



**Made in  
Vietnam**

## Labor Rights Violations in Vietnam's Export Manufacturing Sector

Worker Rights Consortium  
May 2013



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WORKER RIGHTS CONSORTIUM

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CREATIVE COMMONS: INTERNATIONAL LABOUR ORGANIZATION

## I. Introduction

THIS IS A BRIEFING PAPER for Worker Rights Consortium affiliate universities and colleges and their licensees concerning the labor rights environment in Vietnam and, in particular, its export garment manufacturing industry, a sector which includes the production of collegiate licensed apparel. As of March 2013, Vietnam was second only to China in the number of factories (185) that have been disclosed to the WRC by licensees as locations for the manufacture of collegiate products outside the United States.<sup>1</sup>

Likewise, over the previous twelve-month period Vietnam was also the second largest source of apparel and textile imports to the United States by dollar value, which was estimated to total \$7.9 billion and comprise 7.8% of the total imported apparel and textile market.<sup>2</sup> The garment and textile industry is Vietnam's largest single source of formal private sector employment with a direct labor force of more than two million workers.<sup>3</sup> By comparison, electronics assembly, one of the country's other leading export manufacturing sectors, employs approximately 120,000 workers.<sup>4</sup>

As a result, the labor rights environment in Vietnam and, in particular, its export apparel manufacturing industry is of significant interest to the WRC and universities and colleges concerned about the working conditions under which their licensed apparel is produced. The labor rights situation in the country dictates this as well—in 2012 the U.S. Department of Labor added garments from Vietnam to its official list of products made with forced and child labor, making Vietnam one of only seven countries in the world whose apparel received this designation.<sup>5</sup>

Unfortunately, government policies in Vietnam restricting the establishment of independent grassroots nongovernmental organizations, including those that could investigate labor rights abuses and assist workers,<sup>6</sup> and preventing the establishment of independent trade unions<sup>7</sup> hamper fully independent monitoring of working conditions in Vietnam's export garment factories. Advocating for labor rights and monitoring factory conditions independently of the apparel industry and government authorities is, for this reason, more difficult in Vietnam than in China, where such grassroots worker rights organizations, while sometimes subject to harassment and surveillance, are far more prevalent and well-established.<sup>8</sup>

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Despite these challenges, given the difficult labor rights environment in Vietnam and the country's increasing importance as a manufacturing location for collegiate apparel, we felt it useful to review and assess for affiliate universities and colleges key labor issues in Vietnam's export garment industry. We hope this briefing will be useful for WRC affiliate universities and colleges in their engagement with licensees concerning supply chain labor issues in Vietnam.

This review and assessment discusses several issues of particular concern involving labor conditions in Vietnam's garment sector, in particular, and its export manufacturing industries, in general. In summary, the WRC finds the following with respect to the issues listed below:

- ◆ *Freedom of Association and Collective Bargaining*—These basic labor rights are not respected under Vietnamese law. Workers who have attempted to form labor organizations outside of the official union structure dominated by the state and the Communist Party have been prosecuted and jailed on criminal charges in retaliation for their efforts.<sup>9</sup> At the enterprise level, the official union structure is dominated by factory managers who typically also serve as the officers of plant-level unions, a fundamental conflict of interest.<sup>10</sup> So-called “wildcat strikes”—job actions organized by workers outside union structures—occur often, many times in protest of abusive treatment or other labor law violations by factory managers.<sup>11</sup> Workers who lead such strikes can suffer firing, blacklisting, physical violence and imprisonment as a result of employer and state retaliation.<sup>12</sup>
- ◆ *Forced Labor*—As noted, the U.S. Department of Labor has added garments from Vietnam to its annual list of products made with forced and child labor.<sup>13</sup> Leading international human rights authorities have report-

ed on Vietnam’s practice of detaining illegal drug users in state-run “rehabilitation” centers that function as suppliers of forced labor to various industries—including garment subcontracting.<sup>14</sup> International apparel brands, including Columbia Sportswear, previously have been linked to garments produced in these centers through suppliers with whom they subsequently severed some of their business relations.<sup>15</sup> These centers reportedly continue to require forced labor of their detainees, however, including garment work.<sup>16</sup>

- ◆ *Child Labor*—As noted, the U.S. Labor Department has included garments from Vietnam on its global list of products made with forced and child labor.<sup>17</sup> In addition to the occasional employment of underage workers in large garment factories outside of legal restrictions, child labor, including forced labor involving the trafficking of children from rural communities to urban areas, remains a significant problem in smaller workshops of the kind which often act as subcontractors to larger factories.<sup>18</sup>
- ◆ *Gender Discrimination*—Women workers in Vietnam face pervasive pregnancy-based discrimination ranging from termination of employment to denial of statutory maternity benefits.<sup>19</sup>
- ◆ *Health and Safety Hazards*—Factory workers are often at risk from hazards such as locked fire exits and failure to provide protective equipment.<sup>20</sup> In the last two years there have been fatal factory fires in both export apparel and consumer electronics factories.<sup>21</sup>
- ◆ *Excessive Working Hours*—Garment factory employees report being required to work far in excess of legal limits on working hours often without a single weekly rest day.<sup>22</sup> Factories often attempt to conceal such practices by maintaining false records.<sup>23</sup>
- ◆ *Inadequate Wages*—Despite significant recent increases in the legal minimum wage, manufacturing workers continue to receive wages that provide only a fraction of the cost of an adequate standard of living.<sup>24</sup>
- ◆ *Precarious Work*—Employment of workers via short-term contracts or third-party labor contractors, practices that render workers vulnerable to exploitive conditions and retaliation for raising grievances, are increasingly common in the export manufacturing sector.<sup>25</sup>
- ◆ *Non-Enforcement of Labor Laws and “Wage Theft”*—Failure to adequately enforce labor laws leaves workers vulnerable to unlawful employer practices that deny workers earned wages and access to social insurance benefits.<sup>26</sup>

In light of these practices, conditions in Vietnam’s export garment factories remain generally noncompliant with international labor standards and university codes of conduct. While Vietnam has recently revised its labor law,<sup>27</sup> the changes made, in most cases, seem unlikely to resolve the problems we have identified—although we note them in this memo where relevant. These issues and the sources of the WRC’s information concerning them are discussed in further detail in the remainder of this document.

## II. Sources

Published information on labor conditions in Vietnam's export manufacturing industries can generally be classified into four categories of sources, all of which were reviewed for this briefing:

- ◆ Publications by Vietnamese and foreign scholars and other experts on labor rights issues in contemporary Vietnam;
- ◆ Local and international media coverage of labor-related developments and events in Vietnam;
- ◆ Publications by entities that regularly report on labor rights among a broader array of international human rights issues in Vietnam, such as Human Rights Watch and the U.S. State Department's Bureau of Democracy, Human Rights and Labor; and
- ◆ Reports by organizations that have researched or monitored labor conditions among Vietnamese suppliers to multinational enterprises, with support and cooperation from factory owners and international buyers, themselves, including the Fair Labor Association,<sup>28</sup> the ILO Better Work Vietnam program,<sup>29</sup> and Oxfam International.<sup>30</sup>

We also reviewed what is, to our knowledge, the sole recent example of an in-depth fully independent investigation of labor rights compliance at the factory level in Vietnam, a 2011 report by the Dutch and Swedish nongovernmental organizations, SOMO and Swedwatch, on the labor rights environment at factories producing digital cameras for leading Japanese brands like Pentax and Olympus.<sup>31</sup>

To supplement this information, we also cite, where relevant, the findings of interviews conducted with workers at several export apparel factories in Vietnam during the first part of this year. As is the WRC's consistent practice, the names of these factories are noted in the text, along with their major buyers, where these have been identified.



