

JOINT-SUBMISSION FOR THE UNIVERSAL PERIODIC REVIEW OF VIET NAM 2018

M.NET and partners¹

Hà Nội, June 2018

This joint stakeholder submission for the Universal Periodic Review of Vietnam in 2018 has been prepared with direct contribution and consultation of 7 members of Mnet network and several NGOs and individual experts. The consultation process has been conducted through participation of independent experts, academia and researchers with participation of some testimonies.

I. ECONOMIC AND LABOUR RIGHTS

1. **Ratification of international conventions:** Vietnam has ratified 7/9 UN human right fundamental conventions and 5/8 ILO fundamental conventions.² Among the remaining conventions that has not been ratified, are three ILO fundamental conventions including Abolition of Forced Labour (C105), Freedom of Association and Protection of the Right to Organize (C87) and Right to Organize and collective Bargaining (C98); and other important ILO conventions relating to labour right such as the Convention (1990) on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the convention 189 about decent work for domestic workers, the Convention 131 on Minimum wage fixing, and the Convention 95 on Protection of Wages.
2. **UPR follow-up recommendations:** At the Universal Periodic Review (UPR) 2009 and 2014, Vietnam Government had adopted 40 recommendations relating worker rights, of which there were 7 recommendations on ratifying international conventions.³ However, by June 2018, Vietnam has not ratified those conventions.

Recommendations:

- a) Accelerate the implementation of the seven recommendations on ratifying international conventions mentioned above, which was accepted by the Vietnam's government
- b) The State should accelerate the ratification of the ILO conventions: Abolition of Forced Labour (C105), Freedom of Association and Protection of the Right to Organize (C87) and Right to Organize and collective Bargaining (C98); the Convention (1990) on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW),

the convention 189 about decent work for domestic workers, the Convention 131 on Minimum wage fixing, and the Convention 95 on Protection of Wages, and different optional protocols related to complain and communication procedure.

3. Cooperation with UN Special Procedures. Vietnam has adopted UPR recommendations on strengthening cooperation with Human Right Commission as well as other commission and experts relating to Special Procedures but has not issued a standing invitation to all mandate-holders of Special Procedures and not yet accept all request for visit given to Vietnam. Since UPR 2014, fourteen requests for visit has been pending responses, for example: requests for visit by the Special Rapporteur on the situation of human rights defenders (2012), and the Special Rapporteur on Torture (2013).

Recommendations: Strengthening cooperation with UN Special Procedures by issue a standing invitation to all mandate-holders of Special Procedures, specifically the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

II. INEQUALITY IN LABOUR AND EMPLOYMENT

4. Informal female workers. Although the Vietnamese State has made great effort in eliminating gender inequality in the area of labour⁴ has specific stipulations on women workers, yet, no stipulations on informal workers' groups in the Labor Code, while these groups comprise nearly 40 million workers of the total 54 million workers in Vietnam (GSO, 2017)⁵. This means that two thirds of the total workforce in the country is working in the informal sector and are not regulated/protected by the labour laws, which regulate better working and employment conditions and social protection.

Recommendation:

- a) Accelerate the implementation of the Recommendation 143.86 of Serbia: 2014. 143.86 (Approval) Continue implementing policies to eliminate discrimination against vulnerable groups, including provision of their access to social protection, health care, education and housing (Serbia)
- b) By 2019, the revised Labour Code shall include groups of informal workers in order to ensure their economic and social protection rights equal to other groups of workers

5. Limited access to vocational training of rural women and migrant. Over 70% rural women workers are unable to have access to job training programs leading to their impossible access to well-paid jobs when entering the labour market.⁶ Currently the State has not adopted a separate support policy in training, vocational training for migrants, particularly women migrants and migrants for employment in urban areas. Only 4.0% migrant women receives vocational training.⁷ This means that most of the migrant women have had no opportunities to access vocational training to improve their capacity to integrate into the labour market; at the same time, they face more difficulties than men in recruitment and employment due to low skills, no capacity to meet employers' requirements.

