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Vietnam's Labour Reforms: Drivers and Implications

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This photograph taken on 21 September 2021 shows workers wearing face masks while working at the factory which makes activewear for various textile clothing brands in Hanoi. Photo: Nhac NGUYEN, AFP.

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EXECUTIVE SUMMARY

- Vietnam has a single state-led union federation, the Vietnam General Confederation of Labour (VGCL). However, the 2019 Labour Code legalised worker organisations (WOs) not affiliated to the VGCL. This is the first time the country has allowed any formal freedom of association.
- WOs are enterprise-level organisations only. They are not unions and are more limited in what they can do compared to unions.
- The reforms resulted from both external pressure from above, in the form of trade agreements with labour rights requirements, and internal pressure from below, in the form of workers' self-organised strikes.
- The reforms may help the Vietnamese government reduce the number of strikes and labour militancy. They may also pressure the VGCL to become more representative of workers.
- However, it is unlikely that WOs, on their own, will become a significant force in Vietnamese society.

INTRODUCTION

Vietnam is a one-party state with a single, state-led union federation, the Vietnam General Confederation of Labour (VGCL). The Confederation is part of the Vietnam Fatherland Front, a group of state-affiliated mass organisations, and independent trade unions not affiliated to the VGCL are banned. The VGCL operates in the mode of a dual functioning union; a doctrine developed at the 10th Congress of the Russian Communist Party in 1921 in which the role of trade unions in post-revolutionary societies is to both encourage productivity and economic growth, and protect workers from harsh treatment.¹ The doctrine is reflected in the VGCL's contemporary charter, which defines its functions as to protect workers' rights and interests, propagate party directions, help increase productivity and development, and take part in economic and social management.²

The Confederation has been heavily criticised for not representing workers properly. At the enterprise level, it is dominated by employers, with trade union representatives often being the human resource managers of the companies who normally do not stand up for workers vis-à-vis employers. Furthermore, as a state-led union, at the national level, the VGCL is subordinate to the government and the ruling Communist Party of Vietnam, so it is unable to struggle for workers' interests independently.³ This does not mean, however, that the VGCL is useless. In national-level policy debates, for example, it tends to take a more pro-labour position than the Ministry of Labour, Invalids and Social Affairs (MOLISA).⁴

Over the past 15 years or so, Vietnam has seen significant numbers of wildcat strikes, self-organised by workers and not led by the VGCL.⁵ These peaked in 2011, when there were around 1,000 recorded strikes, and have been gradually declining since then. They have reached relatively low levels over the past couple of years, with 121 strikes recorded in 2019 and 126 in 2020, according to VGCL's data.⁶

In November 2019, Vietnam's National Assembly passed a new Labour Code, which came into effect on 1 January 2021.⁷ The new law contained several important changes, including protecting workers without contracts, definitions of discrimination and harassment, and clearer regulations on forced and child labour.⁸ Perhaps the most significant and the most discussed change was Chapter XIII of the law. This allows, for the first time, a form of freedom of association, in which workers are permitted to form organisations not affiliated to VGCL.

This research paper provides an overview and analysis of the freedom of association reforms. First of all, it clarifies what the legislation does and does not allow, given that this has been widely misreported. It then explores the drivers of the reforms, before looking at the potential implications of the changes.

THE FREEDOM OF ASSOCIATION REFORMS

The most important thing to note is that, contrary to what has been widely reported,⁹ Vietnam has not legalised independent trade unions at all. The VGCL remains the only legal trade union federation. Independent unions are still illegal. Rather, the 2019 Labour Code

creates a new category of “enterprise-level worker organisation” (*tổ chức của người lao động tại doanh nghiệp*, WO).¹⁰ There are now three different legal concepts of relevance here:

Type of organisation	Definition
Trade union (<i>công đoàn</i>)	Organisations that are part of the VGCL, legislated by the Trade Union Law.
Enterprise-level worker organisations (<i>tổ chức của người lao động tại doanh nghiệp</i> , WOs)	Worker organisations not affiliated to the VGCL, legislated by Chapter XIII of the 2019 Labour Code.
Grassroots worker representative organisations (<i>tổ chức đại diện người lao động tại cơ sở</i> , WROs)	A term that encompasses both enterprise-level trade unions and enterprise-level worker organisations.