### III. Issues

#### A. VIOLATIONS OF FREEDOM OF ASSOCIATION

##### 1. Restrictions on Freedom to Join or Form a Union

The right of workers to form or join unions of their own choosing is a basic element of the fundamental workplace right of freedom of association.<sup>32</sup> The U.S. State Department's most recent annual "Country Reports on Human Rights Practices" make clear that Vietnam continues to violate this fundamental right.<sup>33</sup>

Vietnamese labor law imposes this restriction on associational rights through its requirement that all unions in the country be affiliated with the Vietnam General Confederation of Labor ("VGCL"), which, under its own governing rules, describes itself as "a member of the political system under the leadership of the Communist Party of Vietnam."<sup>34</sup> This requirement has been retained under the country's new trade union law which took effect on May 1, 2013.<sup>35</sup> Although Vietnamese law requires that all enterprises must establish a trade union, unionization is significantly less-prevalent in foreign-invested enterprises than in the state-owned sector.<sup>36</sup>

## 2. Repression of Independent Unions

Vietnam's government enforces its prohibition of independent unions, in part, through the targeted prosecution and imprisonment of citizens who attempt to establish such organizations. Many of the reported cases of such prosecutions are of persons who sought to found independent unions during the brief period of political liberalization in 2005-2006 when such activities were tolerated by government authorities.<sup>37</sup>

Once the state's policies on this subject reverted to the status quo ante, persons who had taken a public role in forming independent unions were subjected to sustained campaigns of prosecution and imprisonment, particularly if they persisted in their labor activism.<sup>38</sup>

For example, in 2007, Trần Khải Thanh Thủy, a writer who, in October 2006, helped found the Công Đoàn Độc Lập Việt Nam ("Vietnam Independent Trade Union"), was convicted of "disturbing the peace" and jailed for nine months.<sup>39</sup> Sometime after her release on this charge, however, she resumed her activism and, in 2010, was sentenced to 3.5 years in prison for assaulting a police officer.<sup>40</sup>

Similarly, factory worker Nguyễn Tấn Hoàn, who, in 2006, participated in the founding of another independent union, Hiệp Hội Đoàn Kết Công-Nông Việt Nam ("United Workers and Farmers Association of Vietnam"), was arrested in 2007 and imprisoned for eighteen months on charges of "spreading propaganda" and collaborating with foreigners to oppose the state.<sup>41</sup> Another founding member of the same union, Trần Thị Lệ Hồng, also was convicted in 2007 and served two years in prison. The three are among eight prominent independent labor activists who were arrested and prosecuted during this time.<sup>42</sup>

After his release, Nguyen continued his labor activism—reportedly by organizing "wildcat strikes." In early 2010, he was re-arrested and, like Tran, convicted of "disturbing the peace"—and, this time, sentenced to seven years' imprisonment.<sup>43</sup>

## 3. Employer Domination of Unions

The denial of associational rights to Vietnamese workers is rendered worse by the fact that not only is the organizing of independent unions legally prohibited, but the official union structure is also de facto dominated at the factory level by employers themselves. This is because enterprise-level union officials are typically chosen by factory managers, not workers, and are, most commonly, actually the company's human resource managers.<sup>44</sup>

The result is that at the factory level, where workers are most directly impacted by poor labor conditions or rights abuses, and have the most need of collective representation, those designated as their "representatives" are actually persons paid to represent their employer and whose job it is to further the company's



interests in labor relations matters, not those of the workers. Not surprisingly, then, Vietnamese workers express little confidence or trust in factory-level unions.<sup>45</sup> And while more than half of foreign-invested firms reportedly have collective bargaining agreements, nearly all of these simply offer workers terms and conditions to which they are already entitled under the labor law.<sup>46</sup>

The selection of union officials by company management, the designation of company managers to fill these offices, and the monitoring of union meetings by ‘company managers-cum-union officers’<sup>47</sup> all constitute blatant violations of the right of freedom of association, whose observance requires that “[w]orkers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.”<sup>48</sup> Employer domination of factory-level unions creates a fundamental conflict-of-interest on the part of the union officers and an insurmountable bar to unions adequately and independently representing workers’ interests and acting to correct violations of the labor laws.<sup>49</sup>

**Enterprise-level union officials are typically chosen by factory managers, not workers, and are, most commonly, actually the company’s human resource managers.**

In an apparent attempt to address the domination of VGCL enterprise-level unions by factory managers, the ILO Better Work Vietnam program, in cooperation with the VGCL, since 2011 has promoted the establishment of “Performance Improvement Consultative Committees (“PICCs”) at the factory level, which are comprised of an equal number of factory workers and managers and whose purpose is “to improve workplace cooperation and working conditions.”<sup>50</sup> Beginning in 2012, Better Work began to require that the worker members of these committees be nominated and elected by workers themselves.<sup>51</sup>

It is unclear as yet, however, whether the PICCs, which, as noted, are “joint committees” created by factory managers and the VGCL, will become an vehicle for workers to exercise authentic freedom of association—a right which has, at its core, the ability of workers to “establish ... organizations of their own choosing without previous authorisation” which “enjoy adequate protection against acts of interference” by employers.<sup>52</sup> The fact that the VGCL’s own structure is currently dominated at the national level by the state, itself, and at the enterprise level by factory owners suggests that its own ability and willingness to promote genuine change in this area may well be rather limited.

#### 4. Restrictions on the Right to Strike

Denied by the political authorities and their own employers a viable means to exercise freedom of association through the formal labor relations system, Vietnamese workers have, over the past decade, resorted to unauthorized job actions—so-called “wildcat strikes”—in order to protest rights abuses and gain improved conditions. These strikes, while lacking either legal sanction or support from the official union structure, often have been successful in halting rights violations and improving workers’ wages.<sup>53</sup>

Participating in and, especially, organizing such strikes, however, exposes workers to risks of retaliation by employers and state authorities that further violate

**Strikers and strike organizers in Vietnam face dismissal and blacklisting by employers, targeted prosecution and imprisonment by government authorities, and coercive surveillance and retaliatory violence by company security personnel**

their associational rights. The right to strike is protected under international labor rights jurisprudence as a “fundamental right of workers” and an “intrinsic corollary of the right to organize.”<sup>54</sup> Strikers and strike organizers in Vietnam face dismissal and blacklisting by employers, targeted prosecution and imprisonment by government authorities, and coercive surveillance and retaliatory violence by company security personnel, all forms of retaliation that repress

workers’ exercise of this basic right.<sup>55</sup> Nevertheless such strikes are likely to persist until the government permits a measure of meaningful associational activity by employees and other workable avenues for constructive industrial relations.

*a. Prevalence and Causes of Strikes*

The VGCL reported that there were 981 strikes in Vietnam in 2011, more than double the 423 strikes that were registered the year before.<sup>56</sup> As has been a consistent pattern over the past decade, nearly all of these actions were wildcat strikes occurring in the private sector, in which the official union structure played no organizing role.<sup>57</sup>

Instead, as a number of scholars have described, Vietnam’s wildcat strikes have been organized both within and across factories through informal networks of both migrant workers sharing common living quarters and team leaders and skilled workers carrying influence with fellow employees.<sup>58</sup>

A common strategy used by workers, in order to bypass management-dominated union structures at the factory level and avoid targeting of strike leaders by employers, has been to cease work en masse and wait for the arrival of district-level union, labor ministry, or local government officials who then will then solicit workers’ grievances and obtain concessions from factory managers in exchange for employees returning to work.<sup>59</sup> Notably, this process typically does not involve factory employees coming forward as strike leaders to negotiate with managers and, thereby, establish the basis for future bargaining and dispute resolution.<sup>60</sup>

As for the grievances that provoke these strikes, the most common causes reportedly are abusive treatment by factory managers—particularly in the garment sector where Korean and Taiwanese factory owners use authoritarian methods and at times are physically violent toward employees—violations of workers’ rights under the labor laws, and failure of minimum wage increases to keep up with the rapidly rising cost of living.<sup>61</sup> Such grievances typically build up over time until a precipitating event or action by factory managers spurs workers to go on strike.<sup>62</sup>

One recent strike that was precipitated by particularly abusive conduct on the part of foreign managers took place in October 2012 at a Taiwanese-invested shoe factory, Hong Fu Vietnam Footwear Company, which, according to U.S. Customs records, supplies Nike’s Converse subsidiary.<sup>63</sup> Workers at this factory reportedly went on strike after a Chinese supervisor glued a Vietnamese worker’s hands together with “super glue” as a punishment.<sup>64</sup> The supervisor

was reportedly angered by the practices of employees using the powerful adhesive, which workers evidently brought from home, at work, rather than company-supplied industrial glue.<sup>65</sup>

The supervisor's victim required hospital treatment. After workers walked out in protest, representatives from the local district branch of the VGCL arrived, who convinced the factory's management to suspend the offending supervisor and pay both the affected worker's medical bills and the other workers' wages for the period of the strike. The supervisor, however, did not face any criminal charges.<sup>66</sup>

Another key factor in many strikes is factory managers' violation of workers' rights under Vietnamese labor law. Such violations reportedly include "delays and non-payment of wages, illegal layoffs, failure to pay health insurance contributions, wages below the legal minimum, . . . non-payment of overtime, [and] the imposition of excessive overtime."<sup>67</sup> Unlike workers in more industrialized countries, who typically strike to win wages and benefits above the legal minimum, factory employees in Vietnam must often risk going on strike simply to obtain the terms of employment that managers are already obligated to provide to them by law.<sup>68</sup>

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#### *b. Restrictions on the Right to Strike*

As noted, the prevalence of strikes in Vietnam is impressive considering that state officials and factory owners together impose a series of significant restrictions, both legal and practical, on workers' exercise of the right to strike, including statutes that make nearly all strikes, in practice, illegal, as well as, on occasion, blacklisting, firing and criminal prosecution of workers who lead strikes, and physical violence against striking employees. For a strike to be legal, workers must first, among other things, consult with enterprise-level union officials<sup>69</sup>—who, as discussed, are typically members of the factory management itself! The impracticality of workers satisfying the law's requirements means that nearly all strikes are, technically speaking, illegal.<sup>70</sup>

Adding to this restriction has been the amendment of labor laws several years ago to make workers who organize illegal strikes liable for resulting economic damage to employers.<sup>71</sup> The impact of such potential penalties, of course, is to discourage the development of face-to-face dispute resolution between striking workers and factory owners, since the former face potential liability if they come forward to advocate on their own behalf.