6. Unequal retirement age and women's early retirement⁸ hinder their right to equal employment, equal employment opportunities, vocational training and re-training, and promotion and thus affecting their substantial equality. Lack of opportunities for promotion also prevents women from reaching the highest level in the wage scale and this affects not only their salary grade but also their pension

Recommendations: By 2019, the revised Labour Code shall ensure criteria for substantial gender equality including training, salaries, retirement age, healthcare policy and opportunities for promotion.

7. Specific stipulations on women workers. 2012 Labour Code stipulates that the State shall have planning and take measures to organize day-care centers and kindergartens in places where there are many women workers⁹. Decree 85/2015/NĐ-CP stipulates policy toward workers: "assist, support employers in building day-care centers and kindergartens or subsidizing part of the costs of sending children to day-care centers or kindergartens".¹⁰ However, the State has not yet adopted sanctions or specific plans for monitoring of the implementation of this Decree.

Recommendations: The State should adopt specific mechanisms/sanctions to monitor the implementation of stipulations on educational facilities (day-care centers, kindergartens) in industrial parks.

8. Discrimination in employment in the public sector. Several public agencies have employment policies which explicitly discriminate against a number of groups. For instance, the People's

Supreme Court does not recruit people with disabilities.¹ The Supreme Procuracy also does not recruit people with disabilities.²

Recommendation: Assess the discriminatory regulations and practices in the employment procedures by public and private sector and develop an action plan to provide equal opportunity for all.

III. EQUAL ACCESS TO PUBLIC SERVICE AND SOCIAL PROTECTION

9. Limited access to health care of migrant workers. According to Mnet's survey conducted 2017, among the migrant groups, only 41% have medical insurance, while some 90 % migrant workers in the informal sector does not take part in medical insurance. The World Bank report 2013 shows that the regulation on registration for health checkups and medical treatment using medical insurance cards and regulation on the payment rates and benefits at health facilities that accept medical insurance cards of 100%, 80%, 60%, 40% has reduced the need for buying health insurance cards, because if they hold them, they will not be able to enjoy the benefits of healthcare services¹¹. This creates inequality between migrants and local residents in the destination areas and limits accessibility to public healthcare services for migrant workers.

Recommendation: The State should take specific measures to eliminate discrimination in access to public services (eliminating the residence conditions in having access to public services)

10. Poor benefits and low rate of the coverage of voluntary social insurance. Government of Vietnam issues Regulations that express its highly commitment on social insurances for citizens.¹² However, the result still very limited. In spite of the fact that the percentage of formal labour force joining in the compulsory social insurance scheme was very high (99% of the target group), that of the informal labour force joining the voluntary social insurance scheme was so low (only 291 thousand workers¹³, that occupies less than 1% of the informal labour force, including farmers). Informal workers have to contribute more but benefit less compared to the formal workers. The 2014 Social Insurance Law only covers two benefits – pension and survivorship for the voluntary social insurance participants¹⁴, and does not ensure the interests of voluntary social insurance holders when they face risks of losing income such as illnesses or occupational accidents and diseases, or maternity.

¹ Supreme Court's recruitment note for 2017 – 2018. Article II.1.a Accessed at <http://congly.vn/phap-luat/nhan-tin/thi-tuyen-cong-chuc-cac-don-vi-thuoc-tandtc-va-tand-cap-cao-nam-2017-2018-238992.html> on 12/7/2018.

² Supreme Procuracy's recruitment announcement following Plan No. 26/KH-VKSTC dated 23/3/2018 on the recruitment plan of the Supreme Procuracy in 2018.