According to the 2019 Labour Code, workers have the right to establish and join both unions and WOs. The Trade Union Law,¹¹ which regulates unions, and Chapter XIII of the Labour Code, which regulates WOs, grant some of the same protections to both types of WROs. For example, both laws ban employers from discriminating against members of either type of organisation; both give representatives from each organisation the right to engage in enterprise-level collective bargaining and dialogue with employers; both can organise and lead strikes provided they follow the correct (lengthy and bureaucratic) legal procedures; and both can receive support from other registered organisations and agencies within Vietnam.

There are, though, some important differences between the two types of WROs, which put WOs at a disadvantage compared to trade unions. For example, unions can engage in political and policy discussions at every level of the state and government, while enterprise-level WOs cannot do so beyond the enterprise level. Furthermore, there is no legislation giving WOs the right to form regional or sectoral federations beyond the enterprise level; in contrast, the VGCL has a very clear organisational structure, from the national confederation level down. Articles 172 and 174 of Chapter XIII of the Labour Code both make a passing reference to WOs being able to “link” (*liên kết*), but this is not expanded or elaborated upon. Finally, the state has certain responsibilities towards the VGCL and can give them financial support for projects. This is not the case for WOs. In addition, outside of the strictly legal procedures, figures in government also frequently stress their support for unions over WOs.¹²

In addition to this, there is another major issue with regard to forming WOs; they cannot be established in practice, at least for now. The Labour Code does not detail the basic administrative procedures required for creating and registering WOs, such as which documents need filling out and which government office these documents need to be submitted to. Rather, the law says that these procedures will be further regulated by the government. A decree that would explain and legislate such procedures was expected to be enacted in 2020 but that has not been released as of December 2021.¹³ Consequently, workers who want to establish a formal WO in their enterprise cannot yet do so.

WHERE DID THE REFORMS COME FROM?

When explaining where these freedom of association reforms have come from, the most obvious and most reported driver has been the requirements of international trade agreements, or what I call external pressure from above. Two major trade deals to which Vietnam is a party, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA), both contain labour provisions committing signatories to ratify and implement the eight core conventions of the International Labour Organisation (ILO). The ILO is the UN agency responsible for labour, whose members include governments, employers, and unions. They have many conventions on various aspects of labour rights, which states are invited and encouraged to join. Eight of these are seen as fundamental to the basic ability for trade unions to exist and function.¹⁴ Vietnam had already ratified six of the eight—on topics such as forced labour, child labour, equal remuneration, and discrimination—but the two that they had not ratified are the two related to freedom of association: Convention No. 98 and Convention No. 87.

Convention No. 98 is known as the Right to Organise and Collective Bargaining Convention.¹⁵ It protects workers' and employers' organisations from interfering with each other. In the Vietnamese context, this should mean ending the practice of enterprise-level union representatives being human resource managers or someone similar. Vietnam ratified Convention No. 98 in summer 2019 (it came into effect a year later), but there has been no published research into what impact, if any, this has had in practice. Convention No. 87 is known as the Freedom of Association and Protection of the Right to Organise Convention,¹⁶ allowing workers to form and join organisations of their own choice without prior authorisation. Vietnam has said it will ratify this convention by 2023. The freedom of association reforms introduced in the 2019 Labour Code created the legal framework allowing Vietnam to comply with the convention.

The argument from those who stress the external pressure from above as the driver of reforms is that Vietnam made the freedom of association reforms in order to comply with the requirements of the trade agreements to which it wanted to be a party.¹⁷ The implication is that without external pressure from above, there would not have been such reforms. Undoubtedly, this is a large and important part of the explanation. In my view, however, focusing entirely on trade agreements misses a critical factor: internal pressure from below.