The risk of facing prosecution by the state is greatest for workers who organize highly-public strikes involving a large number of workers. In October 2010 a court convicted labor activists Nguyen Hoang Quoc Hung, Do Thi Minh Hanh, and Doan Huy Chuong, of "disrupting security and order against the people's administration" and sentenced them to terms of seven to ten years in prison.<sup>72</sup>

The three labor activists had helped organize a strike of 10,000 workers at the My Phong shoe factory in Tra Vinh, which is reportedly a supplier to the U.S. footwear company, Collective Brands, Inc., the parent company of Payless,

Sperry Top-Sider, Saucony, Keds, and Stride Rite. According to Human Rights Watch, none of the three workers were represented by counsel at their trial, nor were any of them allowed to speak on their own behalf.<sup>73</sup> Reportedly, all three

subsequently have been beaten while in prison.<sup>74</sup> A year later, twenty more worker activists allegedly were arrested during a strike by more than 90,000 workers at the Vietnamese factories of the Taiwanese footwear firm, Pou Yen, a major supplier of shoes to adidas.<sup>75</sup>

Of course, even if they are not targeted by the state, worker activists can still face significant retaliation from employers. The U.S. State Department noted in its 2012 human rights report on Vietnam that both the country's labor ministry (the Ministry of Labour, Invalids and Social Affairs, "MOLISA") and the local news media had reported blacklisting of strikers by employers.

In the first case, a company had photographed striking workers and sent the images to other employers, while in the second, managers from the Japanese electronics firm, Panasonic, were said to have developed a blacklist of striking employees.<sup>76</sup> In a recently-published case study, workers at a garment factory in the Song Than industrial zone reported similar retaliation after a strike in 2008, during which the employer allegedly photographed protesting workers, then interrogated them after the strike was over, and, finally, selectively terminated thirty of the employees.<sup>77</sup> Similarly, workers at Nike supplier

Tae Kwang Vina reported in interviews in 2013 that the company's management has installed closed circuit video cameras in the factory, one of whose purposes, some employees believe, is to deter workers from organizing job actions.

Finally, factory managers have responded to some strikes with physical violence against employees. In 2010, the chief of security at Giai Duc, a Taiwanese joint venture manufacturer of motorbike parts for companies such as Honda, Yamaha and Piaggio, who later claimed to have been acting on orders from factory-higher-ups, intentionally drove a truck into a group of striking workers, killing one employee and severely injuring six others, including a female worker who was pregnant.<sup>78</sup>

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## B. FORCED LABOR

As noted, in 2012 the U.S. Department of Labor added garments from Vietnam to its annual list of products made with forced and child labor, making Vietnam one of just six other countries whose garments received this designation.<sup>79</sup> This development followed reports in 2011 by Human Rights Watch that Vietnamese state authorities were requiring detainees in state-run "rehabilitation centers" for illegal drug users, some of whom were as young as twelve years old, to perform forced labor<sup>80</sup> as part of their addiction "therapy," including processing cashew

nuts — of which Vietnam is the world’s largest exporter and the U.S. is Vietnam’s largest customer<sup>81</sup> — and sewing and embroidering apparel, work for which the detainees received little or no compensation.<sup>82</sup> MOLISA acknowledged that work of this kind was performed at the centers, but claimed that their residents engaged in this part of the “treatment” on a voluntary basis and were properly compensated.<sup>83</sup>

According to Human Rights Watch, Vietnam operates more than 120 such detention centers, which house roughly 40,000 persons.<sup>84</sup> Persons deemed to be drug abusers can be detained involuntarily in the centers for several years, without any opportunity to contest this designation.<sup>85</sup> Residents who refuse to cooperate with the centers’ administrators, including, reportedly, by failing to fulfill the work requirement, risk physical punishments by the center administrators, such as beatings, electric shocks and solitary confinement.<sup>86</sup>

When HRW released its report on forced labor at the centers, it named the U.S. apparel brand Columbia Sportswear Company as one of the firms whose products were being made there.<sup>87</sup> According to HRW, Columbia then indicated that it had severed its business relations with the vendor who had subcontracted work to the centers,<sup>88</sup> which, reportedly, was a local subsidiary of the Singapore-based multinational apparel firm, Ocean Sky Group.<sup>89</sup>

It is not known whether goods destined for U.S. apparel brands are still produced at the government detention centers. Forced labor continues to be present in the Vietnamese apparel industry, however, not only in these centers, but also through the trafficking of persons as young as twelve years old from rural areas to work in “slave labour factories” — small family-owned garment factories — in Ho Chi Minh City, of the type that often serve as subcontractors for larger firms.<sup>90</sup> Coerced labor, in both of these forms, is prohibited under ILO Convention 29 (Forced Labor Convention, 1930), which Vietnam ratified in 2007,<sup>91</sup> and importation of goods made with forced or prison labor is prohibited under U.S. law.<sup>92</sup>

**Forced labor continues to be present in the Vietnamese apparel industry, through the trafficking of persons as young as twelve years old from rural areas to work in “slave labour factories” — small family-owned garment factories — in Ho Chi Minh City, of the type that often serve as subcontractors for larger firms.**

### C. CHILD LABOR

Child labor is a significant problem in the Vietnamese garment industry. As noted, the U.S. Department of Labor has added garments from Vietnam to its annual list of products made with forced and child labor.<sup>93</sup> Moreover, the ILO Better Work program and the U.S. State Department have reported recent instances of use of child labor in Vietnam’s apparel industry.

In its most recent public report, the ILO’s garment factory monitoring program stated that its inspectors had found fourteen-year-old children employed at three of the 132 factories it was monitoring in the country.<sup>94</sup> However, the report also noted that twenty-two of these factories, nearly 17% of the total number, lacked any reliable means of verifying the ages of new employees,<sup>95</sup> a finding roughly

consistent with that of the FLA, whose public reporting indicates that roughly 27% of factories it audited between 2009 and 2011 had this defect in their practices.<sup>96</sup>

Perhaps more significantly, the past year also saw indications of trafficking of children from rural areas to major cities to work in small-scale garment workshops.<sup>97</sup> As the U.S. State Department noted in its annual report on human rights practices, Vietnamese labor officials acknowledged finding children working up to twelve hours per day in such workshops in Ho Chi Minh City, indicating that in one month alone, they had found child laborers in 110 of these establishments in the metropolitan area.<sup>98</sup>

In September 2012, the Vietnamese government's Public Security Ministry reported having rescued nineteen children who were members of an ethnic minority group and had been trafficked to small garment factories around Ho Chi Minh City.<sup>99</sup> According to media accounts, garment factory owners had travelled to rural districts to "hunt" for these children, and had paid parents \$50-100 to send them to the city to work.<sup>100</sup> Some of the children reportedly were given drugs by factory owners to keep them alert and working.<sup>101</sup>

#### D. GENDER DISCRIMINATION

Young women make up the overwhelming majority of workers in Vietnam's export manufacturing industries, reportedly comprising roughly 80% and 75% of the labor force in the apparel and electronics sectors, respectively. As nearly all of these female workers are of childbearing age, it is significant that Vietnam's labor law has mandated relatively generous maternity benefits, including a requirement that employers provide female workers with four months paid leave following the birth of a child—a benefit that was increased to six months paid leave under recent amendments to the labor law.<sup>102</sup>

**At Doojung Vietnam, a Korean-owned export manufacturer of cosmetics brushes, workers reportedly were contractually required, as a condition of employment, not to become pregnant for three years**

To avoid paying these legally mandated benefits, however, employers have resorted to a number of discriminatory practices that violate international labor standards protecting the rights of women workers.<sup>103</sup> A particularly blatant example of such practices was found earlier this year at Doojung Vietnam, a Korean-owned export manufacturer of cosmetics brushes, whose workers reportedly were contractually required, as a condition of employment, not to become pregnant for three years.<sup>104</sup> Not surprisingly, the company also failed to provide women workers who did have children with any of the legally required maternity benefits.<sup>105</sup> These practices were only publicly exposed after workers went on strike in April in protest of these and other illegal conditions.<sup>106</sup>