<http://tuyengongchuc.vn/thong-bao/vien-kiem-sat-nhan-dan-toi-cao-thong-bao-tuyen-dung-cong-chuc-nam-2018/>

Recommendation: The State should ensure the rights of vulnerable groups to equally access social protection by revising the Law on Social Insurance to include short-term benefit packages of maternity, illnesses and occupational accidents and diseases for informal workers (including farmers)

11. Domestic workers. Vietnam currently has legislation relating domestic workers.¹⁵ However, studies show that domestic workers have to face many risks such as precarious jobs, exploitation, sexual harassment, isolated working and living environment, separation from the community, have limited or no access to social protection, and no effective representation to defend their rights. For those workers who live with their employers, they have to work both day and night and have long working hours (on average 10.5 hours at day time and 0.5 hour at night time). Almost of them have no labor contracts. And more than 70% domestic workers do not know about relevant legal documents that protect their rights. Only 22% domestic workers have health insurance and 3% have social insurance. Many of them experience human right violations, such as abuse (20%), seizure of their identity cards (8%) and sexual harassment (16%)¹⁶

Recommendations:

- a) Accelerate the implementation of the Recommendation 143.28¹⁷ (by Uruguay, in the UPR 2014) on ratifying the ILO Convention No. 189 on decent work for Domestic Workers which was accepted by the Vietnam's government
- b) State should adopt specific regulations/sanctions in monitoring of the implementation of Decree 27 on signing of labour contract with domestic workers
- c) State should soon develop and adopt the national standard labour contract

IV. SEXUAL HARASSMENT AT WORKPLACE

12. Sexual harassment at workplace in Labour Code. The 2012 Labour Code of Vietnam has four articles relating sexual harassment at workplace but has not yet adopted the concept, acts of sexual harassment and specific stipulations on duties and responsibilities of the employers and mechanism of punishment and sanctions against the culprit.¹⁸ Acts of sexual harassment at workplace are only understood as happening in headquarters, offices, factories but not outside those places although they relate to work.

Recommendation: The State should ensure that the revised Labour Code will include specific definition on "sexual harassment" and sanctions against acts of sexual harassment at workplace.

V. ENSURING THE MINIMUM LIVING WAGES

13. The right to an adequate standard of living. This right is stated clearly in the Article 25.1. of the United Nations Universal Declaration of Human Rights (UDHR). In order to achieve that right, setting a minimum living wage is crucial to ensuring a just and equitable share of the fruits of progress for all. Minimum wages can also be one element of a policy to overcome poverty and reduce inequality, including gaps between men and women. The Government has approved the proposal for accession of some ILO conventions with this regard.¹⁹In May, 2017, the Government launched the National Action Plan (NAP)²⁰ for implementation of the 2030 sustainable development agenda with 17 goals which aiming for full, productive employment and decent work with equal pay for all citizens as well as to reduce social inequalities.

14. Status of minimum wage: By Labour Code 2012, minimum wages must enable the minimum living needs of employees and their families to be met. Vietnam has indeed made progress in raising minimum wages over recent years by increasing both the General minimum wage and Regional minimum wages. However, after more than five years of enforcement of the Labor Code, the requirement of ensuring minimum living needs has not been fulfilled in practice. Research shows that despite significant increases, the current minimum wage still lags minimum living needs.²¹ In 2015, the minimum wage of Region 1, which is the most industrialized region in Vietnam, was significantly lower than all living wage benchmarks, including the Asia Floor Wage, Fair Wage Network and the estimate of the Vietnam General Confederation of Labour (VGCL) of the minimum living needs of workers.²²According to MOLISA's 2018 report, regional minimum wages meet only 50-60% of the minimum living needs of workers.²³There is also evidence on minimum wages being considered non-binding and of non-compliance by companies.²⁴ This report, has, however, observed a decline in the prevalence of minimum wage issues in recent years, although problems continue to be found particularly among piece rate workers. The non-compliance rate for other forms of compensation related to wages and payments is even higher, up to 58%. A large number of employees, especially those without labour contracts, continue to receive wages below the applicable regional minimums. If the minimum wage policy is not strictly enforced, in the long term it will be less likely to play its key role in ensuring a minimum standard of living for the entire labour force.

Recommendations:

(a) Accelerate the implementation of Recommendation 143.189²⁵ (by Turkey, in UPR 2014) on mitigating income inequalities, as accepted by Vietnam's government

- (b) Implement necessary actions to meet the requirement that by 2020 minimum wages will ensure the basic living needs of employees and their families
- (c) Refer to the elements to be taken into consideration in determining the level of minimum wages, as specified in Article 3 of ILO Convention 131, when setting minimum wages in Labor Code revisions and annual reviews of the National Wage Council. These elements must include consideration of the needs of workers and their families.
- (d) Accelerate the process of accession to ILO Convention 131, concerning Minimum wage fixing, with Special Reference to Developing Countries and the ILO Convention 95 on Protection of Wages.