This is pressure created by workers' self-organised militancy, mentioned in the introduction to this paper. From the mid-2000s until the late 2010s, there were hundreds of recorded strikes every year, largely in industrial export manufacturing, primarily demanding things such as higher wages (or wages that the employer had not paid) and better treatment at workplaces. Every strike was organised by workers themselves without the union; the VGCL has never led a strike. Strike numbers peaked in 2011, when nearly 1,000 were recorded.¹⁸ Over the past decade, Vietnamese authorities, including the VGCL and MOLISA, have been attempting a number of reforms to reduce the number of strikes, and create "harmonious labour relations" (*quan hệ lao động hài hòa*). These include better legal representation for workers in disputes,¹⁹ collective bargaining experiments,²⁰ and the creation of a National Wage Council to negotiate annual wage rises.²¹ While strike numbers

have fallen significantly from the 2011 high point, reducing them further has remained a major concern of the Vietnamese authorities. The freedom of association reforms in the 2019 Labour Code can be seen as a further step in that direction.

In sum, the reforms have been driven by pressure from two directions: internal pressure from below (worker militancy) and external pressure from above (requirements of trade agreements). Allowing the establishment of independent WOs as stipulated in the 2019 Labour Code is one of the key outcomes of these reforms. The next section will discuss implications of this important change for Vietnam's labour context going forward.

WHAT DO THE REFORMS MEAN FOR THE FUTURE?

The implications of the reforms currently remain unclear given that WOs do not and cannot yet exist in practice. However, three preliminary observations and predictions can be made. First, as I have argued elsewhere²² and above, the reforms are the latest in a number of efforts to reduce the number of strikes and labour militancy. It may be working; strike numbers have been falling and these recently reached especially low levels, hovering at just above 120 for the past couple of years. WOs, once established in practice, may further contribute to the trend of declining numbers of strikes, as workers' grievances and disputes become channelled through institutional mechanisms of dispute resolution rather than self-organised activism. There is no guarantee that this would be positive for labour. Strikes have brought significant gains for workers, in terms of both immediate demands and national level policy reforms.²³ There is no certainty that WOs will be able to do the same; indeed, weak WOs may not be able to do much at all, resulting in a net loss for working-class power.

The second implication is more positive. The existence of independent WOs as competitors of trade unions could create pressure for the VGCL to become more representative of workers. For example, the vice president of the provincial VGCL labour federation in Nghệ An, a province in North Central Vietnam, said this explicitly in an opinion piece published in the newspaper of the provincial Communist Party. In the article, she says that the arrival of WOs presents competing organisations for the trade union, meaning it will need to be good at establishing unions, undertaking collective bargaining, and leading and organising strikes.²⁴ The last point is especially notable as the VGCL has never organised a strike. More broadly, in response to the recent trend of export manufacturing employers in southern Vietnam facing difficulties in retaining or recruiting workers—a result of domestic migrant workers abandoning urban areas and returning to their hometowns because of COVID-19²⁵—the VGCL developed a plan to motivate workers to stay in or return to their jobs. A core part of this involved encouraging VGCL offices at various levels to negotiate with employers to improve wages, benefits and conditions.²⁶ While it is hard to confirm that the WO legislation had any direct impact on this response, it is a clear demonstration of how the VGCL is trying to bring more benefits to workers, in the new context of greater official freedom of association and potential competition from WOs.

Finally, it is unlikely that WOs, on their own, will directly become a significant force for change in Vietnamese society. As noted earlier, currently, WOs have not officially existed,

since regulations and instructions on how to register one have not yet been promulgated. Furthermore, once they do come into existence, the law places strict limits on what they can and cannot do, meaning that unless the government is willing to allow further changes, WOs will be unable to engage in national-level policy discussions or form regional and sectoral federations. Another major problem is that many workers have not even heard of WOs.²⁷

Given these reasons, it is difficult to see how the organisations themselves could become a vanguard for change, at least in the short to medium term. More interesting to observe, however, will be how their introduction, on paper and soon in practice, may affect the two major forces in Vietnam's labour politics, namely the state-led VGCL and workers' self-organised strikes.

