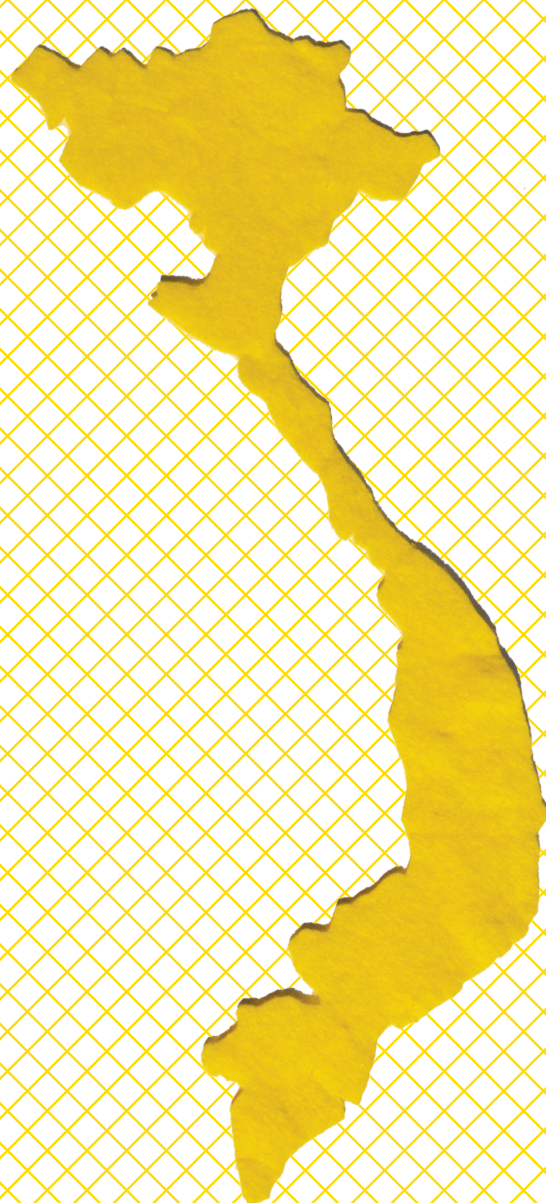




VIETNAM

country study 2015



CONTENTS

Introduction	3
1. How to read this country study	4
2. General country information	5
2.1 Economic indicators	5
2.2 Social, political & governance indicators	6
2.3 Income and poverty	7
2.4 General human rights situation	8
3. Stakeholders	8
4. Garment Industry Overview	11
5. Industrial relations	13
6. Implementation of the FWF Code of Labour Practices	16
6.1 Employment is freely chosen	16
6.2 There is no discrimination in employment	18
6.3 No exploitation of child labour	20
6.4 Freedom of association and the right to collective bargaining	22
6.5 Payment of a living wage	25
6.6 No excessive working hours	36
6.7 Safe and healthy working conditions	38
6.8 Legally-binding employment relationship	41
Sources used in this country study	44

INTRODUCTION

The Vietnamese garment industry is the country's second largest exporting industry, following electronics, and accounts for 15 percent of the country's GDP¹ and 20.77 percent of its total exports in 2014². The U.S is the biggest market for garments from Vietnam, while Japan and the EU come second and third, respectively³.

According to the International Labour Organisation's (ILO) Convention 87 on Freedom of Association and ILO Convention 98 on Protection of the Right to Organise, Vietnam has not ratified worker's rights. Freedom of association remains the most challenging problem for Vietnam. Workers are not allowed to establish independent trade unions of their choice, as all enterprise unions must be affiliated to the Vietnam General Confederation of Labour, the only recognised union in the country. At the grassroots level, it is common to find enterprise union leadership dominated by high-ranking managers and collective bargaining agreements that are copied from the labour legislation.

The second biggest challenge in the Vietnamese textile industry is excessive overtime. The current annual overtime limit for garment industry is 200 hours (which can be extended to 300 hours in special cases) or 30 hours per month⁴, but a large number of garment factories violated this legal limit.

The 2015 minimum wage that is used by garment companies as the basic salary is estimated to meet 75 percent of the minimum living needs. The garment association and the national garment trade union have a sector Collective Bargaining Agreement (CBA) that covers around 100 companies, mainly state-owned enterprises. However, according to the Vietnam General Confederation of Labour (VGCL), at least 60 percent of registered CBAs in Vietnam were just copies of the law⁵. The lowest wages provided by the CBA are only slightly higher than the minimum wages.

FWF will continue to provide updated information on Vietnam at www.fairwear.org on a periodic basis.

As interest from European textile brands continues to grow, Vietnam has grown significantly in importance to Fair Wear Foundation (FWF) members. In 2015 twenty FWF members sourced from approximately 175 factories in the country. Most of these factories are located in or around Hanoi and Ho Chi Minh City and produce clothing, shoes and outdoor goods.

The negotiations for a Free Trade Agreement between Europe and Vietnam would create an even larger boost for doing business in Vietnam. FWF expects to expand its activities in Vietnam even more from 2016 onwards.

Fair Wear Foundation has been active in Vietnam since 2006, and currently works with four Vietnamese auditors, two trainers and one complaints handler. The local complaints handler

1 <http://vietnam.vnanet.vn/vietnamese/tpp-va-co-hoi-cua-det-may-viet-nam/59116.html>

2 GSO 2014 <http://cafef.vn/vi-mo-dau-tu/nam-2014-viet-nam-xuat-sieu-ky-luc-2-ty-usd-201412281153206706.chn>

3 Vietnam Customs Authority 2014

<http://cafef.vn/vi-mo-dau-tu/hang-det-may-vn-dang-lam-mua-lam-gio-tren-nhung-thi-truong-nao-201412111226179301.chn>

4 Labour Code 2012- Article 106 (2b)

5 VGCL Resolution on Collective Bargaining, 2009

<http://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Nghi-quyet-01-NQ-DCT-doi-moi-nang-cao-chat-luong-thuong-luong-ky-ket-va-thuc-hien-thoa-uoc-lao-dong-tap-the-94260.aspx>

based in Hanoi manages the local complaints hotline and handles complaints from workers who submit labour rights violations. FWF has established contact with the employers association VCCI, the Vietnam General Confederation of Labour (VGCL) - the institute for Workers and Trade Unions (IWTU), ILO BetterWork Vietnam and a number of grassroots labour NGOs in Hanoi, Ho Chi Minh City and Hai Phong.

In 2014 FWF started piloting the Workplace Education Programme in Vietnam, organizing factory trainings in all provinces. The trainings aim to raise awareness of both workers and employees of their rights and responsibilities and to build better communication between workers and management. 2015 has seen the expansion of the training programme and an increased capacity of local staff.

1. HOW TO READ THIS FAIR WEAR FOUNDATION COUNTRY STUDY

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

Chapter 2, *General country information*, describes the economic, social, political and governance situation as well as the general human rights situation, using international indicators and comparing the country to other garment producing countries.

Chapter 3, *Stakeholders*, briefly presents the main stakeholders that are active in the garment/textile industry. The focus is on stakeholders who have an actual impact on labour conditions or play an active role in monitoring the situation for workers in the industry. This chapter serves as a reference point for stakeholders and brands that want to engage with or consult a local stakeholder to find further information or help concerning their activities in Vietnam.

Chapter 4, *Garment industry*, presents an overview of the situation for the garment industry in Vietnam, areas of production, products and prospects for the industry.

Chapter 5, *Industrial relations*, describes the trade union situation in the country, both in general and specifically for the garment industry. This chapter gives important information for understanding how well challenges regarding working conditions could be handled through the country's social dialogue, and their current status.

In Chapter 6, *Implementation of the FWF Code of Labour Practices*, the implementation of every standard of the FWF Code of Labour Practices is assessed through official statistics on compliance (where available), laws and regulations, as well as different stakeholders views on implementation. It also contains per standard the main FWF audit findings over the last three years and examples of complaints received by FWF. Auditors and brands can use this section as a reference resource for monitoring activities.

2. GENERAL COUNTRY INFORMATION

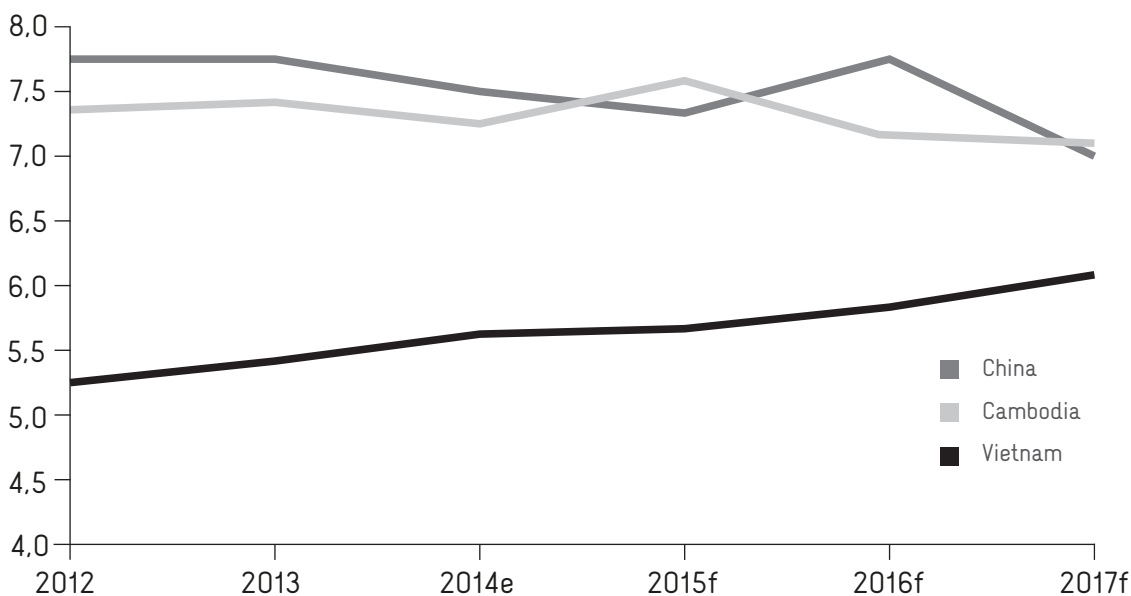
The Socialist Republic of Vietnam is the easternmost country on the Indochina Peninsula in Southeast Asia. With an estimated 90.5 million inhabitants⁶, it is the world's 13th most populous country, and the 8th most populous Asian country. The country is bordered by China to the north, Laos to the northwest, Cambodia to the southwest and the South China Sea – referred to in Vietnam as the East Sea (Biển Đông) – to the east.

Vietnam's growth rate has averaged 6.4 percent per year for the last decade, but it has begun to slow recently to 6 percent in 2014⁷. The external sector continues to be an important engine of growth. Export value in US dollar terms is estimated to have grown by 11.6 percent in 2014, out-performing other countries in the region. Vietnam's traditional labour-intensive manufacturing exports such as garments, footwear and furniture, continue to grow at a rapid clip while exports of hi-tech and high-value products (cell phones, computers, electronics, and automobile parts) have also maintained rapid growth, and have now become the largest share of export.

2.1. Economic indicators

After a few decades of high GDP growth rate of over 7 percent, the Vietnamese economy slowed down in 2009 to 5.4 percent⁸. In 2014, the economy slightly recovered with the GDP growth rate of 6 percent, which is projected to flatten in 2015 and pick up in 2016. Compared to China and Cambodia, Vietnam's GDP growth rate was significantly lower but is projected to catch up in the next few years. Vietnam has also managed to improve macroeconomic stability, with headline inflation falling from a peak of 23 percent in August 2011 to about 4.1 percent for 2014.