VI. ELIMINATION OF ALL FORMS OF FORCED LABOUR

15. The ILO convention 105 on Abolition of Forced Labour clearly defines that any form of forced or compulsory labour, as a method of mobilising and using labour for purposes of economic development, among others, should be undertaken to suppress and not to be made use of (article 1²⁶). In Vietnam, because the minimum wage is lower than living cost and minimum living needs, this forces workers to work overtime or take moon-light job to compensate for living. According to a Labour Code 2012, the legal violation on overtime work was regularly committed, especially in the such labour-intensive enterprises as garment, footwear, exported seafood processing, electronics sampling and communication technology. And there were still enterprises that mobilized workers to do overtime but did not pay them overtime wage.²⁷ Many such cases led to strikes.²⁸ In addition, the Government regulates low minimum wage in order to attracting investment and use labour to be considered as a form of forced labour.

Recommendations:

- a) Accelerate the implementation of the Recommendation 143.180 (2014) (by USA, in the UPR 2014) on Protection of internationally recognized workers' rights and implementation of laws on forbiddance of force labours, which was accepted by the Vietnam's government; Accelerate the process of ratifying the ILO convention 105 on Abolition of forced labours;
- b) The Vietnam Government should have strong measures to monitor the legal enforcement regarding overworking time and ensure overworking time is made on voluntary basis and negotiation between workers and employers, such as legalization of administrative punishment on violation of working time or remedy mechanism for workers to raise their voice.

VII. GUARANTEE RIGHT TO ORGANISE

16. Freedom of Association and Trade Unions as human rights: Vietnam does not subscribe to any Convention of the International Labour Organization (ILO) concerning trade unions.²⁹ An opportunity to promote human rights occurred during free trade agreement negotiations. Accordingly, Vietnam opted to adjust its domestic legislation and systems to explicitly recognise human rights.³⁰ Legal reform has, however, taken place in order to recognize human rights, as codified in the 2013 Constitution and in related laws.³¹

17. Right to organize in legal reform: Labour rights would thus be recognised as human rights and adopted into domestic law. The Labour Code and Trade Union Law were accordingly amended in 2012. The 2013 Constitution supports rights to associate and demonstrate but limits their exercise by, for example, preventing workers from organising or joining independent trade unions of their choice. The right to organise strikes, with provision for collective bargaining, was given to the VGCL in the 2012 Labour Code. This law also allows trade unions and employer organisations to facilitate and support collective bargaining, requiring companies to establish a mechanism to enable management and workers to exchange information and consult on subjects affecting working conditions. However, in Vietnam, there is a question of effective bargaining because Vietnam still has one trade union system. Collective bargaining, as a key labour right, has been limited to the hands of unions, the only recognized organizations through which workers can organize strikes or any bargaining on their rights. The amended Trade Union Law (2013) stipulates that trade unions have the right and responsibility to organise and lead strikes whilst also establishing certain substantive and procedural restrictions on strikes. However, strikes arising out of economic and social policy measures that are not part of a collective negotiation process, since such strikes are regarded as falling outside the law's definition of protected 'interest-based' strikes.³² However, in some instances, an implementation gap exists between what the law preaches and what the government practices.³³