¹ Alex Pravda and Blair A. Ruble, "Communist Trade Unions: Varieties of Dualism", in Alex Pravda and Blair A. Ruble (Eds), *Trade Unions in Communist States* (Boston; London; Sydney: Allen & Unwin Ltd., 1986), pp. 1-21: 2.

² VGCL, *Điều lệ Công đoàn Việt Nam (Đại hội công đoàn lần thứ XII thông qua ngày 24 tháng 9 năm 2018)* [Vietnamese Trade Union Charter (adopted at the XII union congress on 24 September 2018)],

[http://www.congdoan.vn/FileManager/Files/nguyenthingoctu/files/DIEU%20LE%20%20CDVN%20khoa%20XII%20\(b%E1%BA%A3n%20ch%C3%ADnh\).pdf](http://www.congdoan.vn/FileManager/Files/nguyenthingoctu/files/DIEU%20LE%20%20CDVN%20khoa%20XII%20(b%E1%BA%A3n%20ch%C3%ADnh).pdf)

³ Do Quynh Chi and Di van Den Broek, "Wildcat strikes: A catalyst for union reform in Vietnam?", *Journal of Industrial Relations* 55, no. 5 (2013), pp. 783-799.

⁴ Joe Buckley, *Vietnamese Labour Militancy: Capital-labour antagonisms and self-organised struggles* (London; New York: Routledge, 2022): 26.

⁵ Kaxton Siu and Anita Chan, 'Strike Wave in Vietnam, 2006–2011', *Journal of Contemporary Asia* 45, no. 1 (2015), pp. 71–91.

⁶ "Số cuộc ngừng việc tập thể giảm gần 50% [Collective work stoppages reduced by nearly 50%]", *Lao Động* [online], 7 January 2020, <https://laodong.vn/cong-doan/so-cuoc-ngung-viec-tap-the-giam-gan-50-776934.lido>; Hoàng Manh, "126 cuộc ngừng việc tập thể trong năm 2020 [126 collective work stoppages in 2020]", *Dân Trí*, 9 January 2020, <https://dantri.com.vn/lao-dong-viec-lam/126-cuoc-ngung-viec-tap-the-trong-nam-2020-20210109093951160.htm>

⁷ National Assembly, *Bộ luật Lao động 2019* [2019 Labour Code], 2019,

<https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Bo-Luat-lao-dong-2019-333670.aspx>.

⁸ ILO, 'Revised Vietnamese Labour Code to help everyone gain fair shares of economic growth', *ILO*, 20 November 2019,

https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_729339/lang--en/index.htm

⁹ Eric San Juan, "Is there a glimmer of hope for Vietnamese workers?", *Equal Times*, 18 February 2020, https://www.equaltimes.org/is-there-a-glimmer-of-hope#.YawsQ_FBy3I

¹⁰ National Assembly, *Bộ luật Lao động 2019* [2019 Labour Code], 2019,

<https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Bo-Luat-lao-dong-2019-333670.aspx>

¹¹ National Assembly, *Luật Công đoàn* [Trade Union Law], 2012,

<https://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban>. For recent revisions to this law, see: National Assembly, *Luật sửa đổi, bổ sung một số điều của luật công đoàn, dự thảo 2*

[Law amending and adding to a number of article of the trade union law, second draft], 2021, <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Luat-Cong-doan-sua-doi-445264.aspx>

¹² See, for example, “Kỷ niệm Ngày thành lập Công đoàn Việt Nam: Vinh quang 90 năm đồng hành cùng đất nước [Anniversary of the founding of the Vietnamese Trade Union: A glorious 90 years accompanying the country]”, *Lao động*, 28 July 2019, <https://laodong.vn/cong-doan/ky-niem-ngay-thanh-lap-cong-doan-viet-nam-vinh-quang-90-nam-dong-hanh-cung-dat-nuoc-746568.lido>

¹³ T.K. Tran, “Ngoài Công đoàn, VN cần cho các tổ chức khác hoạt động vì người lao động [Besides the union, Vietnam needs other organisations for workers]”, *BBC Vietnamese*, 30 October 2021, <https://www.bbc.com/vietnamese/forum-59089257>

¹⁴ Kari Tapiola, *The Teeth of the ILO: The impact of the 1998 ILO declaration on fundamental principles and rights at work* (Geneva: ILO, 2018).