Figure 1: Vietnam GDP Growth compared with China and Cambodia



Source: World Bank⁹

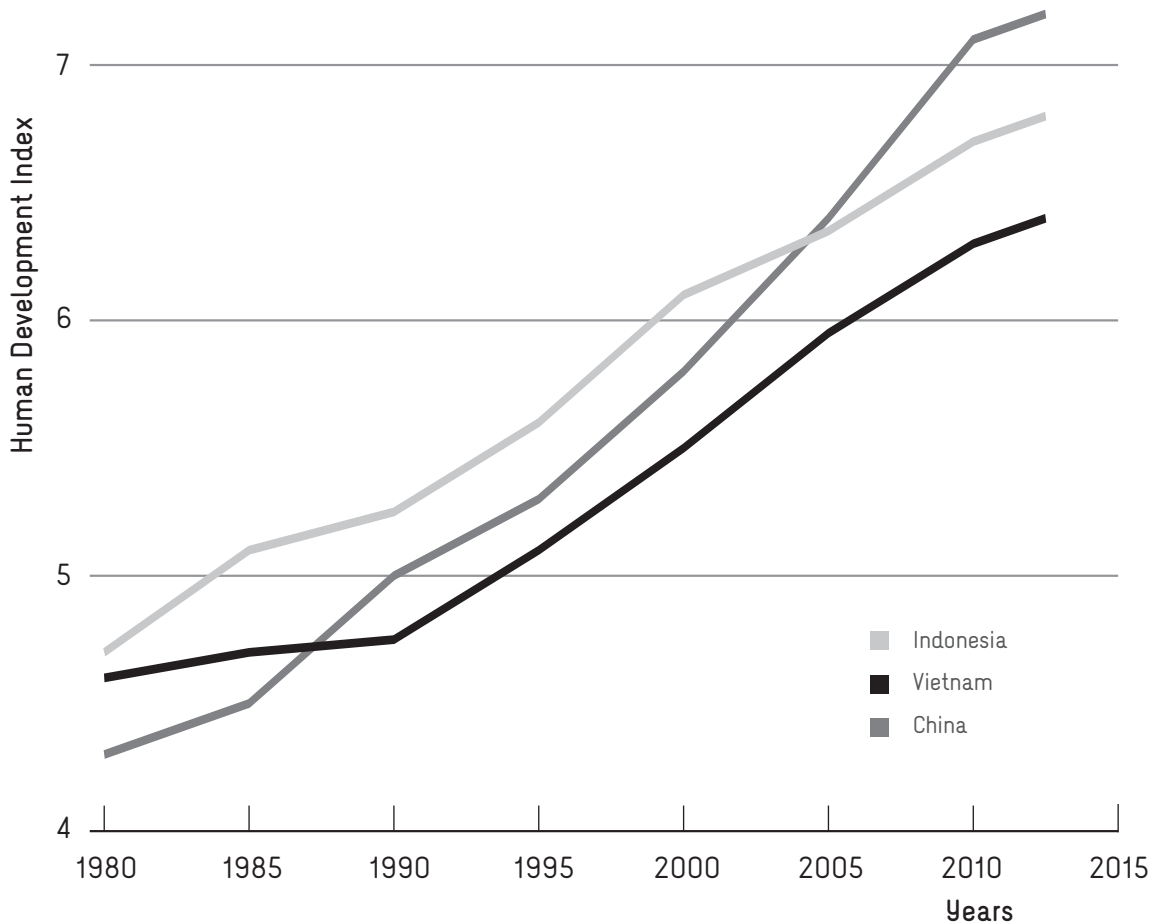
⁶ According to the Vietnam Population Bureau's statistics released in December 2014

<http://doisong.vnexpress.net/tin-tuc/gia-dinh/dan-so-viet-nam-co-gan-90-5-trieu-nguoi-3121884.html>

^{7, 8 + 9} <http://data.worldbank.org/country/vietnam>

According to the UNDP Human Development Report, Vietnam's Human Development Index (HDI) value for 2013 is 0.638, average in the human development category and positioning the country at 121 out of 187 countries and territories. Compared with regional countries, Vietnam's HDI remains lower than China and Indonesia (Figure 2).

Figure 2: Trends in Vietnam, Indonesia and China's HDI 1980 - 2013



Source: UNDP Human Development Report 2014

2.2. Social, political & governance indicators

Vietnam scores low in terms of democracy. According to the Economic Intelligence Unit, Vietnam is one of the two 'authoritarian regimes' in Southeast Asia with the democracy index in 2014 at 2.89 (over a band score of 8.0). Vietnam ranks 144th after Cambodia (100th) and Indonesia (53rd). In terms of rule of law, Vietnam ranked 82nd in 2013 as the country faces challenges in accountability, inefficient regulatory agencies and prevalent corruption (World Justice Project 2012-2013).

According to the Millennium Challenge Corporation (MCC), Vietnam's control of corruption index is much more positive than many regional countries, with the score being 0.32 (Percentile: 83 percent) in 2015. In the mean time, Cambodia gets -0.16 (42 percent) and Indonesia: -0.04 (39 percent). Vietnam's Government Effectiveness Index (by Worldwide Governance Indicators-WGI) slightly decreased from the peak of 48.8 percent (Percentile rank) in 2006 to 44 percent in 2013. China's score in 2013 was 54.1 percent and Cambodia was 18.7 percent.

Table 1: Social, political and governance indicators, 2013

	Bangladesh	China	India	Romania	Vietnam
Rule of law ¹⁰	39.81	52.61	56.4	56.4	39.34
Control of Corruption ¹¹	46.89	35.89	52.63	52.63	36.84
Government effectiveness ¹²	54.07	47.37	52.63	52.63	44.02
Political Stability & Absence of Violence/Terrorism ¹³	7.58	27.01	12.32	52.61	55.92

2.3. Income and poverty

Table 2: Gini Index – Bangladesh, China, India, Romania and Vietnam, 2014

Country	Bangladesh	China	India	Romania	Vietnam
Gini index	32.1	42.1	33.9	27.4	35.6

Source: Human Development Report, 2014

Political and economic reforms (Doi Moi) launched in 1986 have transformed Vietnam from one of the poorest countries in the world, with per capita income below US \$100, to a lower middle-income country within a quarter of a century with per capita income of over US \$2,000 by the end of 2014. Over the last few decades, Vietnam has made remarkable progress in reducing poverty and has become a lower-middle income country. The percentage of people living in poverty dropped from almost 60 percent in the 1990s to less than 3 percent in 2014.

The Multidimensional Poverty Index (MPI), which identifies multiple deprivations in the same households in the areas of education, health and living standards, calculates the share of the population that is multi-dimensionally poor, adjusted by the intensity of the deprivations. The MPI gave Vietnam a score of 6.4 in 2014¹⁴. According to the Index, 6.4 percent of the population is multidimensionally poor, while an additional 8.7 percent is near multidimensional poverty.

According to the income poverty (percentage of the population living below PPP US\$1.25 per day) estimates, 16.9 percent of the population lives below the poverty line. The multidimensional poverty headcount is 10.5 percentage points lower than income poverty, which implies that individuals living below the income poverty line may have access to non-income resources. The poverty head count ratio at US \$2 a day is 12.5 percent.

10, 11, 12 + 13 World Bank, Worldwide Governance Indicators 2013

<http://info.worldbank.org/governance/wgi/index.aspx#reports>

14 Human Development Report, 2014

15 <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>

2.4. General human rights situation

According to Amnesty International (Vietnam Country Report 2014/2015)¹⁵, severe restrictions on freedoms of expression, association and peaceful assembly continue to be prevalent. The state controls media as well as all things judiciary, political and religious. The new Vietnamese Constitution, adopted in November 2013, was enforced after an unprecedented but heavily controlled consultation process lasting around nine months. The Constitution provides a general protection of the rights to freedom of expression, association and peaceful assembly, but limits them by vague and broad provisions in national legislation. Only a limited guarantee of fair trial rights is included.

Human rights activists and advocates for social and political change increased their activities, despite the challenging environment and risk to their personal safety. Despite the early release of six dissidents in April and June,² at least 60 prisoners of conscience (i.e. political prisoners/dissidents) remain imprisoned. Convicted in unfair trials, they include peaceful bloggers, labour and land rights activists, political activists, religious followers and advocates for human rights and social justice. Vaguely worded provisions of the 1999 Penal Code continue to be used to criminalize peaceful activism and those exercising their rights to freedom of expression, association and peaceful assembly.

Under the pressure of the international community and pro-democracy groups within the country, the authorities state that several laws relating to human rights are under preparation for approval by the National Assembly in 2016. They include an amended Penal Code, the Amended Law on the Press, the Law on Association, the Law on Demonstrations and the Law on Information Access.

3. STAKEHOLDERS

In this section a number of stakeholders active in the garment/textile industry in country are briefly presented. The focus is on stakeholders who are actively part of forming the labour conditions or monitoring the situation for industry workers.

GOVERNMENTAL INSTITUTIONS

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

www.molisa.gov.vn

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

<http://cird.gov.vn/trangchu.php>

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

<http://118.70.132.62/Delegate/Login.aspx>

EMPLOYERS ORGANISATIONS

The Vietnam Chamber of Commerce and Industry (VCCI) is one of two national employers' organisations (together with the Vietnam Collaborative Alliance which mainly represents agricultural enterprises and cooperatives). VCCI has around 2,000 enterprise members and 7 branches in the most industrialized provinces and cities. The VCCI's Bureau of Employer Affairs (BEA) is in charge of representing the employers' opinions with regards to national policy and legislation to the state and vice versa.

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

The Vietnam Textile and Apparel Association (VITAS) is a non governmental umbrella association working in the field of textile and garment industry in Vietnam with 15 branches in Vietnam. VITAS has total of 635 members, and accounts for 70 percent of the total capacity of the industry. VITAS promotes business and investment cooperation as well as exchanges information among members, between members, and the outside. Furthermore, VITAS represents its members and makes consultations relevant the State and Government bodies in policy campaigns and mechanisms relating to the development of the Vietnamese textile and garment industry. VITAS represents the Vietnamese textile and garment industry in international organizations and tries bridge cooperation between the domestic industry and the outside world. VITAS also supports foreign companies in looking for Vietnamese textile and garment producers.

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

The Vietnam Textile and Garment Group (VINATEX) is the biggest state-owned group of companies in the field of textile and garment in Vietnam. VINATEX is also a member of VITAS. It has over 90 member companies in Vietnam which together cover activities from spinning, knitting, weaving, and dyeing to finishing. The total labour force of the VINATEX is nearly 100,000 employees in addition to another 35,000 employees working in joint ventures with foreign and local partners.

<http://www.vinatex.com/Portal/Default.aspx>

TRADE UNIONS

The Vietnam General Confederation of Labour (VGCL) is the only recognized trade union organization in Vietnam. Established in 1929, the VGCL is organised by both geographical regions and sectors. VGCL is affiliated to the Party-controlled Vietnam Fatherland's Front, a pro-government collective. By the end of 2013, the VGCL claimed a total membership of 8.5 million.

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

The Garment and Textile Industry Union is a branch of the VGCL and reports directly to the national union. It is responsible for union activities in state-owned garment and textile companies all over the country. Previously the union of the state-owned garment and textile corporation, it was established in 1996 with a membership of primarily state-owned and equitized garment and textile companies. Recently a small number of private companies have joined the union. In 2008, total membership was reported to be 100,000. This is low compared to the VGCL membership, given that the members of this union are mainly (privatised) state-owned enterprises. The government has pushed for privatisation of SOEs for a decade; currently there are only a few SOEs left.