Another discriminatory practice related to the avoidance of paying maternity benefits is employing women on fixed-term contracts of shorter duration than those offered to male employees. Women workers at the Vietnamese operations of Japanese camera manufacturer Olympus reported to researchers that they are hired initially on six-month contracts, while male employees receive contracts of one year in length.<sup>107</sup> Vietnamese law requires one year of service with

an employer to establish eligibility for maternity benefits, so hiring women on six-month contracts enables the company to dismiss a worker who is discovered to be pregnant—by simply declining to renew her contract—before she can become eligible for maternity pay.<sup>108</sup> Indeed, Olympus workers indicated that the company routinely refused to renew the contracts of workers who were believed to be pregnant.<sup>109</sup>

## E. UNSAFE WORKING CONDITIONS

Vietnamese workers face serious safety and health hazards on the job, many of which are present in the operations and supply chains of foreign buyers and manufacturers. MOLISA disclosed that in 2011 the number of workplace accidents reportedly increased fifteen percent over the previous year.<sup>110</sup> The most frequent cause of injury was reportedly either the complete lack or sub-standard quality of necessary safety gear in a given workplace.<sup>111</sup>

A 2011 survey by the VGCL indicated that more than ninety percent of the safety gear provided to employees failed to meet applicable industrial standards.<sup>112</sup> Not surprisingly a leading distributor of workplace safety gear commented that “safety products without origin and required technical criteria are my best seller[s].” He added that “[c]ustomers prefer cheap products, especially factories, which buy on an institutional scale.”<sup>113</sup>

This general attitude towards workplace safety on the part of employers is reflected in the results of the individual factory inspections conducted in the export garment industry by the ILO Better Work Vietnam program. The factory monitoring initiative’s most recent public report shows pervasive noncompliance with basic safety standards:

- ◆ Thirty-five out of 132 factories that were inspected (27%) had emergency exits that were locked, obstructed or inaccessible during times when employees were inside the facilities;
- ◆ At forty-two of 132 factories (32%), workers were not using necessary personal protective equipment; and
- ◆ Thirty out of 132 factories (23%) failed to properly monitor or limit workers’ exposure to hazardous chemicals.<sup>114</sup>

Results of monitoring conducted for the Fair Labor Association of its member firms’ supplier factories in Vietnam indicate that such hazards may be, if anything, more pervasive than the ILO’s inspection data suggests. Of factories audited for the FLA between 2009 and 2011, 80% violated basic requirements related to emergency evacuation, with common violations including blocked aisles and locked exits, lack of fire alarms and smoke detectors, and failure to conduct fire drills or test electrical systems.<sup>115</sup> Seventy percent of factories audited for the FLA during this period also failed to provide workers with required personal protective equipment, and 52% had not installed necessary guards on machinery.<sup>116</sup>



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The risks such conditions pose for Vietnamese apparel workers were shown in July 2011 when a footwear manufacturing facility in the northern city of Hai Phong burned, killing seventeen workers and severely injuring twenty-three more.<sup>117</sup> The factory, an unlicensed business (which was not monitored by Better Work), had only a single exit that became blocked when burning insulation material fell from the ceiling, trapping workers inside the structure.<sup>118</sup>

**In July 2011 a footwear manufacturing facility in the northern city of Hai Phong burned, killing seventeen workers and severely injuring twenty-three more. The factory had only a single exit that became blocked when burning insulation material fell from the ceiling, trapping workers inside the structure**

The previous year had seen another fatal factory fire, this time in the export electronics sector, when a burning structure collapsed at a company producing plastic parts for the Japanese camera and office equipment firm, Canon, Inc.<sup>119</sup> A Chinese manager at this Canon supplier factory, the Vietnam DragonJet company, was killed, and a Vietnamese worker at the plant suffered brain injury, when a wall fell on top of both of them during the fire.<sup>120</sup>

## F. EXCESSIVE WORKING HOURS

Under Vietnamese law, an employer may not have a worker perform overtime in excess of four hours per day, thirty hours per month, or 200 hours per year.<sup>121</sup>

University codes of conduct also place a maximum limit on overtime in factories producing collegiate apparel of twelve hours of overtime per week.<sup>122</sup> Factories in export manufacturing sectors such as garment manufacturing and electronics assembly, however, routinely exceed these limits as do facilities in the supply chains of other multinational firms.

Interviews with employees in March 2013 at four apparel factories in near Ho Chi Minh City—Nike suppliers Tae Kwang Vina and Yupoong Vietnam, All Super Enterprise (a reported supplier to J.C. Penney and Lacoste), and Scavi Vietnam (a factory that reportedly supplies Puma and VF) —found that working hours at all four exceeded the legal limit. Likewise, the ILO's Better Work Vietnam program reported in its most recent public summary of its inspection results that 93% of factories it audited were violating the annual legal limit on overtime as well.<sup>123</sup> Finally, a review of the FLA's public reporting of its monitoring in Vietnam over the past several years indicates that 90% of factories audited under that program also violated Vietnamese law and/or the FLA's code in this area.<sup>124</sup>

Moreover, the ILO reported that nearly 60% of factories had failed to provide workers with the legal minimum of four rest days per month.<sup>125</sup> In other words, during some portion of the period surveyed, a majority of factories were having their employees work seven days per week—without a single day of rest. Unfortunately, these levels of noncompliance appear to have been unimproved by ILO Better Work's factory monitoring activities over the past few years.<sup>126</sup>

While factory workers in many developing countries, including Vietnam, often see some overtime hours as necessary to supplement their meager regular wages, in many cases, working hours reflect employer coercion rather than worker choice. For example, workers at Korean-owned manufacturer Doojung Vietnam reported that prior to going on strike “they had been forced to work extra 110

to 120 hours per month, with no vacations or breaks.”<sup>127</sup> One factory worker revealed that “[a]ccording to the contract I signed, I could take off Sundays but had to then work from 7am Saturday [morning] to 8am Sunday [morning].”<sup>128</sup> Another employee stated, “We are all so exhausted from the job, but whenever somebody asked for a reduction in overtime they were fired,”<sup>129</sup>

Similarly, at the Hoang Ha garment factory, a sewing machine operator reported being compelled to work “28 days each month for 10 hours each day,” saying, “I’m really tired and need rest because I’m four-month[s] pregnant. But I have no other choice. I was lucky to get this job anyway, or I would be unemployed.”<sup>130</sup>

Similar conditions reportedly exist in some electronics assembly plants as well. Workers employed in the Vietnamese operations of the Korean firm, Samsung, told interviewers that during peak production period they are required to work four-to-five hours of overtime every day of the week, Monday through Sunday.<sup>131</sup> Even in the case of Unilever, the Dutch consumer products firm, whose operations in Vietnam produce for the local market and might be expected to be insulated from high-pressure international delivery schedules, employees of one of its local suppliers reported that they had worked “four hours’ overtime a day six days a week for ten months of the previous year,” an amount more than five times greater than the then-legal maximum.<sup>132</sup>

**One factory worker revealed that “[a]ccording to the contract I signed, I could take off Sundays but had to then work from 7am Saturday to 8am Sunday.” Another employee stated, “We are all so exhausted from the job, but whenever somebody asked for a reduction in overtime they were fired”**

## G. INADEQUATE WAGES

Vietnam’s labor code states that the country’s minimum wage “must ensure minimum living conditions of employees and family households.”<sup>133</sup> Yet although wage levels in Vietnam’s export apparel sector have increased significantly over the past decade,<sup>134</sup> there is a broad consensus that they remain insufficient to provide a minimally adequate standard of living for workers and their families.

In a 2011 interview, Chau Nhat Binh of the VGCL’s International Department called the wages paid by foreign-invested factories in Vietnam “shockingly low.”<sup>135</sup> A 2012 study by the VGCL’s Institute of Workers and Trade Unions found that wages for workers in the footwear industry averaged only \$ 124 per month, less than the average monthly wage figure for workers in all formal sector industries (\$ 136), and the lowest wage of any sector surveyed.<sup>136</sup>

According to the VGCL survey, the average wage for a footwear worker provided barely half of the amount the average family of three needed to cover *food expenses alone* (\$220 per month).<sup>137</sup> Not surprisingly, only seven percent of the workers surveyed indicated that they were able to accumulate any savings at all.<sup>138</sup>

Similarly, a 2010-2011 study by the FLA-sponsored Fair Wage Network of pay practices at fifteen garment factories in Vietnam found that seventy-five percent of the surveyed factories paid only the legal minimum wage and that the remaining twenty-five percent actually paid *less* than the minimum wage.<sup>139</sup> Yet as

MOLISA's own wage experts have acknowledged, the legal minimum wage fails to provide for workers' basic needs.<sup>140</sup>

One measure of the minimum income needed to provide for the basic needs of a worker and her family is the Asia Floor Wage calculated by trade unions, labour



rights activists and academics working in Asia, Europe and North America, which has been converted using the World Bank's Purchasing Power Parity factors to provide wage figures for given countries in the region that enable workers to afford equivalent baskets of goods and services.<sup>141</sup> Oxfam's 2011 study of labor practices in Unilever's Vietnamese operations noted that the Asia Floor Wage figure for Vietnam (4.04 million Vietnamese dong (VND)) was two times greater than the then-current minimum wage (1.5 million VND per month).<sup>142</sup>