¹⁵ ILO, *C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, 1949, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098.

¹⁶ ILO, *C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, 1948, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087.

¹⁷ Pham Trong Nghia, *Trade and Labour Rights: The Case of the TPP*, University of Oxford Global Economic Governance Programme Working Paper 124, 2017, https://www.geg.ox.ac.uk/sites/geg.bsg.ox.ac.uk/files/GEG%20WP%20124%20-%20Trade%20%26%20Labour%20Rights%20%20The%20Case%20of%20the%20TPP%20-%20Nghia%20Trong%20Pham_0.pdf; Angie N Tran, Jennifer Bair, Marion Werner, “Forcing Change from the Outside? The Role of Trade–labour Linkages in Transforming Vietnam’s Labour Regime”, *Competition & Change* 21, no. 5 (2017), pp. 397–416.

¹⁸ For in-depth studies of strikes and other forms of Vietnamese labour activism, see: Benedict J. T. Kerkvliet, *Speaking Out in Vietnam: Public Political Criticism in a Communist Party-Ruled Nation* (Ithaca; London: Cornell University Press, 2019); Angie Ngoc Tran, *Ties That Bind: Cultural Identity, Class, and Law in Vietnam’s Labor Resistance* (Ithaca: Cornell University Press, 2013); Joe Buckley, *Vietnamese Labour Militancy: Capital-labour antagonisms and self-organised struggles* (London; New York: Routledge, 2022).

¹⁹ Tu Phuong Nguyen, *Workplace Justice: Rights and Labour Resistance in Vietnam* (Singapore: Palgrave Macmillan, 2019).

²⁰ Katie Quan, “One Step Forward: Collective Bargaining Experiments in Vietnam and China”, in A. Chan (ed), *Chinese Workers in Comparative Perspective* (Ithaca; London: Cornell University Press, 2015), pp. 174-192.

²¹ ILO, “National wage council launched, giving employers and workers a voice in minimum wage setting”, *ILO*, 3 August 2013, https://www.ilo.org/hanoi/Informationresources/Publicinformation/WCMS_218763/lang-en/index.htm.

²² Joe Buckley, “Freedom of Association in Vietnam: A Heretical View”, *Global Labour Journal* 12, no. 2 (2021), pp. 79-94.

²³ For some examples, see Buckley, “Freedom of Association in Vietnam”.

²⁴ Nguyen Thi Thu Nhi, “Phát huy vai trò của tổ chức công đoàn Nghệ An trong giai đoạn mới [Upholding the role of Nghe An trade unions in the new period]”, *Báo Nghệ An*, 28 July 2021, <https://baonghean.vn/phat-huy-vai-tro-cua-to-chuc-cong-doan-nghe-an-trong-giai-doan-moi-291346.html>.

²⁵ Lien Hoang, “Labor paradox leaves Vietnam factories reeling after COVID exodus”, *Nikkei Asia*, 20 October 2021, <https://asia.nikkei.com/Business/Companies/Labor-paradox-leaves-Vietnam-factories-reeling-after-COVID-exodus>.

²⁶ Hà Anh, “Giải pháp để người lao động không về quê tự phát’ [Solutions to stop workers spontaneously returning to their hometowns]”, *Lao động*, 7 October 2021, <https://laodong.vn/cong-doan/giai-phap-de-nguoi-lao-dong-khong-ve-que-tu-phat-961286.ldo>.

²⁷ Michael Tatarski, “Vietnamese workers still in the dark about potential of new representative organisations”, *China Labour Bulletin*, 21 January 2021, <https://clb.org.hk/content/vietnamese-workers-still-dark-about-potential-new-representative-organisations>.

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