18. Trade unions and strikes: Notably, the amended Labour Code (2013) allows for labour strikes although the organisation of strikes requires compliance with a complicated regulatory procedure that has had the effect of making many strikes illegal. Wild cat strikes are widespread but still considered illegal.³⁴ Repression of strikes is however rare, although in some cases force has been used to stop strikes or curtail worker unrest.³⁵ At the same time, the State call for harmonious labor relations is strengthened,³⁶ a view supported in interviews.³⁷ As

such, the amended Labour Code (2013) allows for labour strikes but organisation of such strikes requires compliance with a complicated regulatory procedure which had the effect of making many strikes illegal in 2016 illegal.³⁸In general, the government has refrained from taking action against illegal strikers and, in some cases, has actively mediated agreements in their favour. In many cases, company managements have policies that do not encourage the establishment of trade union, with little interference by the state.³⁹Nevertheless, a fear of human rights practices especially freedom of association and freedom to form trade unions outside the VGCL system. Nevertheless, the right to strike is still limited because under the current Labour Code, attempted dispute resolution via mediation and reconciliation must occur before the right to strike will be recognised.⁴⁰ Therefore, trade unions remain hamstrung in fully claiming their rights even workers demand more trade union action in representing them in bargaining with management.

19. Independence of trade unions: There have been not big changes to the mandate of Vietnam Trade Unions to enable their greater independence.⁴¹The law proscribes workers' rights to form and join unions outside of the VGCL framework. In debate on amending the law, some argue that the constitution should empower trade unions to be even more independent in order to fulfil their mandate of protecting the rights of workers.⁴²The 2012 Law on Trade Unions, authorised greater financial independence so as trade union can become more independent from management, as practice management can intervene in trade union work.⁴³At enterprise level, there is process more democratic in election and union leaders at enterprise level can have greater leeway to act while workers can choose their representatives by election, of their merit of qualities and capacities.⁴⁴Although, as provided by law, workers still do not have the right to set up their own unions recognized by the State and the VGCL.

Recommendations

- (a) Accelerate the process of accession to the ILO conventions on Freedom of Association and Protection of the Right to Organize (C87) and the ILO 98 conventions Right to Organize and collective Bargaining (C98);
- (b) Comprehensive programs to raise awareness of workers and employers about their rights and responsibilities should be implemented.
- (c) Government should introduce clearer mechanisms to support the right to strike.

¹Mnet is Vietnamese civil society network, with the mandate to work for labor rights includes 7 organisations namely Institute for Development and Community Health (LIGHT); Center for Development and Integration (CDI); Research Center for Gender-Family and Community Development (GFCD); Institute for Research on Policy, Law and Development (PLD) Vietnam Justice Support Association for the Poor (VIJUSAP); Social Work and Community Development Research Centre (SDRC); Center for family support and community development (CFSCD). Other

NGO partners include Research Centre for Gender, Family and Environment in Development (CGFED) and Human Rights Space (HRS).

²² The ratified UN Fundamental conventions includes: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child; Convention on the Rights of person with disabilities. The ratified ILO Fundamental conventions includes: Forced Labour (C29), Minimum Age (C138), Worst Forms of Child Labour (C182), Equal Remuneration (C100), Discrimination ((Employment and Occupation) (C111).

³These includes: Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Azerbaijan) (2009); 143.21. Ratify CRPD, CAT, CPED and ICRMW (Bukina Faso) (2014); 143.18. Consider acceding to ICRMW (Algeria); 1. Consider accession to the ILO Forced Labour Convention (Malaysia) (2009); 1. Continue the process of acceding to the appropriate ILO conventions (Belarus) (2009); 143.28. Consider ratifying other pending fundamental International Labour Organization (ILO) Conventions such as Convention No.189 (2011) concerning decent work for domestic workers (Uruguay) (2014).

⁴ Chapter X of the 2012 Labour Code

⁵ General Stastics Office, 2017, Press Release on social and economic situation 2017::<http://www.gso.gov.vn/default.aspx?tabid=382&idmid=&ItemID=18667>

⁶UN Women and FAO, Survey report on access to social protection of women labour, 2015

⁷ActionAID, 2014, Study on access to social protection of migrant,
http://www.actionaid.org/sites/files/actionaid/policy_brief_vietnamese_version_final.pdf

⁸ Vietnam Labour Code, 2012, Art 187 – Retirement age: 1. The employee must satisfy the conditions of the social insurance payment in accordance with the law on social insurance to enjoy the pension salary when female is full 60-year-old and female is full 55 years old.