While according to the Oxfam study, Unilever paid its direct employees in Vietnam a wage that was roughly double the legal minimum (2.75-3.25 million VND in monthly cash compensation), this figure still fell significantly short of the Asia Floor Wage.<sup>143</sup> And, as the Fair Wage Network study indicated, most garment factories, unlike Unilever, only paid the minimum wage, itself.<sup>144</sup>

Yet even this disparity does not truly reflect the extent of the gap between workers' actual wages and what would be required to provide them and their families an adequate minimum standard of living. Both Oxfam's 2011 study and wage research the WRC conducted in 2012 found that the minimum income required for the basic needs of a worker and her family in Vietnam is actually significantly *higher* than the Asian Floor Wage figure. Oxfam estimated that the monthly living expenses of a worker with a single dependent child were 5.42 million VND per month, a figure nearly 35% higher than the Asia Floor Wage, and more than three times greater than the minimum wage.<sup>145</sup>

Oxfam's findings are consistent with the WRC's own wage research which estimated that, although inflation-adjusted wages had risen substantially in Vietnam's export garment sector over the past ten years, prevailing straight time wages for Vietnamese garment workers (which the WRC calculated as amounting to 2.3 million VND, including all cash compensation) provided less than a third (29%) of a "living wage" — defined as a wage comparable in local buying power to that received by workers at the Alta Gracia factory in the Dominican Republic, the only garment factory in the developing world where payment of a living wage has actually been implemented and publicly verified.<sup>146</sup>

In January 2013 the monthly minimum wage for workers in Ho Chi Minh City and Hanoi was raised to 2.3 million VND.<sup>147</sup> While a substantial increase over the previous legal minimum, this figure, as discussed, is still far less than any accepted measure of what is required to meet the basic needs of workers and their families. Even so, many employers, at the same time as they implemented the new minimum wage, reportedly also reduced certain cash allowances they had been providing to their employees, with the result that these workers failed to receive the full benefit of the increase.<sup>148</sup>

## H. PRECARIOUS WORK

As in other countries in Southeast Asia, Vietnam has seen an expansion in recent years of forms of employment often referred to as “precarious work”—including hiring workers on successive temporary contracts and outsourcing the employment relationship, itself, to third-party “labor contractors.” These practices have the result of rendering workers significantly more vulnerable to abuse and exploitation, as persons working under these arrangements often lack legal rights and protections that workers in more “regular” forms of employment possess, receive less compensation for their work, and face greater risks of retaliation if they speak out about mistreatment.

An example of the impact of such practices is illustrated in Oxfam’s 2011 report on labor practices at Unilever’s Vietnamese operations. The report found that the majority of workers in Unilever’s Vietnam facility (748 out of 1,385) were not actually employed by Unilever, itself, but, instead, by a “labour provider” firm named Thang Loi.<sup>149</sup> Thang Loi’s workers received wages that were, on average, nearly 25% lower than those of comparably-situated workers whom Unilver employed directly.<sup>150</sup> Moreover, Thang Loi hired these workers on successive temporary contracts of six months’ duration, which not only made their employment status less secure, but also rendered them, under Vietnamese law, ineligible to join the factory-level union.<sup>151</sup>

SOMO and Swedwatch’s 2011 study on labor practices in the electronics assembly sector revealed similar practices among Japanese firms producing digital cameras in Vietnam. That study found that workers at Pentax’s Vietnam facility were employed on successive one-year contracts, even though some of them were long-term employees, a practice that, as the report notes, violated the country’s labor code.<sup>152</sup> The report cites the ILO’s Chief Technical Advisor in Vietnam as blaming the use of successive short-term contracts for a vicious cycle of higher employee turnover (due to lower wages paid to workers employed under such arrangements) and lower productivity (resulting from high turnover and resulting lack of seniority among workers).<sup>153</sup>

Recently-enacted amendments to the country’s labor laws address the issue of labor subcontracting, establishing the legality of the practice (which previously had existed as a grey area of the law), but putting in place restrictions on employers and protections for subcontracted workers.<sup>154</sup> The latter include requiring “equal pay and working conditions” for outsourced workers, and limiting the total period that an outsourced worker can be assigned to the same firm to a term of twelve months.<sup>155</sup>

In the export apparel sector, it appears that, thus far, the more common practice is for factories to hire employees directly on successive short-term contracts, thereby giving the management greater discretion to dismiss the worker through non-renewal of the agreement. A 2011 study on the use of short-term employment contracts in the export apparel industry in Cambodia found that such arrangements were associated with violations of workers’ associational rights

**The average wage for a footwear worker provided barely half of the amount the average family of three needed to cover food expenses alone. Not surprisingly, only seven percent of the workers surveyed indicated that they were able to accumulate any savings at all.**

and denial of seniority-based statutory benefits, particularly maternity benefits for women workers.<sup>156</sup>

Workers at the Yupoong Vietnam and All Super Enterprise garment factories in factory in Bien Hoa, near Ho Chi Minh City, report that these companies employ them on such temporary contracts. Yupoong Vietnam has been disclosed by both Nike and Twins Enterprises as a supplier of collegiate apparel.<sup>157</sup> According to U.S Customs records, All Super Enterprise supplies garments to J.C. Penney.



## I. “WAGE THEFT” AND FAILURE TO ENFORCE LABOR LAWS

Denying workers the wages and benefits they are legally due is a pervasive violation in Vietnam’s export apparel sector. Factory inspections by the ILO’s Better Work Vietnam program found that 19% of factories failed to pay the legal minimum wage for workers’ regular hours, and that 30% did not provide workers with the minimum legal compensation for overtime hours.<sup>158</sup> Similarly, the Fair Wage Network’s 2010-2011 study found that

a majority (53%) of the factories it surveyed in Vietnam failed to pay workers in accordance with legal requirements and that 25% of surveyed factories paid workers less than the legal minimum wage.<sup>159</sup>

In some cases, underpayment of wages appears to be due to employees being required to work “off-the-clock.” As noted, workers at Nike footwear supplier Tae Kwang Vina are required to arrive at the factory fifteen minutes before their work shifts in order to shout company-dictated “slogans.” The company’s failure to compensate workers for this time would result in an underpayment of ninety minutes per week, or roughly seventy-five hours per year—nearly ten days’ straight-time wages.<sup>160</sup> In fact, the monetary loss to workers actually would be greater than this—fourteen days’ pay per year per worker—as, under Vietnamese law, the missing fifteen minutes per day should be treated as overtime, and calculated at 150% of the workers’ usual rate of pay.<sup>161</sup>

“Wage theft” from workers by employers is particularly damaging because, as discussed, the minimum wage, itself, falls far short of providing workers and their families with an adequate income. Inadequate incomes—that deny workers the means to pay or save funds for unexpected needs and expenses, such as medical care or loss of employment—make it all the more crucial that low-wage employees have access to social safety nets. Unfortunately, garment factories in Vietnam also frequently fail to enroll or make legally-required contributions for workers in social insurance programs. The ILO Better Work program reports that nearly a quarter of the factories it monitors failed to properly make such payments on behalf of their workers.<sup>162</sup>

Neither the ILO inspection program nor the FLA’s monitoring regime exercise any enforcement power over factory owners to compel them to cease cheating workers of wages and social insurance contributions, much less compensate these employee for this loss.<sup>163</sup> Unfortunately because of the limited transparen-

cy in both programs' reporting practices—ILO Better Work does not publicly release factories' inspection reports or disclose their buyers, and the FLA does not identify the factories it monitors by name<sup>164</sup>—buyers, who possess the greatest influence with factories, also have little direct incentive to ensure that these violations are corrected. As can be seen even from the limited public disclosure these programs do provide, the theft of workers' meager wages is significant and yet continues largely unabated by these programs.

The inherent rationale of such programs, of course, is to bridge the gap between the pervasiveness of such violations and the limited capacity of the state regulatory agencies responsible for enforcing the labor law. In Vietnam, this need is particularly acute—in 2008 it was reported that MOLISA had only eleven inspectors in Hanoi, and that in Ho Chi Minh City, the municipal labor department only had five.<sup>165</sup>

Moreover, the penalties these agencies impose on employers appear to hardly pose even an obstacle to law-breaking, much less a serious deterrent. In 2007, the VGCL reported the case of a company that had failed to make social insurance contributions for 3,000 workers. The employer had illegally withheld payments of \$ 187,500, but as it was fined only \$1,250 as a penalty, it continued to violate the law.<sup>166</sup> The ineffectiveness of such regulatory efforts is further exacerbated by the reported tendency of some labor inspectors to extort bribes from factory owners,<sup>167</sup> presumably in return for looking away as employers keep stealing wages and benefits from their workers.

