to 13 years, but requested information its date of adoption [<i>repeat of 2014 DR</i>].

	C182*	(2017): Urged the government to strengthen law enforcement capacity concerning child labour, especially sexual exploitation, and improve identification and support for victims [<i>repeat of 2014 Obs</i>]. Requested information on reported initiatives to combat child labour, including national policies, anti-trafficking programmes, and rehabilitation of street children [<i>repeat of 2014 DR</i>].
Discrimination	C100*	(2018): Requested clarification on whether 'payment in kind' is covered by extant equal pay laws. Also requested information on the impact of initiatives to reduce the gender pay gap and address underlying causes; and on pertinent training offered to judges and labour inspectors, citing few cases before courts [<i>repeats 2016 Obs</i>].
	C111*	(2018): Noted the omission of 'political opinion' and 'nationality' from expressly prohibited grounds of discrimination, and requested information on practical measures to ensure non-discrimination on these grounds. Noted that women are barred from employment in work that might damage reproductive function, and requested the government limit such protective measures to maternity protections. Welcomed recent legislative initiatives to address discrimination against women in hiring (e.g., preferential treatment schemes), but requested information on implementation. Also requested information on the implementation of provisions prohibiting workplace sexual harassment and a related Code of Conduct [<i>repeats 2016 Obs</i>]. Noted how some government programmes perpetuate women's employment in informal work and light industries where pay and conditions are poor. Requested measures – training, education – to provide women with equal access to higher paid occupations. Also requested the government implement schemes to incentivise employers to hire ethnic minorities and women; allocate resources to its Action Plan for employment of disabled people; and reinstate a quota system for disabled workers [<i>repeat of 2016 DR</i>].

* Regular reports out of cycle. Several ILO-CEACR comments repeat previous Observations and Direct Requests and thus may not reflect the current legislative or in-practice situation.

References

ILO CEACR [Observations and Direct Requests for Vietnam](#).

ILO CEACR, 2017, [Case of serious failure \(CAS\) - Discussion: 2017. Published 106th ILC session \(2017\), Vietnam](#).