⁹ Vietnam Labour Code, 2012, Art 153. Specific stipulations on women workers: 1. To ensure the equal working rights of female employee 2. To encourage employers to create conditions for female employee to work regularly and widely apply the flexible timetable working regime, working shorter hours and assigning work at home. 3. To take measures to create jobs, improve working conditions; improve their occupational level, health care, enhancing the physical and mental welfare for female employees to help them promote their professional capacity efficiently, harmoniously combining the working life and family life. 4. To have tax reduction for employer who employs many women employees in accordance with the law on tax. 5. To expand the type of training convenient for women employee to have additional reserve job and appropriate with the physical physiological characteristics, and maternal functions of women. 6. The State makes plans and takes measures for the organization of preschool, kindergarten at the place where there are many female employees.

¹⁰ Government, 2015, Decree 85/2015/NĐ-CP: stipulating in detail the implementation of specific stipulations on women workers of the Labour Code <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Nghi-dinh-85-2015-ND-CP-huong-dan-Bo-luat-Lao-dong-chinh-sach-lao-dong-nu-291926.aspx>

¹¹World Bank, 2013, Report on universal coverage of health insurance in Vietnam: Situation and Resolutions <http://documents.worldbank.org/curated/en/174471468322142660/pdf/890660VIETNAME0oading0to0image0bank.pdf>

¹²Resolution 21-NQ/TW of Political Bureau on strengthening the Communist Party efforts on social insurance, medical insurance

¹³<https://baomoi.com/13-5-trieu-nguoi-tham-gia-da-duoc-cap-so-bao-hiem-xa-hoi/c/24424879.epi> , searched in internet on 11/7/2018

¹⁴ Clause 2, Article 4 of the 2014 Social Insurance Law

¹⁵ The 2012 Labour Code and Decree No. 27/2014/NĐ-CP, Circular No. 19/2014/TT-BLĐTBXH.

¹⁶Research Center for Gender-Family and Community Development (GFCD), 2012, Report “Evaluation on situation of domestic workers in Vietnam”

¹⁷Recommendation 143.28 of Uruguay, in the UPR 2014: “Consider ratifying other pending fundamental International Labour Organization (ILO) Conventions such as Convention No.189 (2011) concerning decent work for domestic workers

¹⁸The 2012 Labour Code only mentions in Article 8 that acts of sexual harassment are prohibited at workplace but only uses the terms sexual harassment in Article 37, 182 and 183.

¹⁹Decision No. 2528/QĐ-TTg dated 31 December 2015 of the Prime Minister, approving the implementation plan and the proposal for accession to the conventions of the United Nations and the International Labour Organization in the field of labour and social affairs for the period from 2016 to 2020. The Government approved the proposal for accession to various conventions of the UN and the ILO, including the ILO Convention 131 concerning Minimum wage fixing, with special reference to developing countries and ILO Convention 95 on Protection of Wages, for the period 2016 - 2020.

²⁰Decision No. 622/QĐ-TTg dated 10 May 2017 of the Prime Minister, in which 17 SDGs of Vietnam towards 2030 have been set including 115 specific targets, corresponding with global SDG targets. In the NAP, Goals 8 and 10 set targets (targets 8.5, 10.1, 10.4)

²¹ Do Quynh Chi, Research Center for Employment Relations (ERC) - CNV International, Vietnam country study Labour Standards in the Garment Supply Chain, 2016

²² Do Quynh Chi - Friedrich-Ebert-Stiftung Vietnam, *The missing link in the chain? Trade regimes and labour standards in the garment, footwear and electronics supply chains in Vietnam*, 2nd edition, 2017

²³ MOLISA, Report on the implementation of the Labor Code, dated 31 January 2018, uploaded on MOLISA's website <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=580>

²⁴BetterWork, *Annual Report 2017 - An industry and compliance review - Vietnam, reporting period: October 2015 to December 2016*. According to Better Work's Annual report 2017, 12% of 257 assessed factories did not comply with minimum wages/piece rate wages.