LABOUR NGOS

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

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

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

<http://cdivietnam.org/cdi/>

The Research Centre for Employment Relations (ERC) is an independent research and training organisation. ERC was established in 2007, with focus on researching labour practices in manufacturing industries and providing labour relations training for export-oriented manufacturing companies.

<http://www.quanhelaodong.com>

INTERNATIONAL ORGANISATIONS AND PROJECTS

Officially launched in 2002, the International Labour Organisation (ILO) Office in Hanoi is the coordinating agency for all the ILO projects and programs in Vietnam. Its primary focus is on providing technical assistance across a range of key labour market development issues, creating more and better jobs through enterprise development, ensuring basic social services for all and promoting industrial relations and social dialogue. Additionally, the ILO Office in Hanoi works closely with the tripartite constituents including the Ministry of Labour, Invalids and Social Affairs (government), the Vietnam General Confederation of Labour (trade union), the Vietnam Chamber of Commerce and Industry, and the Vietnam Collaborative Alliances (employers) to provide technical assistance to law-making projects related to labour and social issues.

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

The BetterWork Vietnam (BWV) is a partnership between the International Labour Organization (ILO) and the International Finance Corporation (IFC). It was launched in August 2006 in order to improve labour standards and competitiveness within global supply chains. BWV advises and monitors labour standards in 303 garment companies in both southern and northern provinces within Vietnam. BWV also works with VGCL, VCCI and MOLISA to contribute to national policy debates.

<http://betterwork.com/vietnam/>

The International Labour Organisation (ILO) Industrial Relations Project aims to establish sound industrial relations through the improved representational capacity of the social partners. These representations are based on democratic principles, an improved social dialogue process and industrial relations support services, and an updated legal framework for minimum labour standards. The goal is to provide workers with income security and employers with operational flexibility. The project also helps ILO social partners conduct pilot projects, union organising initiatives in particular.

http://www.ilo.org/hanoi/Whatwedo/Projects/WCMS_144582/lang--en/index.htm

4. GARMENT INDUSTRY

ORGANISATION OF THE GARMENT INDUSTRY

Vietnam is becoming an increasingly important country in garment exporting. The textile and garment sector of Vietnam is one of the country's largest industries and a key contributor to its economic growth. In 2014 Vietnam's textile and garment exports increased 18 percent year over year (YOY) to total approximately US \$20 billion, accounting for 15 percent of the country's gross domestic product and 18 percent of its total exports, according to the Vietnam National Textile and Garment Group (VINATEX).

Textile and garment industries, as well as leather and footwear, recorded high growth in production and exports. The Ministry of Industry and Trade reported that in the first five months of 2015, the textile and garment industry gained a YOY increase of 8.4 percent in export value to US \$8.11 billion, including US \$1.65 billion recorded in May. The export orders of textile and garment enterprises remained positive in the second quarter, with 62 percent of total enterprises producing clothes, marking an increase in export orders against the first quarter. Clothing and apparel is expected to remain the country's top export item in the foreseeable future, contributing almost 20 percent of the projected growth in total merchandise exports in the decade to 2030. Though the US remains Vietnam's largest export market, China is forecast to become Vietnam's largest export destination by 2030.

The textile and garment industry comprises approximately 4,000 enterprises and provides (direct and indirect) employment for more than 4.5 million people. The total export value in 2014 was \$24.5 billion, 16 percent higher than that of 2013¹⁶. Since Vietnam has entered the

¹⁶ <http://www.vinatex.com/Portal/Detail.aspx?Organization=vinatex&MenuID=726&ContentID=11981>

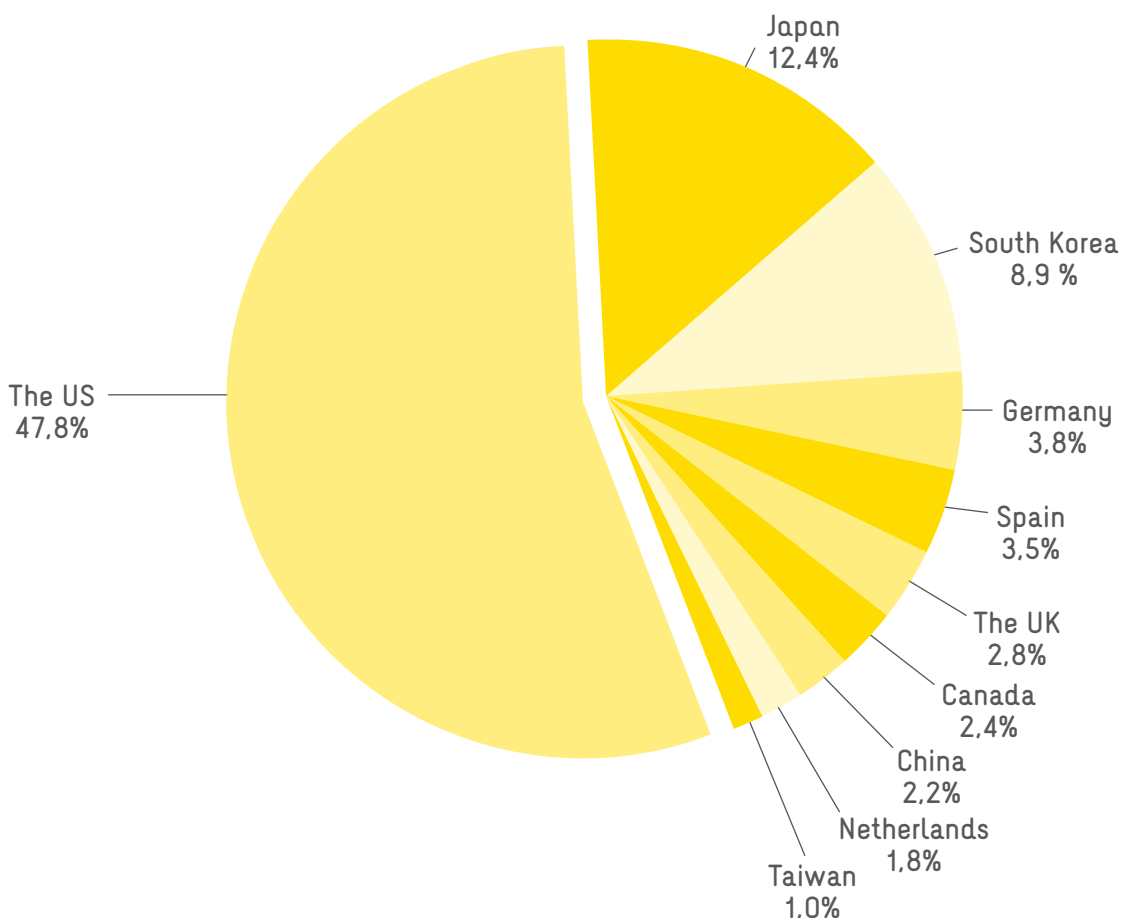
ASEAN-EU Free Trade Agreement and is prepared to join the Trans-Pacific Partnership (TPP), the industry has high hope for faster export growth in the near future. Consequently, according to VINATEX, the target goal is to export US \$28.5 billion in 2015.

Vietnam's garment and textile industry consists of three subsectors: an up-stream sector (fibre production), a mid-stream sector (fabric production and dyeing) and a down-stream sector (garment manufacturing). The textile and garment industry's main materials are cotton, synthetic fibre, wool, filament and silk. At the initial stage, the export oriented garment production in Vietnam was mostly on CMT (cut, make and trim) basis earning a very low value addition, much like Cambodia. With the establishment of new industries, the country gradually generated more value addition from the textile and garments industry.

MAIN EXPORTS FROM GARMENT INDUSTRY

The industry's main export market is the United States (US), and garment exports to that country in 2013 increased 14.2 percent to total US \$8.6 billion, VINATEX reports. Since 2009, Vietnam has become the largest exporter of garment from ASEAN to the United States (see Figure 3). Exports to the European Union (EU) in 2013 was US \$2.7 billion; to Japan, US \$2.4 billion; and to South Korea, US \$1.87 billion.

Figure 3: Main export markets for Vietnamese apparel



Source: General Department of Vietnam Customs, 2014

The most common garment export items include: shirts, trousers, jackets, T-shirts, polos, sports and outdoor wear, children's wear, underwear and swimming wear, and work attire.

MAIN AREAS FOR GARMENT PRODUCTION

Around 58 percent of the enterprises are located in North-East area, 27 percent in The Red River Delta area, 7 percent Northern Central Area and central Coastal Area, 4 percent in the Mekong River Delta and the final 4 percent in the Northern Midland and Mountain Area and highlands. About 2,500 garment export-oriented factories are operating and registered with VITAS, with 77 percent owned by joint stock companies with state partnership, 18.5 percent being 100 percent Foreign Direct Investment companies, 0.5 percent state-owned and 5 percent Local Cooperatives¹⁷.

PERCENTAGE EMPLOYED IN GARMENT INDUSTRY

Vietnamese textile and garment companies employ an estimated 2.5 million workers, with 2 million employed in supporting industries (logistics, packaging and transportation)¹⁸.

SOCIAL COMPOSITION OF THE GARMENT WORKFORCE

Women dominate the garment industry, making up 81.6 percent of the workforce. The average age of garment workers is low, 28 years old, compared to 36 years old in China. The labour force is also young, with 75 percent of workers under 30 years old. Migrants from the rural areas also dominate the garment labour force with 83.7 percent of workers originating in rural areas (BWV Baseline Survey, 2012)¹⁹.

5. INDUSTRIAL RELATIONS

ORGANISATION OF EMPLOYERS AND TRADE UNIONS IN THE GARMENT SECTOR

The current Vietnamese Constitution provides for the right of citizens to form associations and trade unions. Trade unions are established to protect the lawful rights and legitimate interests of workers. Enterprise level workers have the right to establish, join and operate the trade union in accordance with the Law on Trade unions.

The Vietnam General Confederation of Labour (VGCL) is the only recognised union organisation in Vietnam and it is closely integrated into Vietnam's Communist Party. The VGCL chairperson is a member of the Party Central Committee and reports to the Fatherlands' Front. The VCP also provides funding for union activities and appoints key union personnel. Although the Constitution provides for the rights of citizens to form associations and trade unions, enterprise

17, 18 + 19 <https://www.betterwork.com/global/?cat=35>

unions must be established by VGCL regional branches and affiliated to the VGCL. Often union officials are also (high-ranking) managers at the enterprise level. The VGCL's subordination to the VCP at upper levels and the Enterprise Union Leadership's dependence on management at the workplace have been the major obstacles to workers practising their rights to freedom of association and collective bargaining.

UNION DENSITY IN COUNTRY

Vietnam's union membership in 2014 was 8, 558, 063 members²⁰. By 2011, the national union density was 32.15 percent, but within enterprises stood at 42.23 percent. The VGCL set the target of recruiting around 600,000 new members every year between 2013 and 2018.

There were 346 unionised garment companies by the end of 2013 (Vietnam Garment and Textile Union, National Congress, 2013). Nearly 6 percent of registered garment-textile companies are unionised.

The Collective Bargaining Agreement (CBA) coverage in Vietnam is high, with 67 percent of unionised establishments having CBAs. However, the general quality of the CBAs registered has been low. In 2009 the VGCL estimated that only 40 percent of the CBAs offered at least one provision that is better than the minimum labour standards, which means that 60 percent of the CBAs were simply copied from the Labour Code without providing any better benefits for workers. Some high-ranking officials from MOLISA claimed informally that 90 percent of the registered CBAs did not result from genuine collective bargaining and provided no better benefits for workers (VGCL Resolution on Collective bargaining, 2009).