Vietnam's labor law attempts to supplement the limited regulatory capacity of government agencies by authorizing the official trade union structure to help monitor employers' legal compliance. The VGCL, for example, reports employing 100 of its own labor inspectors in Hanoi.<sup>168</sup> The union's ability to actually perform this function effectively, however, is hamstrung by the fact that at the enterprise level, where violations occur, its officers are predominantly members of company management—the same party responsible for breaking the law.<sup>169</sup>

As a result, the burden of enforcing workers' rights under the law falls on the persons the law is supposed to protect—workers, themselves, for whom, as discussed, the only way to assert their rights is through wildcat strikes. As we have seen, such “illegal” strikes typically break out when workers finally lose patience with their employers' own ongoing violation of the labor laws.<sup>170</sup> Yet until workers are able to raise an independent collective voice to defend their rights through other means, this dysfunctional situation is likely to persist.

## IV. Conclusion

VIOLATIONS OF BASIC LABOR RIGHTS remain pervasive in Vietnam's garment industry and its export manufacturing sectors more generally. Repressive state policies—such as the practice of detaining and requiring forced labor from persons accused of illegal drug use—along with exploitation of vulnerable populations by employers, including through trafficked child and forced labor, implicate the industry in some of the worst forms of abuse. Recognition of Vietnam as a country where the risk of products made under such conditions entering into the supply chain of U.S. apparel brands and retailers is particularly pronounced is expressed in the recent addition of garments from the country to the U.S. Department of Labor's list of products made with forced and child labor.

Also particularly troubling is the fact that by law and in practice Vietnamese workers are consistently and thoroughly denied the rights of freedom of association and collective bargaining. A similar situation—of the establishment of labor organizations legally restricted to a single official union operating under the direction of the ruling political party, and enterprise-level unions under the de facto control of factory managers—prevails in other countries, too, most notably, of course, in China.<sup>171</sup>

As labor rights experts have observed, however, a signal difference is that Chinese political authorities have endorsed, if not actual freedom of association, the need for the official trade union structure to change its practices and support the development of more authentic collective bargaining between managers and employees.<sup>172</sup> It remains to be seen whether Vietnam's new labor law, which appears to strengthen the VGCL's hand in collective bargaining,<sup>173</sup> means that a similar shift in course will actually occur.

Vietnamese workers have responded creatively and courageously to the legal and practical restrictions placed on their associational and collective bargaining rights, through the practice of wildcat strikes. But a choice between tolerating wholesale violations of their legal rights—grueling work hours and theft of meager wages and benefits—or risking potential blacklisting, violence and prosecution for organizing illegal job actions, is not one that workers anywhere should be forced to make.

In light of these and other significant violations highlighted in this report—unsafe working conditions, gender discrimination, and abusive labor contracting—universities and colleges have a clear mandate to ask apparel companies that choose to have collegiate apparel produced in Vietnam for accurate and detailed reporting of the measures they are taking to protect and advance the rights of the workers who make these garments.

# Endnotes

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- 3 Better Work Vietnam, *Garment Industry 6th Compliance Synthesis Report 3* (Apr. 26, 2013), <http://betterwork.org/vietnam/wp-content/uploads/BWV-6th-synthesis-report.pdf>.
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- 5 U.S. Dept. of Labor, Bureau of Int'l Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, *List of Goods Produced by Child Labor or Forced Labor* (Sep. 26, 2012), <http://www.dol.gov/ilab/programs/ocft/2012TVPRA.pdf>.
- 6 Kakuli and Schipper, *supra*, n. 4 at 4 (“It is not . . . possible [in Vietnam] to start up independent non-governmental organizations (NGOs) as they are required to work in cooperation with a government sponsor, which limits their ability to criticize labour conditions.”); Anita Chan, *Strikes in Vietnam and China: Contrasts in Labor Laws and Diverging Industrial Relations Patterns* 5 (conference paper, ABA International Labor and Employment Law Committee) (May 2010) (describing research and explaining that “[i]n Vietnam very few such grassroots labour NGOs exist and there was no opportunity to get in touch with them”).
- 7 See, Kakuli and Schipper, *supra*, n. 4 at 14.
- 8 See, Chan, *supra*, n. 6 at 5 (comparing labor research in China, where “a considerable number of interviews were held with the staff of labour NGOs in . . . Shenzhen, who have a wealth of experience working with Chinese migrant workers” with labor research in Vietnam, where, because “very few such grassroots labour NGOs exist,” interviews “were conducted with officials of the [government-sponsored] trade union federation and the Ministry of Labour (MOLISA), with staff members of the International Labor Organization (ILO), and with monitoring companies” as well as “locally based staff members of a well-known Western-owned footwear company”).
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- 10 Better Work Vietnam, *Garment Industry, 5rd Compliance Synthesis Report* 10 (Sept. 16, 2011), <http://www.betterwork.org/sites/VietNam/English/resources/Documents/Better%20Work%20Vietnam%20-%203rd%20Compliance%20Synthesis%20Report.pdf>.
- 11 Bernadine Van Gramberg, Julian Teicher, and Tien Nguyen, “Industrial Disputes in Vietnam: the Tale of the Wildcat,” 4 *Asia Pacific Journal of Human Resources* (2013).
- 12 See discussion, *infra* at 10-11.
- 13 U.S. Dept. of Labor, *supra*, n. 5.
- 14 Human Rights Watch, *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam* (2011), <http://www.hrw.org/sites/default/files/reports/vietnam0911ToPost.pdf>.
- 15 Human Rights Watch, “Ending Forced Labor in Vietnam’s Drug Detention Centers” (Nov.16, 2011), <http://www.hrw.org/news/2011/11/16/ending-forced-labor-vietnam-s-drug-detention-centers>. According to information obtained by the WRC, these suppliers reportedly included the Ocean Sky Group, a Singapore-based multinational apparel manufacturer, which was acquired in April 2013 by another Singaporean apparel firm, Luen Thai, Ltd.
- 16 *Ibid*.
- 17 See, U.S. Dept. of Labor, *supra*, n. 5.
- 18 See discussion, *infra*, at 13-14.
- 19 See, e.g. Kakuli and Schipper, *supra*, n. 4 at 30.
- 20 See, Better Work, *supra*, n. 3 at 9.
- 21 *Thanh Nien News*, “Five Jailed for Deadly Vietnam Factory Fire” (Aug. 1, 2012), <http://www.thanhniennews.com/2010/pages/20120801-4-vietnamese-1-chinese-jailed-in-deadly-factory-fire.aspx>; and “Chinese Employee Killed in Northern Vietnam Factory Fire” (Dec. 12, 2011), <http://www.thanhniennews.com/2010/pages/20111212-chinese-killed-in-vietnam-factory-fire.aspx>.
- 22 Better Work Vietnam, *supra*, n. 3, at 9.
- 23 *Id.* at 22.
- 24 See discussion, *infra*, at 19-20.
- 25 See discussion, *infra*, at 20-22.
- 26 See discussion, *infra*, at 22-23.
- 27 Labor Code, Law 10-2012-QH13 (Jun. 18. 2012).
- 28 Fair Labor Association, *Tracking Charts*, <http://www.fairlabor.org/transparency/tracking-charts>.
- 29 Better Work Vietnam, *supra*, n. 3.
- 30 Rachel Wilshaw, Liesbeth Unger, Do Quynh Chi and Pham Thu Thuy, *Labour Rights in Unilever's Supply Chain: From Compliance to Good Practice* (Oxfam: Jan. 2013).
- 31 Kakuli and Schipper, *supra*, n. 4.
- 32 ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948), Art. 2 (“Workers . . . without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”).
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- 36 Van Gramberg, et al, *supra*, n. 11, at 5.
- 37 Human Rights Watch, *Not Yet a Workers Paradise: Vietnam's Suppression of the Independent Workers' Movement 2* (May 4, 2009), [http://www.hrw.org/node/82844/section/3#\\_ftn5](http://www.hrw.org/node/82844/section/3#_ftn5).
- 38 Ibid.
- 39 Kerkvliet, *supra*, n. 9 at 14.
- 40 Ibid.
- 41 Ibid. In 2008, another labor rights activist, Phan Ngoc Tuan, was convicted of the same charge and received a multi-year sentence. *See*, Human Rights Watch, *supra*, n. 37.
- 42 Kerkvliet, *supra*, n. 9 at 14.
- 43 Id. at 15.
- 44 *See*, Van Gramberg et al, *supra*, n. 11, at 5 (“It is common for human resource managers to be the union president in F[oreign] I[invested] E[nterprises] . . .”); *also*, Better Work Vietnam, *supra*, n. 3 at 13 (“Most union officials at the enterprise level in Vietnam are also part of the management of the enterprise.”).
- 45 *See e.g.*, Wilshaw et al, *supra*, n. 30 at 61 (“The U[nilever] V[iet]N[am] union includes managers appointed by . . . [Unilever’s] joint venture [partner], Vinachem. Although workers are entitled to vote, this lacks meaning as they are unable to elect someone they trust to represent them; this is common practice in Viet Nam . . .”).
- 46 Le Thanh Sang, Huynh Thi Ngoc Tuyet, Nguyen Thi Minh Chau, Nguyen Lan Huong, Tran Minh Ut, *Labor Relations and Labor Conflicts* 50 (case studies) (2010).
- 47 *See*, Better Work Vietnam, *supra*, n. 3, (finding that “[i]n 81 [of 132] factories monitored, workers are not free to meet without management present . . . due to the fact that senior members of management are serving on the union executive committee in these factories” and that “[b]y default, this means that the union members are not able to meet without the influence of the management”).
- 48 ILO Convention 98 (Right to Organise and Collective Bargaining Convention, 1949) Art. 2(1), (2) (adding that “acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations . . . with the object of placing such organisations under the control of employers or employers’ organisations, shall be deemed to constitute acts of interference within the meaning of this Article”).
- 49 *See*, Van Gramberg, et al, *supra*, n. 11 at 5 (finding that “human resource managers [serving as] union president” at the same time that the union “is charged with monitoring breaches of the [Labor] Code” create “conflict [between] union leaders’ managerial interest in the success of the company and their capacity to engage in critical scrutiny of enterprise operations. . .”).
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- 51 *See*, Van Gramberg, et al, *supra*, n. 11 at 5.
- 52 ILO Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948) and 98 (Right to Organise and Collective Bargaining Convention, 1949).
- 53 Quynh Chi Do, “The Challenge from Below: Wildcat Strikes and the Pressure for Union Reform in Vietnam” 18 (working paper) (Hong Kong City University Southeast Asia Research Center: Nov. 3, 2008) (“Wildcat strikes in Vietnam have . . . enabled workers to bargain with the employers for higher wages and better working conditions.”).
- 54 ILO, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* ¶¶ 520, 523 (5th rev. ed. 2006).
- 55 Id. at ¶¶ 660-664, 671-673.
- 56 Kakuli and Schipper, *supra*, n. 4 at 4; U.S. State Dept., *supra*, n. 33.
- 57 Quynh, *supra*, n. 53 at 1 (“Unsurprisingly, none of the strikes in the last 13 years was organised by the official unions.”).
- 58 Id. at 18 (“The growth in scale and sophistication of strikes is attributed to the network of migrant workers living in workers’ villages, [and] the organising role of team leaders and experienced workers.”).
- 59 Chan, *supra*, n. 6 at 17, 37.
- 60 Id. at 8.
- 61 Van Gramberg et al, *supra*, n. 11. For examples of the authoritarian management style of foreign factory owners in Vietnam, *see DTI News*, “Workers Strike Against Mistreatment in Hanoi Industrial Park” (Apr. 9, 2013) (discussing Korean-owned manufacturer of cosmetic brushes, where “[w]orkers . . . said that they were made to memorise the phrase, ‘We have parents at home, but we must learn to consider company managers as new parents.’”), <http://www.dtinews.vn/en/news/017004/28597/workers-strike-against-mistreatment-in-hanoi-industrial-park.html>; *also*, Sang et al, *supra*, n. 46 at 43 (reporting allegations by employees in garment factories in the Song Than industrial zone that they are fined for dropping thread on the floor, walking more slowly than their supervisors, and failing to arrive at work ten minutes before the start of their work shifts). Similarly, workers at the Tae Kwang Vina footwear factory, a long-time supplier to Nike, reported to the WRC in 2013 that they are required to arrive at work fifteen minutes early to “shout slogans” dictated by factory management (“We do not make damaged goods! We do not accept the damaged goods! We do not deliver damaged goods!”) before their paid work-day begins—and are forced to write “self-criticism” letters or are fined if they fail to do so.
- 62 Ibid.
- 63 U.S. Customs data accessed via Importgenius, <http://www.importgenius.com/>.
- 64 *Thanh Nien News*, “Chinese Supervisor Not to be Charged for Sticking Worker’s Palms with Glue” (Oct. 25, 2012), <http://talkvietnam.com>.