²⁵Recommendation 143.189 of Turkey in the UPR 2014: "Focus on mitigating income inequalities, providing equal opportunities in education and employment, and improving social security and health services for all segments of the population"

²⁶ ILO convention 105 on Abolition of Forced Labour, 1957, Article 1: *Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;(b) as a method of mobilising and using labour for purposes of economic development;(c) as a means of labour discipline;(d) as a punishment for having participated in strikes;(e) as a means of racial, social, national or religious discrimination.*

²⁷ Better Work, Annual report 2017, An Industry and Compliance Review, page 6. According to the ILO Better work report 2017 that 77 percent of surveyed factories still fail to meet monthly overtime limits and 72 percent exceed annual limits, while 44 percent of factories do not provide at least four days of rest per month to workers as regulated by law, and about 13% also fail to guarantee women workers the statutory right to daily breastfeeding and menstruation breaks.

²⁸Ministry of Labours, Invalids and Social Affairs (MOLISA), Assessment of the Labour Code 2012 implementation, 2017

²⁹ To date, Vietnam has ratified 21 ILO conventions but has not ratified the conventions on freedom of association and collective bargaining and related human rights conventions

See, 'Ratifications for Vietnam' ILO, available at

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004, accessed on 9 July 2018.

³⁰ TPP imposed conditions for labour standards, requiring state commitments on labour rights protection and mechanisms. In Vietnam's case, the USA put requirements on legal changes to ensure freedom of association and freedom to join trade unions. In addition, free trade agreements with the European Union (EVFTA) posts social and sustainability conditions including freedom of unions.

³¹ Government of Vietnam. 2013 Constitution, Chapter II. Article 15 states that "citizens have [the right to] freedom of expression, freedom of press, access to information, freedom of assembly, freedom of association, and freedom of demonstration. The realisation of these rights are provided by law."

³² In October 2015, the government issued Decree 88 regarding administrative sanctions for interference in trade union activities. It imposed fines of between VND3 and 10 million (US\$135-\$450) for discrimination against employees establishing or joining a trade union, carrying out trade union activities, and for any actions disadvantaging the operations of a trade union.

³³SHAPE-SEA (2018). Human rights Outlook in Southeast Asia 2016

³⁴ In Vietnam, according to VGCL data, between 1995 and 2012 nearly 5,000 strikes occurred, of which about 100 were in SOEs, 1,400 in private companies and about 3,500 cases in FDI companies. None of these strikes was organized by local unions in companies. See Report of a workshop on 05/4/2013 by the Federation of Labour Unions (VGCL), accessed at <http://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat/thoi-su/4450/gan-5.000-cuoc-dinh-cong-tu-khi-luat-lao-dong-ra-doi> [accessed 430/7/2014]. In 2011, 95% of strikes were deemed to be illegal. Citing joint report of International Federation of Human Rights and Vietnam, and Vietnam Committee on Human Rights on Universal Periodic review of Vietnam. 17.June, 2013 read more at

https://www.fidh.org/IMG/pdf/joint_upr_submission_on_vietnam_final_version.pdf [accessed 30/6/2015]

³⁵ Case in Binh Duong, when workers held a public demonstration against China to show their wish for national sovereignty: <http://vnexpress.net/tin-tuc/thoi-su/nhieu-ke-kich-dong-cong-nhan-trong-cuoc-bieu-tinh-phan-doi-trung-quoc-2990053.html> The case of Wonderful Co. (Binh Duong), strike on 3/4/2014: police stopped the strike with tear gas. <http://bantinhiephoi.blogspot.com/2014/04/binh-duong-cong-nhan-bieu-tinh-ung-o.html> [accessed 24/10/ 2014] Case of a strike in Hanoi Metal Co. on 10 Dec 2010. Although news media accessed inside Vietnam did not carry news of police repression of workers. Read in:

<http://congthuonghn.gov.vn/default.aspx?page=&lang=0&cat=6&content=181> [accessed 15/8/2014]

³⁶ Party Resolution No. 20/NQ-TW 28/1/2008 and Party Resolution no. 22 dated 5/6/2008. Resolution 20. To perfect the cooperation mechanism between state, enterprise managements and trade unions to resolve labor conflicts, build

harmonious labor relations, promote stability and progress. The CPV stresses the need for trade unions to develop mechanisms for “harmonious” labor relations, in which labor, capital and the state work in harmony.