Table 3: CBA Coverage (2011)

Sector	CBA Coverage (%)
Nationwide	67.00
FDI enterprises	62.35
Domestic enterprises	64.62
State-owned enterprises	97.00

COLLECTIVE BARGAINING AGREEMENT COVERAGE IN GARMENT INDUSTRY

MOLISA estimated the Collective Bargaining Agreement (CBA) coverage in the garment industry was 50 percent in 2012²¹. However, there is no official statistics on the CBA coverage in garment industry. VITAS and the national garment union signed a sectorial CBA in 2014 that covered 70 VITAS member companies and over 100,000 workers²².

²⁰ VGCL National Review Conference, 2015

²¹ MOLISA Employment and Labour Survey, 2012

²² Proceedings of the VGCL National Review Conference, 2015 (unpublished document)

LOCAL GRIEVANCE MECHANISMS FOR WORKERS

Each company develops their own grievance-handling system, which ranges from suggestion boxes to labour-management meetings. If the internal grievance system fails, the complainant can request the district labour mediator to solve the grievance (Chapter 14 of the 2012 Labour Code). Again, if the grievance cannot be handled through mediation, the complainant may bring the case to the local civil court.

STATE ROLE IN INDUSTRIAL RELATIONS

The state provides the mechanisms for mediation and arbitration of collective labour disputes.

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

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

MECHANISMS FOR SOCIAL DIALOGUE (NATIONAL/SECTORIAL)

Social dialogue is widely regarded by the local stakeholders as the key to peaceful labour relations. Chapter 5 of the 2012 Labour Code makes worker-management dialogue compulsory for all companies at least once every quarter. Every three months, workers are allowed to elect their team representatives, who join with the enterprise union leadership to dialogue on all relevant issues with the top management.

Social dialogue at the sectorial level is not common, except for a few industries such as garment and rubber. In the garment industry, VITAS also have monthly meetings with the national garment federation of labour to discuss labour issues (Interview with Mr Truong Van Cam, VITAS). However, as both VITAS and the national garment FOL represent only a small number of state-owned garment companies (around 100 companies employing 130,000 workers), their meetings are far from representative of the whole industry.

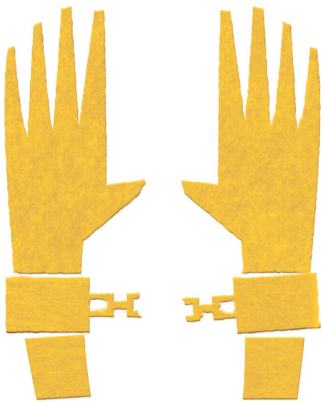
At the national level, there are two social dialogue mechanisms: one is the National Labour Relations Committee; the other is the National Wage Council. The National Wage Council meets once per year to discuss the new minimum wage rate as well as evaluating the impacts of minimum wage on various policy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

6. IMPLEMENTATION OF THE FWF CODE OF LABOUR PRACTICES

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

6.1. Employment is freely chosen

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



OFFICIAL STATISTICS ON COMPLIANCE

The Government of Vietnam does not publish any official statistics or reports on forced labour. According to the International Labour Organisation²³ and International Labour Rights²⁴, there were charges of forced labour in drug detention camps and among international migration programs. However, there has not been a public report on forced labour in textile-garment industry of Vietnam.

LAWS AND REGULATIONS

The regulation of labour contracts is provided within the Labour Code. There are three types of employment contracts: indefinite term contracts (for unlimited duration), fixed term contracts (for limited duration of 12 to 36 months), and casual/temporary employment contracts (for duration of less than 12 months).

If a worker continues working after the expiration of initial contract, both parties must sign a new employment contract within 30 days. Otherwise, a definite term contract is considered as indefinite term contract and a temporary contract with duration of less than 12 months is considered as a 24-month definite term contract.

The fixed term contracts and temporary employment contracts may be renewed only once. Maximum duration of fixed term contracts inclusive of renewals is 72 months. For casual/temporary employment contracts it is 24 months. If a worker continues working after the expiry of these terms, the fixed term and casual/temporary contracts turn into an indefinite term contracts.

An employer cannot engage a temporary contract worker for a seasonal job of under 12 months for regular work that would normally require 12 months or more of work, except in the following cases: the temporary substitution of employees called up for military service; and the temporary substitution of employees taking maternity leave, sick leave, occupational accident (injury leave) or other temporary leave.

23 ILO Global Report on Forced Labour 2011

<http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/meetingdocument/kd00014.pdf>

24 <http://www.laborrights.org/our-work/forced-labor-vietnam>

STAKEHOLDERS' OPINIONS AND ANALYSIS OF IMPLEMENTATION

The stakeholders consulted expressed concerns over the issues of involuntary overtime and toilet access restriction in the garment industry. According to a VGCL informant, in some garment companies the supervisors pressured workers to sign overtime consent forms, which by law should be voluntary, but the supervisors have been found to manipulate workers to accept overtime whether or not they want it (Interview with Nguyen Minh Tien, Deputy Director of VGCL's Institute of Workers and Unions).

The ERC also found cases in which the team leaders swiped identity cards of workers at the end of the shift, faking the recording of working hours while forcing workers to do overtime without their consent (ERC-VCCI Survey of Garment Industry, 2009). The ILO BetterWork Vietnam, in its latest Compliance Report (July 2014), found three findings related to forced labour in this report. In one instance, the dormitory was located within the factory site and workers were requested to return to the dormitory before a pre-determined time in the evening. In two other factories, the assessors found that workers felt it was difficult for them to leave the workplace even if they had not signed up to work overtime.

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

MAIN FWF AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF auditors in Vietnam rarely find cases of proven forced labour, especially in the formal economic sector. This is a result of a wide shortage of cheap and skilled labour. Factory managers commonly have personnel documents showing the labour contracts signed in the form regulated by the MOLISA (Ministry of Labour Invalids and Social Affairs), including copies of IDs and resignation policies. Auditors do not usually find workers that have a debt with the factory. Wages are usually paid on time and by bank transfer. However, auditors do report problems of forced overtime in Vietnamese garment factories. In addition, in some cases factories try to restrict workers freedom of movement by using cards for toilet use, to prevent workers to go to the toilet whenever they want.

WORKER COMPLAINTS, RELATED TO 'EMPLOYMENT IS FREELY CHOSEN'

In 2014 a company that supplies an FWF brand filed a [complaint](#) related to the labour standards 'Employment is freely chosen', 'Payment of a Living Wage' and 'Safe and healthy working conditions'.

In 2011 workers from a company supplying an FWF brand filed a [complaint](#) related to the labour standards of reasonable working hours and employment is freely chosen.

6.2. There is no discrimination in employment



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

OFFICIAL STATISTICS ON COMPLIANCE

In recent years Vietnam has made progress in closing the gender gap in employment. In fact, Vietnam was ranked higher than other garment-producing countries such as China, India, Bangladesh or Cambodia in terms of gender equality in employment (see Table 4).

Table 4: Gender Equality Indicators of Vietnam, China and Bangladesh, 2014

Indicators	Vietnam	China	Bangladesh
Global Gender Gap Index, 2014 ²⁵	76	87	68
Wage equality for similar work rank, 2014 ²⁶	79	77	105
Gender Inequality Index (Rank) ²⁷	58	37	115

LAWS AND REGULATIONS

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

Men and women must be treated equally in the workplace. Workers have the right to work and they can freely choose the type of occupation or employment they want to. They are free to choose the vocational training they want to participate to improve their professional skills. Discrimination is prohibited on the grounds of sex, race, social class, marital status, belief, religion, HIV status, disability or participation in the union activities at the workplace. Discrimination on the basis of gender or marital status is also prohibited. Employers must not discriminate between men and women for recruitment, employment, working time, rest time, advancement in wage grades and remuneration.

²⁵ Global Gender Gap Report 2014 http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf

²⁶ World Economic Forum, Global Gender Gap Report 2013 & 2014

²⁷ A composite measure reflecting inequality in achievement between women and men in three dimensions: reproductive health, empowerment and the labour market. Out of 149 countries, Human Development Report, 2014

Discrimination on the basis of being a member of a trade union is also prohibited and any acts causing disadvantage to the workers related to certain establishment, participation and operation of a trade union are also considered discrimination and thus prohibited.

Female employees have equal working rights and it is the responsibility of an employer to create favourable working conditions for female employees. However, employment of women in 79 occupations is prohibited, 45 of which are applicable to all female employees while the remaining 34 occupations/activities are applicable to pregnant and breastfeeding workers.

The 2012 Labour Code has one chapter (Chapter 10) on female employees. Female employees have equal working rights and it is the responsibility of an employer to create favourable working conditions for female employees (Art. 153&154). However, employment of women in 79 occupations is prohibited, 45 of which are applicable to all female employees while the remaining 34 occupations/activities are applicable to pregnant and breastfeeding workers.

The Household Registration (Ho khau) system of Vietnam, which was revised by the 2007 Law on Residence, provides for two types of residence categories - temporary and permanent. The temporary residents have limited access to basic social services include education for children at public schools, access to public hospitals at the places of temporary residence, eligibility to purchase houses and vehicles. Such a system has restricted the migrant workers from accessing basic social and health services at their destinations; resulting in their resorting to high-cost private alternatives.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Gender based discrimination

According to the 2015 Survey of Marie Stopes International (MSI), many factories provide the equal number of toilets for male and female workers while the latter account for over 80 percent of the labour force of garment and footwear firms. Female workers, therefore, had to wait for long before they could access to the toilets, which tend to affect their productivity. Consequently, a number of female workers admitted that they limited their own use of toilets, which resulted in an increase of gynaecological infections.

ILO BetterWork Vietnam found that discrimination against women is not common among their 300 factories. There were job announcements in 5 factories referred to the applicant's gender or marital status. Gender was a factor in hiring decisions and conditions of work in 2 different factories. In 2 factories, employers terminated workers who were pregnant, on maternity leave, getting married or breastfeeding a child less than 12 months of age. Non-compliance for gender does not seem to be concentrated in a particular factory, but violations are found in different factories.

Migrant labour

According to the Deputy Director of Legal Affairs, MOLISA, employers in the Southern provinces tend to discriminate against workers migrating from Thanh Hoa, Nghe An and Ha Tinh (provinces in the Central of Vietnam). These employers claimed that migrant workers from these three provinces tend to be disobedient and tend to resort to wildcat strikes more often than workers from other provinces (Interview with Mr Nguyen Van Binh). These employers refused any job applicants who came from Thanh Hoa, Nghe An and Ha Tinh.

Migrant workers' access to basic social services including healthcare, education for their children, house ownership or registration of transport vehicles remain limited due to the household registration system. The Oxfam Vietnam representative explained that the household registration system of Vietnam, which was established in the 1960s, tied a citizen's right to access to social services to their places of household registration (Interview with Van Thu Ha, Oxfam Vietnam). Therefore, if a worker migrates to another province while their household registration remains in their province of origin, s/he will have extremely limited access to important social services and normally have to resort to private education and healthcare services which are much too costly. Such institutional barriers to the migrant workers are also the reason for migrants not to commit to their jobs in the industrial zones.

MAIN FWF AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF audits show findings related discrimination between men and women in terms of remuneration and promotion and discrimination between local workers and (internal) migrant workers. Women often work in low-skilled, low-paid jobs while the technical and managerial positions are occupied by men.