- [com/2012/10/chinese-supervisor-not-to-be-charged-for-sticking-workers-palms-with-glue/](http://www.vietnamnews.vn/news/top-news/workers-strike-while-the-irons-hot.html).
- 65 Ibid.
- 66 Ibid. Physical abuse of workers by supervisors also tends to escalate disputes that have begun over other workplace issues. See, Phan Hien, “Workers Strike While the Iron’s Hot,” *Vietnam Investment Review* (Aug. 12, 2012) (discussing labor dispute at a factory owned by a Taiwanese apparel manufacturer, Makalot Garments, initially over meal allowances and rest periods, which “became more serious . . . a[fter] a Taiwanese manager hit a Vietnamese worker”) <http://www.vir.com.vn/news/top-news/workers-strike-while-the-irons-hot.html>. Makalot Garments’ corporate website states that its global clients include Gap’s Old Navy division, VF and Walmart. Makalot Industrial Co., Ltd., “About Makalot,” [http://www.makalot.com.tw/eng/about\\_4.aspx](http://www.makalot.com.tw/eng/about_4.aspx).
- 67 Van Gramberg et al, *supra*, n. 11 at 6.
- 68 Id. at 4 (“Theoretically, the [Labor] Code offers workers high levels of protection. . . . Nevertheless, these restrictions on employers and the range of benefits mandated for workers have done little to stop the rising tide of industrial unrest in Vietnam, which appears to be largely in reaction to employer breaches of the Code . . . .”); also, *Vietnam Breaking News*, “Binh Duong Decreases Collective Labor Disputes,” (Apr. 16, 2013) (“The main reasons of collective labour conflicts and strikes resulted from violating the Labour Law regulations by employers . . . .”), <http://vietnambreakingnews.com/2013/04/binh-duong-decreases-collective-labour-disputes/>.
- 69 Van Gramberg et al, *supra*, n. 11 at 9 (“Strikes are . . . illegal if they occur without the authorisation of the enterprise trade union executive. . . .”).
- 70 Id. at 8-10 (discussing process for establishing legality of a job action, including consultation with three different official union entities, and a strike vote with, at factories with more than 300 employees, at least 75% of workers voting in favor of the action). The authors point out that, “These requirements fail to take into account that most strikes in Vietnam are wildcat strikes; thus the bulk of strikes in the country are illegal.” Id. at 9.
- 71 Kakuli and Schipper, *supra*, n. 4 at 14 (noting that “[N]ew legislation levies a heavy responsibility on workers who organize a strike to compensate [employers] for economic damage in cases when strike action is considered illegal.”).
- 72 Human Rights Watch, “Vietnam: Overturn Labor Activists’ Harsh Prison Sentences” (Mar. 16, 2011), <http://www.hrw.org/news/2011/03/16/vietnam-overturn-labor-activists-harsh-prison-sentences>.
- 73 Ibid.
- 74 International Trade Union Confederation, *Annual Survey of Violations of Trade Union Rights—Vietnam 2012*, <http://survey.ituc-csi.org/Vietnam.html?lang=en#tabs-5>.
- 75 Students and Scholars Against Corporate Misbehavior (“SACOM”), “Support Massive Strike at Adidas Supplier in Vietnam” (Jul. 12, 2011), <http://sacom.hk/archives/876>.
- 76 U.S. State Department, *supra*, n. 33.
- 77 Sang, et al, *supra*, n. 46 at 39.
- 78 *Thanh Nien News*, “Hanoi Guard Drives Truck into Striking Workers, One Killed” (Jun. 23, 2011), <http://www.thanhniennews.com/2010/pages/20110623173639.aspx>.
- 79 U.S. Dept. of Labor, *supra*, n. 5.
- 80 Human Rights Watch, *supra*, n. 14.
- 81 *Vietnam News*, “Nation Stays Atop Cashew Heap” (Jan. 8, 2011), <http://vietnamnews.vn/et/Economy/207434/Nation-stays-atop-cashew-heap.html>.
- 82 Human Rights Watch, *supra*, n. 14.
- 83 U.S. State Department, *supra*, n. 33.
- 84 Human Rights Watch, *World Report 2013: Vietnam*, <http://www.hrw.org/world-report/2013/country-chapters/vietnam?page=3>.
- 85 Ibid.
- 86 Ibid.
- 87 Human Rights Watch, *supra*, n. 15.
- 88 Ibid.
- 89 See discussion, *supra*, n. 15. Ocean Sky continues to list Columbia, as well as Adidas, Gap, VF and Walmart, among its “business partners” on its website, and is affiliated with the Fair Labor Association as a “participating supplier.” See, Ocean Sky, “Our Products & Customers,” <http://www.oceanskyintl.com/product>; also, FLA, “Ocean Sky International Limited,” <http://www.fairlabor.org/affiliate/ocean-sky-international-limited>.
- 90 See, Thu Huong “Trafficked Victims Get New Lease on Life,” (May 21, 2013), *Vietnam News* (describing case of twenty-year old trafficking victim who was locked in garment factory, beaten and required to work sixteen-hour days), <http://vietnamnews.vn/sunday/features/239616/trafficked-victims-get-new-lease-on-life.html>; also, see discussion, *infra*, at 16.
- 91 ILO Convention 29 (Forced Labor, 1930) (“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C029;ILO\\_NORMLEX\\_Ratifications\\_of\\_Convention\\_29](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029;ILO_NORMLEX_Ratifications_of_Convention_29), [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312174](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174).
- 92 19 U.S.C. § 1307 (Tariff Act of 1930, § 307) (“All goods . . . produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. . . .”).
- 93 U.S. Dept. of Labor, *supra*, n. 5.
- 94 ILO Better Work Vietnam, *supra*, n. 3.
- 95 Ibid.
- 96 Fair Labor Association. *supra*, n. 28.
- 97 U.S. State Dept., *supra*, n. 33.