³⁷ Ngo Huong (2016). *Economic liberalization, political space and the role of trade unions in Vietnam*. Doctoral Dissertation. Mahidol University. Interviewees mention that union leaders should “harmonize” the interests of workers with those of management and the Party (interview with a local union official from the Dong Nai province and the chair of the union at a joint stock company in the Hai Duong province) Another interviewee said: “I know the law very well. But we cannot be too intense/confrontational; instead we have to find the right words to keep the balance/harmony, even when we know that the employers are violating the law, because they pay our salaries. Even if we get the city or province's TU, or an inspector or the Department of Labour involved and for example accuse the employer of being wrong, the most that can be done is to make the employer pay for a compensation.”

³⁸ The VGCL reported 177 strikes from January through July in 2016, approximately the same number as 2015. Of those strikes, 69% were in foreign direct-investment companies (mainly Korean, Taiwanese, and Japanese companies and in three labour intensive sectors including the garment, footwear, and electronic industries) See, ‘Vietnam’ US Department of State, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017.

³⁹ Ngo Huong. Samsung in Vietnam. In *Labor Rights in High Tech Electronics*. Asia Monitoring Resource Center. 2013. Read more at

<http://www.amrc.org.hk/sites/default/files/Labour%20Rights%20in%20High%20Tech%20Electronics%20-%20AMRC.pdf>. Samsung is an example of how concerns and demands of workers have evolved to recognize the importance of unions in protecting workers’ rights. After a long period of operation, in 2014 Samsung agreed to allow a trade union to be established in its Vietnam operation. Further media coverage: <http://congdoanconghuong.org.vn/tin-tuc/t891/co-mot-chu-tich-cong-doan-nhu-the.htm> [accessed 7 December 2014]

⁴⁰ The VGCL reported 177 strikes from January through July, approximately the same number as 2015. Of those strikes, 69% were in foreign direct-investment companies (mainly Korean, Taiwanese, and Japanese companies and in three labour intensive sectors including the garment, footwear, and electronic industries) See, ‘Vietnam’ US Department of State, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017.

⁴¹ Constitutions over time and the amended 2013 Constitution have recognized the role of Vietnam Trade Union (VGCL). “Vietnam Trade Union is the socio-political organization of the worker class and laborers established on the basis of voluntary for laborers to take care and protect the legitimate rights and interests of laborers; participate in state management, socio-economic management; participate in supervision, inspection, assessment of state organs, units, organisations and enterprises on the issues related to rights and duties of laborers; disseminate and mobilize laborers to study, improve capacity, profession and comply with the laws and nation building and national protection” Read further on:

http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=171264

⁴² This debate was sourced from media. (Title Vn: Xácđịnhvịtríquantrọngcủatôchứccôngđoàn Title Eng: Identify the important position/status of TUs Author: VinhHai; Newspaper: Lao Dong, March 1, 2013, no 44/2013 (9366), page 4. Dr. Pham Ngoc Ky proposed that Article 10 should identify the TU’s rights to participate in the state’s management activities. According to Dr. Ky, this idea is very clear and need not add any more rights because it already includes TU’s interest in policies and supervision of those policies as an independent agent. [accessed 30 August 2014]

⁴³ ILO, IFC, Better Work Annual Report 2016. The report shows 30% of factories having senior management in the factories and in 34% in survey having management involved in trade union activities and decision making.

⁴⁴ Ngo Huong (2016). *Economic liberalization, political space and the role of trade unions in Vietnam*. Doctoral Dissertation. Mahidol University. Citing interview #U4 [dated 8/8/2014] At factory level there is a union committee, headed by a chairperson elected by a Workers’ Assembly for a fixed term. There are also union representatives nominated by workers at production unit level who comprise the factory committee union. One union leader at private enterprise level said: “since the Chair of the Trade Union is elected, if s/he does not function well to protect the interests and rights of workers, they will not be elected for another next term.” This point is also supported in interviews with senior union cadres at ministry level.