The current institutional settings, including the household registration system as well as the infrastructure surrounding the factories, have been discriminative against migrant workers. The registration system poses a number of barriers to the migrant workers to have access to the basic social services. Consequently, most of the migrant workers have to rent from local landlords at higher prices and under dubious conditions. When migrant workers get married and have children, the difficulties double. There is a serious shortage of kindergartens, schools and clinics in the neighbourhoods surrounding industrial zones. FWF audits has occasionally showed age discrimination where factories tend to be resistant to hire workers above the age of 30-35.

6.3. No exploitation of child labour



“There shall be no use of child labour. The age for admission to employment shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years.” (ILO Convention 138) “There shall be no forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour. [...] Children [under the age of 18] shall not perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals.” (ILO Convention 182)

OFFICIAL STATISTICS ON COMPLIANCE

Table 5: Indicators of child labour, 2014 – Vietnam, China and Bangladesh

	Bangladesh	China	Vietnam
Child labour (%) ²⁸	13	N.A	7
Global Slavery Index (rank) ²⁹	59	109	89

The child labour percentage 7 for Vietnam indicates the percentage of children ages 5–14 years old involved in child labour at the moment of the survey. A child is considered to be involved in child labour under the following conditions: (a) children 5–11 years old who, during the reference week, did at least 1 hour of economic activity or at least 28 hours of household chores, or (b) children 12–14 years old who, during the reference week, did at least 14 hours of economic activity or at least 28 hours of household chores.

The Global Slavery Index Rank of countries by prevalence of population in modern slavery ranks Vietnam at 89. Modern slavery involves one person possessing or controlling another person in such a way as to significantly deprive that person of their individual liberty, with the intention of exploiting that person through their use, management, profit, transfer or disposal.

LAWS AND REGULATIONS

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

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

The working hours of young employees (less than 15 years of age) cannot exceed 4 hours per day and 20 hours per week. Overtime and night work is prohibited for young workers. Also, the young employees must not be employed to produce and trade in alcohol, wine, beer, tobacco, substances affecting mind and other drugs. The employers must provide opportunities for the young employees and person less than 15 years of age to take part in labour and cultural learning.

28 Source: UNICEF, The State of the World's Children 2015

29 Source: The Walk Free Foundation, Global Slavery Index 2014

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Although according to BetterWork Vietnam and MOLISA, child labour has not been found in registered export-oriented garment factories, the 2014 ILO-MOLISA Survey on Child Labour found that there were 47,343 workers under 18 years old employed in garment workshops. Most of these workshops are unregistered and manufacture low-cost apparel products for the local markets. In particular, 1.2 percent of child workers employed in garment production fell into a small age group of 5-11 years old.

MAIN FWF AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF audits have not revealed cases of child labour in the formal garment companies, especially among the export-oriented ones. However, there have been very rare cases of child labour among the smaller (and often informal) garment workshops in Ho Chi Minh City. In some cases, juvenile workers were found to be employed with a temporary contract. In those cases the juvenile workers must be registered with the labour bureau and work with the protection of legal provisions (for instance, without overtime hours). It is common to use fake documents when applying for jobs in the textile industry. For that reason, if the factory does not have an effective age verification system, there will be a risk of hiring juvenile workers without providing special protection as required by law.

6.4. Freedom of association and the right to collective bargaining



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

OFFICIAL STATISTICS ON COMPLIANCE

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

There were over 5,000 strikes in Vietnam between 1995 and 2015, none of which followed the legal procedures for strike organisation or were led by the official trade unions. The textile-garment industry had the highest incidence of strikes, accounting for 34 percent of all the strikes occurred so far.

LAWS AND REGULATIONS

The Constitution grants the right to form associations and trade unions to protect the lawful rights and legitimate interests of workers. Enterprise level workers have the right to establish, join and operate the trade unions. At the enterprise level, there are enterprise unions (or grassroots unions). At the higher levels, there are district federation of labour, provincial federation of labour. At the national level, VGCL is the only recognised national trade union.

An employer must recognize the trade union as well as create favourable conditions for the activities of grassroots-level trade unions. Trade unions have the following rights: to represent workers' collective interests by negotiating, signing and supervising the implementation of collective bargaining agreements; litigating in Court upon violations of CBAs; cooperate with enterprises in formulating and monitoring the implementation of wage scales and tables; guiding and counselling workers on their rights and obligations upon signing and implementing labour contracts with enterprises; representing workers in taking legal actions in Court; taking part in the settlement of labour disputes together with the competent agencies; organizing and leading strikes as stipulated by law.

Employers are not allowed to hinder employees in establishing, joining or operating a trade union; coerce employees in establishing, joining or operating a trade union; ask employees not to join or to withdraw from a trade union; and discriminate against employees regarding wages, hours and other rights and obligations in order to hinder employees from establishing, joining and operating a trade union.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Similar to China, there is only one legally recognised trade union organisation in Vietnam – the Vietnam General Confederation of Labour (VGCL). Workers have the right to join the union, however, the enterprise unions must be affiliated with the VGCL. Apart from the fact that workers do not have the right to establish the union of their choice, this is an area of the most pervasive violations by employers in Vietnam.

BetterWork Vietnam, for instance, found a significant number of member companies that manipulated union activities (see Table 6). It is common for high-ranking managers such as HR managers or deputy directors to serve as union leaders, even union chairpersons not only in the garment sector, but also in other industries within Vietnam. According to the informants from MOLISA and VGCL, the management sometimes keeps union funds and requires the enterprise union officials to secure the executives' signatures in order to withdraw from the union fund (Interview with Nguyen Van Binh and Nguyen Minh Tien).

Table 6: Interference and Discrimination against Union Activities and Officials, ILO BetterWork Vietnam, 2014

Question	# Factories out of compliance
Are workers free to meet without management present?	60
Has the employer tried to interfere with, manipulate or control the union(s)?	46
Is senior management serving on the union executive committee?	45
Is the employer involved in union decision-making, the formation of the constitution and rules, in union activities, administration, finances or elections?	66

Source: BetterWork Compliance Report, July 2014³⁰

Collective bargaining is widely regarded as a formality rather than the outcome of real negotiations between workers and employers. According to the VGCL informant, most workers do not know the contents of the active collective bargaining agreements (CBAs) in their companies. Some cannot even tell the difference between the CBA and labour contracts (Interview with Nguyen Minh Tien). BetterWork Vietnam also found that collective bargaining is an area of high level of non-compliance among their member companies. The most common non-compliance issues are employers who failed to inform workers about the CBA and the CBAs not approved by more than 50 percent of workers covered (see Table). These evidences prove that the CBAs were drafted more as a formality rather than the result of negotiations.

Table 7: Non-compliance with the Right to Collective Bargaining, BetterWork Vietnam, 2014

Question	# Factories out of compliance
Does the employer consult with unions where legally required?	16
Has the collective agreement in force been approved by more than 50 percent of workers covered?	10
Has the employer implemented all provision of the collective agreement(s) in force?	2
Has the employer informed workers about the collective bargaining agreement?	18
If there is a collective bargaining agreement, does it provide more favourable terms and conditions for workers than the law?	3

Source: BetterWork Compliance Report, July 2014³¹

30 + 31 <http://www.betterwork.org/global/?p=4305>

The sectorial CBA signed between VITAS and the national garment trade union in 2014 offered a few benefits for workers, though not significantly. For instance, covered companies must pay at least 3 percent higher than the minimum wage, the meal allowance for Region 1 ranges from 10,000 dong-13, 000 dong/person (or USD \$0.5)³². According to the ERC and ILSSA informants, other companies not covered by the sectorial CBA are already paying higher rates than these. For instance, manufacturing companies in Ho Chi Minh City are offering meal allowances of 16,000-18,000 dong/person (Interview with Nguyen Huyen Le, ILSSA).

MAIN FWF AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF auditors find unionised factories where the factory is part of the official trade union and approximately 90 percent of the workforce is a union member. Workers are not allowed to form their own union. The chairman is usually appointed by the factory management and is part of the management. The trade union organises activities and gifts during national holidays. Even though auditors do find factories where the factory holds regular dialogue meetings, cases of workers actively negotiating their rights is rare. Commonly there is low awareness among workers on trade union and collective bargaining rights. Recently audits have gradually been showing workers' committees formed by democratically chosen representatives.

6.5. Payment of a living wage



“Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income” (ILO Conventions 26 and 131, the Universal Declaration of Human Rights, art 23(3) and art 25(1)). “Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted. Deductions shall never constitute an amount that will lead the employee to receive less than the minimum wage. Employees shall be adequately and clearly informed about the specifications of their wages including wage rates and pay period.”

OFFICIAL STATISTICS ON COMPLIANCE

There are on average 6.6 percent of male and 11 percent of female workers paid under the minimum wages. Unfortunately, the share of workers paid below the minimum wage has been increasing since 2011 (see Table 8).

³² <http://bxh.laodong.com.vn:2014/thoa-uoc-lao-dong-tap-the-nganh-det-may-viet-nam-co-loi-hon-cho-nguoi-lao-dong/>

Table 8: The share of workers below the minimum wage 2011-13, by gender

	2011	2012	2013	Average
Female	6.5	13.7	15.5	11.0
Male	3.7	8.2	10.0	6.6

Source: Vietnam Labour Force Surveys 2011-2013

There are no official statistics on living wage levels in Vietnam.

LAWS AND REGULATIONS

A worker's salary must be equal to the minimum wage. Minimum wage guarantees the fulfilment of minimum living needs of the employees and their families, and is based on the local social and economic conditions as well as the normal wage in the labour market.

Since 2013, minimum wage announced by the government is based on the recommendations of the National Wages Council. From January 1st, 2015 onwards the region-based minimum wage for unskilled workers is as follows:

Table 9: Minimum Wages effective as of 1st January 2015³³

Region	Minimum Wage (VND/person/month)
Region 1	3,100,000
Region 2	2,750,000
Region 3	2,400,000
Region 4	2,150,000

Wages may be determined by agreement between the workers and the employer (employment contract) and through collective bargaining agreement. However, these can't be lower than those specified by law. The minimum wage rate of a trained worker and for hazardous working condition must at least be 7 percent and 5 percent (7 percent for special hazardous conditions) higher than the region based minimum wage rate, respectively.

Payment of wages is made by an employer on the basis of time (hourly, daily, or on monthly basis), piecework or completion of a task, provided that the chosen form of payment is maintained for a certain period. An employer must notify worker(s) at least 10 days prior to any change in the form of payment.

³³ Governmental Decree 103/2014/ND-CP on regional minimum wages as of 2015

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

The minimum wage of Vietnam is defined as 'the lowest rate that is paid to the employee who performs the simplest work in the normal working conditions and that must ensure the minimal living needs of the employees and their families' (Article 91.1 of the Labour Code). However, stakeholders agree the current minimum wages are lagging far behind the minimum living needs. According to the stakeholders, the current minimum wage covers up to 70 percent of the minimum living needs (Interviews with Nguyen Huyen Le and Nguyen Minh Tien). It is the objective of the government to increase the minimum wage to the minimum living needs level by 2018.

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

Employers' Organisations (VCCI)

According to Vi Thi Hong Minh, Deputy Director of VCCI's Bureau for Employers Affairs (BEA), a member of the NWC, VCCI uses the ILO-proposed formula of

[GDP growth rate + Productivity growth rate] - unemployment rate = percent minimum wage (MW) increase]

However, as Minh explained:

The unemployment rate in Vietnam is not reliable due to the big agricultural and informal sector, so we only use [GDP+productivity]. Because the government set the target of MW to meet the minimum living needs by 2018 (VGCL is asking for 2017), every year until 2018, the MW will be increased slightly to catch up the gap between the MW and the minimum living needs.