- 98 Ibid.
- 99 *Vietnam Net News*, “20 Child Laborers Rescued from a Garment Enterprise” (Nov. 13, 2012), <http://english.vietnamnet.vn/fms/society/52442/hcm-city--20-child-laborers-rescued-from-a-garment-enterprise.html>.
- 100 Ibid.
- 101 Ibid.
- 102 *Vietnam Net News*, “Businesses a Bit Puzzled About Six Month Maternity Leave Policy” (Jan. 5, 2013) (quoting managers of garment factories stating that they would “encourage” women workers to return from leave early), <http://english.vietnamnet.vn/fms/business/56161/businesses-a-bit-puzzled-about-6-month-maternity-leave-policy.html>.
- 103 ILO Conventions 111 (Discrimination (Employment and Occupation Convention, 1958) (“Each Member . . . undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination [including on the basis of sex] in respect thereof.”) and 183 (Maternity Protection Convention, 2000) (“It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on [maternity] leave . . . except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing . . . Each Member [State] shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including . . . access to employment.”), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C183\\_](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C183_).
- 104 *DTI News*, *supra*, n. 61.
- 105 Ibid.
- 106 Ibid.
- 107 Kakuli and Schipper, *supra*, n. 4 at 30. Olympus later informed researchers that this policy was a “mistake.” Ibid.
- 108 Ibid.
- 109 Ibid.
- 110 *Vietnam News*, “Insufficient Safety Gear Poses Threat to Labourers,” (Aug. 18, 2012), <http://vietnamnews.vn/social-issues/228939/insufficient-safety-gear-poses-threat-to-labourers.html>.
- 111 Ibid.
- 112 Ibid.
- 113 Ibid.
- 114 Better Work Vietnam, *supra*, n. 3 at 10. Exposure to hazardous chemicals is a particularly serious issue in footwear factories where adhesives and solvents are commonly used. For example, at Nike supplier Tae Kwang Vina, where reports of health hazards from such materials first surfaced in the late 1990s, workers recently reported to the WRC that they still experience skin irritations and nausea from chemicals in use in some parts of the plant. Deepti Bhatnagar, Animesh Rathore, Magtii Moreno Torres and Parameeta Kanungo, “Nike in Vietnam: the Tae Kwang Vina Factory” (case study), [http://siteresources.worldbank.org/INTEMPowerment/Resources/14826\\_Nike-web.pdf](http://siteresources.worldbank.org/INTEMPowerment/Resources/14826_Nike-web.pdf).
- 115 Fair Labor Association, *supra*, n. 28.
- 116 Ibid. Similarly, workers at the Tae Kwang Vina factory told interviewers of a recent accident where an employee at the plant had lost a hand in the factory’s machinery.
- 117 *Thanh Nien News*, “Five Jailed for Deadly Vietnam Factory Fire” (Aug. 1, 2012), <http://www.thanhniennews.com/2010/pages/20120801-4-vietnamese-1-chinese-jailed-in-deadly-factory-fire.aspx>.
- 118 Ibid.
- 119 Ibid.
- 120 *Thanh Nien News*, “Chinese Employee Killed in Northern Vietnam Factory Fire” (Dec. 12, 2011), <http://www.thanhniennews.com/2010/pages/20111212-chinese-killed-in-vietnam-factory-fire.aspx>.
- 121 Labour Code, Article 106.
- 122 Collegiate Licensing Corp., *Special Agreement regarding Labor Codes of Conduct*, Sch. I, § II.B.2 (May 2008).
- 123 ILO Better Work Vietnam, *supra*, n. 3.
- 124 Fair Labor Association, *supra*, n. 28.
- 125 ILO Better Work Vietnam, *supra*, n. 3; Labour Code, Article 110.
- 126 *Compare*, id. to ILO Better Work Vietnam, *supra*, n. 10 (finding 86% of factories inspected in 2010-2011 noncompliant in overtime hours, and 52% noncompliant in providing rest days).
- 127 *See*, *DTI News*, *supra*, n. 61.
- 128 Ibid.
- 129 Ibid.
- 130 *Viet Nam News*, “Over 70% of Garment Workers Suffer Occupational Stress: Survey” (Feb. 1, 2010), <http://vietnamnews.vn/social-issues/employment/196444/over-70-of-garment-workers-suffer-occupational-stress-survey.html>.
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- 133 Labor Code, art. 91.
- 134 WRC, *Global Wage Trends for Apparel Workers, 2001–2011* 11 (working paper) (Center for American Progress: Apr. 2013) (finding a 40% increase in inflation-adjusted wage rates for Vietnamese garment workers between 2001 and 2011).
- 135 Jeffery Ballinger, “Vietnamese Workers’ Stories a Compelling Read” (book review), *National Catholic Reporter* (Aug. 29, 2012), <http://ncronline.org/node/31879>.

- 136 *Vietnam Net*, “Workers Struggle to Live on Salaries” (Nov. 18, 2012). <http://english.vietnamnet.vn/fms/society/52482/workers-struggle-to-live-on-salaries.html>.
- 137 *Ibid.*
- 138 *Ibid.*
- 139 *Cited in* Wilshaw et al, *supra*, n. 30 at 40.
- 140 *Id.* at 65.
- 141 Asia Floor Wage Campaign, <http://www.asiafloorwage.org/Resource-Reports.html>.
- 142 Wilshaw, et al. *supra*, n. 30 at 21.
- 143 *Ibid.*
- 144 *Id.* at 40.
- 145 *Id.* at 67.
- 146 WRC, *supra*, n. 134, at 11, 16-17.
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- 148 *Vietnam Net*, “Having to pay higher wages, businesses trim workers’ allowances” (May 22, 2013), <http://english.vietnamnet.vn/fms/business/74783/having-to-pay-higher-wages--businesses-trim-workers--allowances.html>.
- 149 Wilshaw, et al. *supra*, n. 30 at 65.
- 150 *Id.* at 71.
- 151 *Id.* at 86.
- 152 Kakuli and Schiller, *supra*, n. 4 at 36.
- 153 *Ibid.*
- 154 Labour Code, Arts. 53-58 (Labour Outsourcing).
- 155 *Ibid.*
- 156 Yale Law School Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams*, (Apr. 2011), [http://www.law.yale.edu/documents/pdf/Intellectual\\_Life/Cambodia\\_TearingApartattheSeams.pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf).
- 157 *See*, WRC Factory Database, [http://www.workersrights.org/search/index.asp?fct\\_country=Vietnam&factory=Yupoong+Vietnam+Co.+Ltd.&id=0](http://www.workersrights.org/search/index.asp?fct_country=Vietnam&factory=Yupoong+Vietnam+Co.+Ltd.&id=0).
- 158 Better Work Vietnam, *supra*, n. 3 at 9.
- 159 Wilshaw et al, *supra*, n. 30 at 40.
- 160 The annual amount of underpayment per worker could be expressed as: (15 minutes underpayment / day) x 6 work days / week) x (50 working weeks / year) ÷ (8 working hours / day) x (60 minutes / hour) = 9.375 days’ pay / year.
- 161 Labour Code, Art. 97.
- 162 ILO Better Work Vietnam, *supra*, n. 3 at 9.
- 163 *See*, Stanford Law School International Human Rights and Dispute Resolution Clinic and the Worker Rights Consortium, *Monitoring in the Dark: An Evaluation of the ILO’s Better Factories Cambodia Program* 45 (2013), <https://humanrightsclinic.law.stanford.edu/wp-content/uploads/2013/03/Monitoring-in-the-Dark-Stanford-WRC.pdf>.
- 164 ILO Better Work Vietnam, *supra*, n. 3 at 9; Fair Labor Association, *supra*, n. 28.
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