Based on this calculation, the 2014 proposal from the VCCI was:

[5% (GDP 2014)+3.5% (Productivity 2014)] + 4% = 12.5 %]

There was a lot of discussion inside the employers' group about this figure. Business associations such as VITAS, LEFASO, and FDI business associations believed that the productivity rate announced by the GSO was not reliable. Also, enterprises already compensate workers for their productivity increase. They advocated for a MW increase equalled to the inflation rate. Ms Dang Phuong Dung, Vice Chairperson of VITAS said:

When minimum wage increases 10 percent, the labour cost for employers increases 17 percent. In the mean time, productivity in the garment industry of Vietnam remains low. According to a recent survey of VITAS, the hourly productivity of Vietnamese garment workers ranges from 1.3-1.9 USD/hour and only 15 percent of Vietnamese garment companies achieve the productivity of over 500 USD/person/month. The remaining 85 percent of garment companies are struggling to compete within the region; therefore, the fast-increasing MW will be a big burden for these garment companies.

Trade Union (VGCL)

The VGCL conducts annual surveys of minimum living needs to determine their proposal for the new minimum wage. However, according to the VGCL informant, the VGCL's proposal is influenced by political processes:

There are a lot of political impacts on the calculation. Normally the leaders of VGCL agreed upon a new MW increase rate. Then the Institute will conduct a survey. After that we also adjusted the survey outcome to validate the MW increase rate fixed by the VGCL leaders. In terms of the survey, we contacted district trade unions in major provinces (covering all 4 regions). The district unions selected companies (3 FDI, 3 garment, 2 electronics, etc.). They usually chose the bigger companies that are organised and pay well. Then we interviewed the companies to understand how much workers earn. Finally, we calculate the living needs of workers by basing on the food basket of MOLISA, often by calling the local trade unions asking for the local prices. The accuracy for such calculation is low (Interview with Nguyen Minh Tien).

In 2014, the VGCL proposed an increase of 18.5 percent of the MW.

Ministry of Labour, Invalids and Social Affairs (MOLISA)

In principle, the Vietnamese government fixes the national minimum wage (MW) based on the following 4 indicators:

(1) The minimum living needs of a worker doing the simplest job in normal working conditions and having children to feed.

A system of minimum living needs includes staple food and other food stuffs calculated based on a shopping basket of necessary items that ensures an essential amount of calories for consumption by a worker, non-food needs calculated by taking a percentage of expenditure for non-food items in a family budget (based on statistics), and the need for feeding children. In particular, the current formula for calculating the minimum living needs is:

Food:	45 percent (including a basket of 54 essential foods) to ensure the consumption of 2300kcal/person/day
Non-food:	55 percent
Dependant:	70 percent of the adult's needs

(2) Survey of the market wages paid to a worker without technical skills doing the simplest job in normal working conditions.

(3) The economy's capacity (GDP) and the inhabitant's expenditure fund.

(4) Consumer Price Index (CPI) compared to the original period that fixed the general MW.

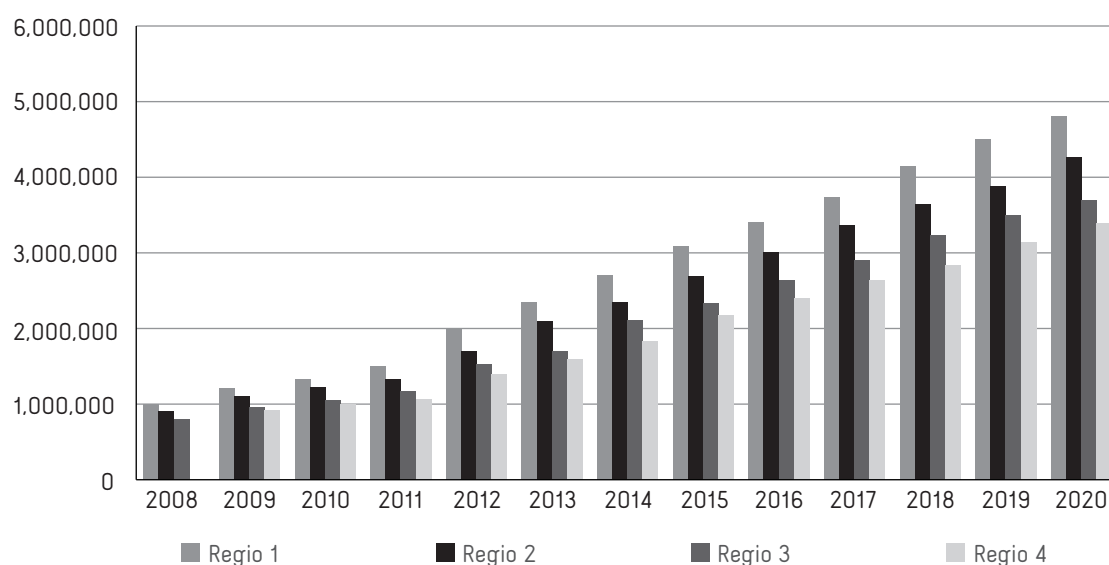
The MOLISA informant, however, admitted that they had to propose the rate of new minimum wage that is lower than the minimum living needs to lessen the burden on the enterprises. At the NWC meeting in 2014, the three parties agreed to an increase of 15 percent for 2015, which makes the minimum wages by regions as:

Table 10: MW Proposed rates and the Official MWs for 2015 (VND/person/month)

Proposing Party	Region 1	Region 2	Region 3	Region 4
VGCL	3,200,000	2,850,000	2,520,000	2,300,000
VCCI	3,100,000	2,750,000	2,420,000	2,200,000
Official MWs for 2015	3,100,000	2,750,000	2,400,000	2,150,000

In order to push the minimum wage up to the minimum living needs level, the NWC plans to increase the MW by 15 percent every year until 2018 (see Figure 4).

Figure 4: Vietnam's Private Sector Minimum Wage, 2008 - 2014, and 2015 - 2020 (est) (vnd/month)



Industrial standards concerning wages:

Hourly pay is the most common method of payment in the garment sector, according to BetterWork Vietnam. In fact, over 70 percent of garment factories are paying by hour. However, 20 percent of garment companies are still applying the piece-rate system.

Table 11: Basis of Pay in Garment Companies, BetterWork Vietnam, 2014

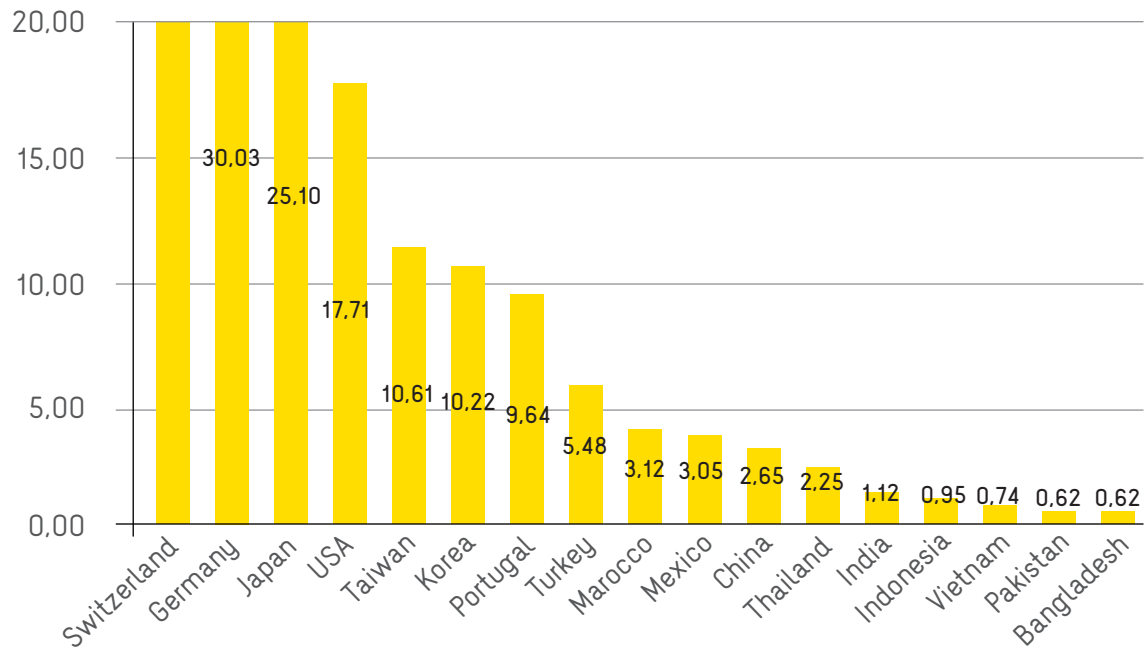
Basis of Payment	%
Hourly Pay	70.6
Piece rate Pay	20.0
Hourly and piece-rate pay	10.3

Source: BetterWork Compliance Report, July 2014³⁴

34 <http://www.betterwork.org/global/?p=4305>

According to Werner International, the hourly pay for a Vietnamese garment worker in 2014 was USD 0.74, very low compared to China, India, and Thailand and slightly higher than wages in Bangladesh (see Figure 5).

Figure 5: Labour Cost in the Textile Industry in 2014³⁵



USD/h in 2014

Switzerland	52.35
Germany	30.03
Japan	25.10
USA	17.71
Taiwan	10.61
Korea	10.22
Portugal	9.64
Turkey	5.48
Marocco	3.12
Mexico	3.05
China	2.65
Thailand	2.25
India	1.12
Indonesia	0.95
Vietnam	0.74
Pakistan	0.62
Bangladesh	0.62

Source: Werner

³⁵ <http://betterwork.org/global/?p=4305>

CBA standards concerning wages:

According to the CBA of the garment sector signed in 2014, the wages applied for the covered companies is as follows:

Table 12: Lowest Wages, National Garment Sector Collective Bargaining Agreement, Applicable 2014-2017 (VND/person/month)

Region	Region 1	Region 2	Region 3	Region 4
Current wages	3,150,000	2,850,000	2,600,000	2,400,000
Proposing wages	3,500,000	3,150,000	2,750,000	2,600,000

Source: VITAS, 2015³⁶

However, according to the informant from VITAS, VITAS and the national garment union are planning to revise the lowest wages in the sectorial CBA. The new proposed rates are: 3.5 million (Region 1); 3.15 million (Region 2); 2.75 million (Region 3); 2.6 million (Region 4).

Estimates of living wage:

In 2014, the minimum living needs as calculated by MOLISA was 4.13 million VND and the living wage estimated by VGCL for a worker with 1 child is: 4.1 million VND. Similarly, VGCL's estimates for living wage in:

- Region 1: 4.78 million VND
- Region 2: 4.13 million VND
- Region 3: 3.85 million VND
- Region 4: 3.31 million VND

Table 13: Poverty lines, applicable from 2011-2015

Poverty Lines	Rate
Rural poverty line	up to 400,000 VND/person/month (or 4.8 million VND / person/year)
Urban poverty line	up to 500,000 VND/person/month (or 6.0 million VND/person/year)
Near rural poverty line	401,000 to 520,000 VND/person/month
Near urban poverty line	501,000 to 650,000 VND/person/month

Source: MOLISA³⁷

³⁶ www.garco10.vn/home/chi-tiet-tin-tuc/1246-thoa-uoc-lao-dong-tap-the-nganh-Det-may-viet-nam--co-loi-hon-cho-nguoi-lao-dong.html

³⁷ www.molisa.gov.vn

2015 Vietnam wage benchmarks				
Region	Name of wage measurement	Description	Amount (VND)	Recording date
Region 1 (Hanoi/Ho Chi Minh)	CBA wage 2014	Signed between VINATEX and The Textile/Garment Industry Union - The minimum wage, including basic wage, allowance, bonus, not including meal and insurances of those workers who fulfil the standard working hours in normal working conditions and meet production target and quality.	VND 3150000	01-07-2014
Region 1 (Hanoi/Ho Chi Minh)	Basic need wage 2014	Minimum earnings needed to cover food, non-food and childcare expenses according to the survey of VGCL in 2013	VND 4780000	01-07-2014
Region 1 (Hanoi/Ho Chi Minh)	Minimum Wage 2015	The monthly salary paid to untrained employees doing the simplest task in normal working conditions, ensuring full working days as standard days in the month and completing the assigned work.	VND3100000	01-01-2015
Region 2 (Rural districts Hanoi, Hai Phong, Hai Duong, Hung Yen)	CBA wage 2014	Signed between VINATEX and The Textile/Garment Industry Union - The minimum wage, including basic wage, allowance, bonus, not including meal and insurances of those workers who fulfil the standard working hours in normal working conditions and meet production target and quality.	VND 2850000	01-07-2014

Region 2 (Rural districts Hanoi, Hai Phong, Hai Duong, Hung Yen)	Basic need wage 2014	Minimum earnings needed to cover food, non-food and childcare expenses according to the survey of VGCL in 2013	VND 4130000	01-07-2014
Region 2 (Rural districts Hanoi, Hai Phong, Hai Duong, Hung Yen)	Minimum wage 2015	The monthly salary paid to untrained employees doing the simplest task in normal working conditions, ensuring full working days as standard days in the month and completing the assigned work.	VND 2750000	01-01-2015
Region 3 (Provincial Cities)	CBA wage 2014	Signed between VINATEX and The Textile/Garment Industry Union - The minimum wage, including basic wage, allowance, bonus, not including meal and insurances of those workers who fulfil the standard working hours in normal working conditions and meet production target and quality.	VND 2600000	01-07-2014
Region 3 (Provincial Cities)	Basic need wage 2014	Minimum earnings needed to cover food, non-food and childcare expenses according to the survey of VGCL in 2013	VND 3850000	01-07-2014
Region 3 (Provincial Cities)	Minimum wage 2015	The monthly salary paid to untrained employees doing the simplest task in normal working conditions, ensuring full working days as standard days in the month and completing the assigned work.	VND 2400000	01-01-2015

Region 4 (Remaining localities)	Basic need wage 2014	Minimum earnings needed to cover food, non-food and childcare expenses according to the survey of VGCL in 2013	VND 3310000	01-07-2014
Region 4 (Remaining localities)	CBA wage 2014	Signed between VINATEX and the Textile/Garment Industry Union - The minimum wage, including basic wage, allowance, bonus, not including meal and insurances of those workers who fulfil the standard working hours in normal working conditions and meet production target and quality.	VND 2400000	01-07-2014
Region 4 (Remaining localities)	Minimum wage 2015	The monthly salary paid to untrained employees doing the simplest task in normal working conditions, ensuring full working days as standard days in the month and completing the assigned work.	VND 2150000	01-01-2015
National	Living wage costs	Wageindicator.org - living wage estimates calculate the monthly expenses necessary to cover the cost of food, housing and other non-specified discretionary purchases. For individual.	VND 2772100	2014
National	Living Wage estimate	The Institute of Workers and Unions found that the living wage for 1 worker with 1 child.	VND 4100000	2014
Region 1	Living Wage estimate	The Institute of Workers and Unions found that the living wage for 1 worker with 1 child.	VND 4780000	2014

Region 2	Living Wage estimate	The Institute of Workers and Unions found that the living wage for 1 worker with 1 child.	VND 4130000	2014
Region 3	Living Wage estimate	The Institute of Workers and Unions found that the living wage for 1 worker with 1 child.	VND 3850000	2014
Region 4	Living Wage estimate	The Institute of Workers and Unions found that the living wage for 1 worker with 1 child.	VND 3310000	2014
National	Asia Floor Wage	Asia Floor Wage as of Oct 2012	VND 5496428	01-11-2012

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

Most factories use a piece rate system where a worker's monthly income is highly dependent on the productivity, skills and overtime hours. The impact of high and low seasons, therefore, has a big impact on workers' wages. In some cases workers reach a living wage estimate when the productivity bonus and benefits are largely contributed to the monthly income. In most cases FWF audits find payment slightly above minimum wages. However, in some cases factories do not pay the additional 7 percent for trained or skilled workers or the additional 5 percent that is required for those working in heavy, hazardous or dangerous jobs. There is usually a big gap between living wage estimates collected by local stakeholders. The living costs vary immensely between different cities in North and South Vietnam and between rural and urban areas. Audits often uncover problems with leave and overtime payments not complying with local law.

WORKER COMPLAINTS, RELATED TO 'PAYMENT OF A LIVING WAGE'

A 2014 [complaint](#) from a company that supplies a Fair Wear Foundation brand, related to the labour standards 'Employment is freely chosen', 'Payment of a Living Wage' and 'Safe and healthy working conditions'.

6.6. No excessive working hours



"Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7-day period. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate."
(ILO Convention 1)

OFFICIAL STATISTICS ON COMPLIANCE

According to the 2013 national survey on Labour and Employment of General Statistics Office, 36.1 percent of workers were working more than 48 hours per week³⁸. More recent official statistics on compliance regarding working hours are limited.

LAWS AND REGULATIONS

The normal amount of working hours is 8 hours per day and 48 hours per week. Working hours may be determined on a daily or weekly basis, but the average working hours must not exceed 10 hours per day and 48 hours per week. The state, however, encourages employers to implement a 40 hour workweek. Working hours for employees involved in extremely difficult, dangerous or hazardous work must not exceed 6 hours per day.

An employee may be required to work overtime with his/her own consent and on payment of premium rate. The employer is obliged to provide compensatory leave if the worker works overtime for certain consecutive days a month (a maximum of 7 days). Overtime premium is paid if the compensatory rest periods are not available.

Overtime working hours cannot exceed 12 hours per day for working on weekly rest days or public holidays (50 percent of the standard working hours on normal days); 30 hours per month (for both normal and hazardous work) and 200 hours per year. In exceptional cases, 300 hours of overtime may be allowed per year. The 300 hour limit is applicable to hazardous work that includes the garments sector.

Overtime work is compensated as follows: at least 150 percent of the normal wage rate is provided on weekdays; at least 200 percent of the normal wage rate is provided on weekly days-off; and at least 300 percent of the normal wage rate is provided on holidays and days-off with pay (annual leave). Overtime payment for the employees who receive time-based wages or piece rate wages is 300 percent of their regular wages for hours worked in addition to one full day of regular wages.

In certain cases (force majeure, protection of life and property, national defence and security), the employee is bound to work overtime upon employer's request and the employee cannot refuse.

38 Link to the survey report: <http://www.gso.gov.vn/default.aspx?tabid=512&idmid=56&itemID=12540>

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Excessive overtime remains the major violation of this standard in Vietnam. The latest BetterWork Vietnam assessments³⁹ showed that there is a 93 percent non-compliance rate with regard to overtime regulations, exceeding the national legal limit of 300 overtime hours per year. In an additional 45 factories, the working time records did not accurately reflect the number of hours actually worked (BetterWork Vietnam 2012).

Double booking on overtime is also frequently found among garment workers. According to Nguyen Quoc Thuan, BetterWork Vietnam explained:

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

MAIN FWF AUDIT FINDINGS OVER THE LAST THREE YEARS

Excessive overtime is one of the biggest problems found during FWF audits particularly during peak seasons when working hours are found structurally between 65 and 75 hours per week, with occasional work on Sundays. Some factories work up to three Sundays a month and pay 200 percent without the legally required compensation day off. Double book system sometimes is used to hide excessive overtime and Sunday work. Auditors also found that some factories fail to provide a 30 minute dinner break in case of working more than 2 overtime hours a day.

WORKER COMPLAINTS, RELATED TO ‘REASONABLE HOUR OF WORK’

In 2011, workers from a company supplying a FWF member filed a [complaint](#) related to the labour standards of reasonable working hours and employment is freely chosen.

In 2010, workers from a company supplying a FWF member filed a [complaint](#) related to the standard of reasonable working hours.

³⁹ <http://www.betterwork.org/global/?p=4305>

6.7. Safe and healthy working conditions



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

OFFICIAL STATISTICS ON COMPLIANCE

In 2014 there were 6,709 work-related accidents in Vietnam that left 630 dead. The garment industry accounted for 4.9 percent of the death toll and the footwear industry 4.5 percent⁴⁰.

LAWS AND REGULATIONS

It is the responsibility of all involved to make the workplace safe. All enterprises, agencies, organizations and individuals related to labour and production are obligated to comply with the laws on labour safety and hygiene.

It is also obligatory for employers to ensure a standardized working environment, to improve the healthcare and working conditions of workers, and to establish practices that minimize or eliminate safety and health related hazards.

In order to protect the health and safety of the worker, employers must comply with the standards on labour safety and hygiene when building or renovating new facilities or when purchasing equipment that has strict OSH requirements.

The employer must ensure that national standards on labour safety and hygiene have been published and applied. Employers must assess the dangerous and harmful factors to improve the working conditions and health care for the employees, including machinery, equipment, workshops and warehouses.

The employees are must also be provided with health and safety measures in the workplace including the following: inter alia; regulation compliance; procedures and rules on the labour safety and hygiene related to the work and duties assigned; proper usage and maintenance of the personal protective equipment already provided; and a prompt report to the responsible person upon detection of a risk of occupational accident.

⁴⁰ Bureau for Work Safety, MOLISA. 2014. Report on Work-related Accidents in 2014
<http://antoanlaodong.gov.vn/catld/Pages/chitiettin.aspx?IDNews=1712>

Labour Code requires that workers engaged in potentially dangerous and/or harmful work must have sufficient protective clothing and protective devices. The standardized personal protective equipment (PPE) including clothing and devices must be provided to the workers engaged in potentially dangerous and/or harmful work. Workers are required to use PPE in accordance with the rules published by the Ministry of Labour - Invalids and Social Affairs.

Specific PPE for the head, eyes and face, hearing, respiration, hands, feet, body, as well as protective equipment preventing falling from heights and preventing electric shock, are provided free of cost by the employers. It is prohibited for the employer to pay cash in hand to employees instead of providing personal protective equipment or to pay cash in hand and let employees purchase personal protective equipment for themselves.

It is the duty of the employers to instruct workers about use of the adequate personal protective equipment and closely supervise its use. Employers have to provide facility for storage and maintenance of PPE according to the instructions of manufactures, or producer of such PPE.

It is the employer's duty to organize training on labour safety and hygiene for the employees, trade apprentices, trainees upon recruitment and personnel arrangement (promotion, transfers). It is also the employer's responsibility to give guidance on regulations regarding labour safety and hygiene to the persons visiting and working at the facility under the scope of management of the employer.

The Gender Equality Law's Article 10 prohibits gender-based violence and the Criminal Codes Articles 111 and 113 provides for punishments for rape and forcible sexual intercourse, respectively. Sexual harassment was not mentioned in Vietnamese labour legislation until the revised 2012 Labour Code adopted by the National Assembly on June 18th.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

According to Nguyen Quoc Thuan, BetterWork (BW) Vietnam, the biggest area of non-compliance in OSH relates to the provision of changing rooms for female workers, showers, lockers for employees' personal belongings, and other similar types of facilities. Many factories have none of these additional legally required facilities, while others have some but not all or not sufficient numbers. Sixteen garment companies in the BW Project failed to provide adequate accessible toilets, especially for female workers. Female workers account for over 80 percent of the labour force but the number of toilets for men and women are the same, leaving many female workers unable to access toilets during working hours.

Table 14: Non-compliance of Occupational Health and Safety Standards

Question	# factories out of compliance
Does the employer comply with requirements regarding canteen?	12
Does the employer keep food samples for 24 hours?	11
Does the employer provide workers enough free safe drinking water?	4
Does the workplace have adequate accessible toilets?	16
Does the workplace have adequate hand washing taps?	7
Does the workplace have other legally-required-facilities?	120
Is the workplace clean and tidy?	28

Source: BetterWork Vietnam Compliance Survey, July 2014⁴¹

Verbal abuse (such as shouting, using vulgar language) was occasionally found among garment factories. Nearly ten percent of workers in the BW Project were concerned about verbal abuse.

Table 15:

Level of worker concern regarding sexual harassment and verbal and physical abuse	Sexual harassment (%)	Verbal abuse (e.g. shouting, vulgar language) (%)	Physical abuse (e.g. striking, pushing) (%)
Felt concern	3.1	9.6	3.4
Discussed with co-workers	1.3	6.8	1.3
Discussed with supervisor or manager	1.0	2.8	1.7
Discussed with trade union representative	0.7	1.1	1.0
Considered resigning	0.3	0.8	0.4
Threatened or mounted a strike	0.2	0.4	0.2

Source: BetterWork Vietnam, 2012⁴²

The ILO study concludes that there is a need to effectively prohibit this behaviour and protect its victims, by providing a clear definition and obliging employers to take preventive measures against sexual harassment and establish complaint procedures in the workplace.⁴³

41 <http://www.betterwork.org/global/?p=4305>

42 <https://www.betterwork.com/global/?cat=35>

43 This issue paper summarizes the key findings of the study "Sexual Harassment at the Workplace in Vietnam: An Overview and the Legal Framework" 2012, a result of the coordinated efforts of the ILO Country Office in Vietnam (ILO) and the Ministry of Labour, Invalids and Social Affairs (MOLISA)

6.8. Legally-binding employment relationship



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

OFFICIAL STATISTICS ON COMPLIANCE

Table 16: Employment in the informal economy in non-agricultural activities by component, both sexes⁴⁴

Country /Year	Persons in informal employment		Persons employed in the informal sector		Persons in informal employment outside the informal sector	
	Thousands	% of non-agricultural employment	Thousands	% of non-agricultural employment	Thousands	% of non-agricultural employment
China (2010)	36.030	32.6	24.220	21.9	13.850	12.5
India (2009 / 2010)	185.876	83.6	150.113	67.5	37.409	16.8
Vietnam (2009)	17.172	68.2	10.948	43.5	6.303	25

LAWS AND REGULATIONS

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

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

For old age, disability and survivors' benefit, employer and employee contribution is 14 percent and 8 percent respectively. For sickness and maternity leaves, a contribution is paid from the employer, of which 3 percent is from the payroll. Work injury contribution (1 percent) is again paid by the employer only. Unemployment benefits are financed through contributions from employers and workers at the rate of 1 percent each.

⁴⁴ Source: Statistical update on employment in the informal economy, ILO 2012

The Ministry of Labour, Invalids, and Social Affairs provides general supervision, while the Vietnam Social Security agency administers all social security programs the programs. The Ministry of Health provides general supervision for medical care.

A worker who has either suffered from an injury during employment, before or after work time, or outside the workplace while on assignment by the employer, and on route to and from workplace and residence (in a reasonable time and route) is entitled to employment injury benefit. Employment injury benefit is provided to the worker who has lost 5 percent or more of the working capacity in an employment injury.

The employee with lost earning capacity of 5-30 percent is entitled to a lump-sum benefit. The employee with loss of 5 percent of earning capacity is provided benefit equivalent to 5 months of the common minimum wage, then 0.5 percent of the common minimum wage for every additional percentage of lost earning capacity.

The worker with at least 31 percent loss of the earning capacity is entitled to monthly benefit as follows: for 30 percent of the lost earning capacity, employee is paid 30 percent of the common minimum wage, then 2 percent of the common minimum wage for every additional percentage of lost earning capacity. Furthermore, the employee is entitled to the benefit based on the years of paying social insurance premiums.

If a worker dies because of an occupational accident/disease, his or her dependents are entitled to lump-sum benefit equivalent to 36 months of the common minimum wage.

Work injuries are divided into three categories: (i) permanent total incapacity (ii) temporary incapacity and (iii) fatal injury leading to death of a worker.

In the case of permanent incapacity/disability, that is, 31 percent or more loss in working capacity, 100 percent of the monthly minimum wage is paid in addition to the disability grant. In the case of temporary disability, from the first day of treatment until recovery or certification of permanent disability, 100 percent of an insured worker's monthly salary is paid. In the case of fatal injury, 50 percent of the monthly minimum wage is paid to eligible dependent (widow/widower, children and parents) as a survivors' pension and survivors' grant. The benefit is paid up to 4 dependent survivors. Survivor's grant is paid as a lump sum if an insured worker has less than 15 years of contribution. Funeral grant is also paid to the person paying for funeral as a lump sum of 10 months of minimum wage.

Emergency healthcare and considerate treatment is provided in case of an occupational accident. The employer must pay all medical expenses for the employees who are not participating in health insurance. Different level of coverage is provided for different individuals. For some individuals, 100 percent of the medical care costs are covered; while for others, only 80 percent of it is covered.

Sick leave duration depends on the type of employment. Sick leave of 30 working days is provided to the worker employed under normal working conditions (for those with less than 15 years of contribution), 40 days (for those with 15-30 years of contribution), and 60 days (for those with 30 or more years of contribution). Duration of sick leave increases by 10 days for those working in heavy or hazardous occupations/jobs.

Sick leave may be extended to 180 days in a year due to severity of illness. If the illness continues even after 180 days, a lower amount is paid as compensation. The amount of sickness benefit is 75 percent of the employee's declared wage to the social insurance.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Main country specific issues of concern:

In terms of labour contracts, there are two problems in terms of compliance in Vietnam. First, employers may refuse to sign labour contracts with temporary, low-skilled workers or only make oral agreements with them. According to the BetterWork Vietnam, 5.2 percent of workers, employed by the 300 garment companies that are members of the Project, do not have proper labour contracts with their employers.

Table 17: Types of Contract, BetterWork Vietnam Factories, 2014

Type of contract	%
No contract	1.6
Training or probationary contract	3.6
Temporary contract or one of less than one year's duration	5.0
Definite or fixed-term contract for 1-3 years	47.2
Indefinite or open-ended contract	38.8
Unknown	3.4
Prefer not to answer	0.3

Secondly, some employers may sign a series of definite term contracts (1-3 years) instead of signing an indefinite term contract after 2 short-term contracts (as defined by the Labour Code). Consequently, many employees are working based upon a string of short-term contracts.

Evasion of social security contribution is pervasive in Vietnam. According to MOLISA, as many as 5 million employees, or 31.25 percent of the labour force eligible for compulsory social security, did not participate in the social security system in 2014. By August 2014, there were over 47,000 companies employing 630,000 workers that owed social security contributions to the authorities (Vietnam Social Security, 2014)².

MAIN FWF AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF auditors can commonly review employment contracts and verify their compliance with MOLISA regulations. Workers usually receive copies of their labour contract. FWF audits often show structural problems related to the payments and coverage of social security. There have been cases in which temporary workers were used for several years without being offered benefits, whereas the law only allows for a period of 3 months for temporary employment.

WORKER COMPLAINTS RELATED TO 'LEGALLY BINDING EMPLOYMENT RELATIONSHIP'

A [complaint](#) from two former workers of a company supplying an FWF brand.

SOURCES USED IN THIS COUNTRY STUDY

This information has been gathered by Dr Đỗ Quỳnh Chi, a labour relations specialist from the Research Centre for Labour Relations (ERC). The study is prepared through gathering information about national laws and local stakeholders' views on labour issues in Vietnam's garment industry. In addition to this, Fair Wear Foundation has gathered information from internationally recognized sources on the economic, social, political and human rights situation in the country. The following stakeholders representing public authorities, employers, trade unions and NGOs, were consulted in the writing of this country study:

I. GOVERNMENT/PUBLIC AUTHORITIES

The Ministry of Labour, Invalids, and Social Affairs ([MOLISA](http://www.molisa.gov.vn)): is in charge of regulating and enforcing labour standards, labour inspections, labour market policies, labour migration policies, vocational training and social security policies.

www.molisa.gov.vn

II. EMPLOYERS

The Vietnam Chamber of Commerce and Industry ([VCCI](http://www.vcci.com.vn/)) is one of two national employers' organisations (together with the Vietnam Collaborative Alliances which mainly represents agricultural enterprises and cooperatives). VCCI has around 2,000 enterprise members and 7 branches in Vietnam's most industrialized provinces and cities. The VCCI's Bureau of Employer Affairs (BEA) is in charge of representing the employers' opinions with regards to national policy and legislation to the state and vice versa.

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

The Vietnam Textile and Apparel Association ([VITAS](http://www.vietnamtextile.org.vn/)) is a non governmental umbrella association working in the field of textile and garment industry in Vietnam with 15 branches in Vietnam and a total of 635 members, accounting for 70 percent of the total capacity of the industry. VITAS promotes business and investment cooperation as well as exchanges information among members, between members and the outside. Furthermore, VITAS represents its members and consults relevant the state and government bodies in policy campaign and mechanisms relating to the development of the textile and garment industry in Vietnam. VITAS represents Vietnamese textile and garment industry in international organizations and tries to be a bridge of cooperation between the domestic industry and the outside world. The VITAS also supports foreign companies in looking for Vietnamese textile and garment producers.

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

III. TRADE UNIONS

The Vietnam General Confederation of Labour ([VGCL](http://www.congdoanvn.org.vn/)) is the only recognized trade union organization in Vietnam. Established in 1929, the VGCL is organised by both geographical regions and sectors. The VGCL is affiliated to the Party-controlled Vietnam Fatherland's Front. By the end of 2013, the VGCL claimed a total membership of 8.5 million.

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

Garment and Textile Industry Union: The Garment and Textile Industry Union is a branch of the VGCL and reports directly to the national union. It is responsible for union activities in state-owned garment and textile companies all over the country. It was previously the union of the state-owned garment and textile corporation. The garment and textile industry union was set up in 1996 with most members being state-owned and equitized garment and textile companies. Recently a small number of private companies have joined the union. In 2008 total membership was reported to be 100,000.

IV. LABOUR RELATED NGOS

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

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

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

<http://cdvietnam.org/cdi/>

V. INTERNATIONAL STAKEHOLDERS

International Labour Organisation Office in Hanoi: Officially launched in 2002, the ILO Office in Hanoi is the coordinating agency for all the ILO projects and programs in Vietnam. It mainly focuses on providing technical assistance across a range of key labour market development issues, creating more and better jobs through enterprise development, ensuring basic social services for all, and promoting industrial relations and social dialogue. Additionally, the ILO Office in Hanoi works closely with the tripartite constituents including the Ministry of Labour, Invalids and Social Affairs (government), the Vietnam General Confederation of Labour (trade union), and the Vietnam Chamber of Commerce and Industry and Vietnam Collaborative Alliances (employers) to provide technical assistance to law-making projects related to labour and social issues.

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