

# AN ASSESSMENT

*USING THE FRAMEWORK OF THE UNITED NATIONS  
GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS*



**LABOUR ISSUES IN THE GARMENT,  
FOOTWEAR AND ELECTRONICS  
SUPPLY CHAINS IN VIET NAM**

***ACCESS TO REMEDY***



# ABBREVIATIONS

<b>CBA</b>	Collective Bargaining Agreement
<b>FES</b>	Friedrich Ebert Stiftung
<b>LAC</b>	Legal Aid Centre
<b>DOLISA</b>	Department of Labour, Invalids and Social Affairs
<b>MOLISA</b>	Ministry of Labour, Invalids and Social Affairs
<b>MNC</b>	Multi National Corporation
<b>OSH</b>	Occupational safety and health
<b>SME</b>	Small and medium-sized enterprise
<b>UNGP</b>	United Nations Guiding Principles on Business and Human rights
<b>VCCI</b>	Viet Nam Chamber of Commerce and Industry
<b>VGCL</b>	Viet Nam General Confederation of Labour
<b>VGCL - IWT</b>	Viet Nam General Confederation of Labour - Institute of Workers and Trade Unions

## The main findings of the report

The report uses the United Nations Guiding Principles for Business and Human Rights (UNGPR) to assess the existing remedy mechanisms of violations against labour laws of business community in Viet Nam. Firstly, the report reviews major violations of labour in three biggest industries: garment, footwear and electronics, and from there, assesses the State-based and non-State based judicial and non-judicial grievance mechanisms as well as existing internal grievance mechanisms at enterprise level in Viet Nam. Main findings of the report are:

- Among the three sectors of garment, footwear and electronics, there are still existing most salient violations in the field of labour rights, including: discrimination against female workers, forced overtime beyond legal limits, non-livable wages and arbitrary wage deductions, as well as employers' manipulation of union's activities;
- Viet Nam has a comprehensive system of judicial and non-judicial mechanisms to handle labour disputes and has achieved encouraging results. Workers win 90% of the cases brought to court. The rate of successful mediation by the labour mediators is high, which is over 70% for individual disputes and over 90% for wildcat strikes. Union and non-union legal aid centers also have many legal information dissemination activities, legal advice and legal protection at court, especially in the industrialized provinces;
- However, the number of workers' complaints resolved through the formal mechanisms mentioned above is not commensurate with the factual number and its content. The reason is that the accessibility of workers with formal mechanisms remains limited due to the lack of information, knowledge, and resources. In addition, the capacity of judicial and non-judicial mechanisms is inconsistent and irregular in different provinces/cities;
- Another weakness is that the internal grievance-handling mechanisms are in place, but neither effective nor transparent at each supplying factory within the supply chains. Rank-and-file workers often have to choose informal channels to voice their concerns or to walk out in wildcat strikes to demand for their own rights and advance their interests;
- The report provides three recommendations including: (i) Improving the internal grievance-handling mechanism at enterprise and within the supply chains; (ii) Improving workers' accessibility and ensuring the effectiveness of these State-based judicial and non-judicial grievance mechanisms; and (iii) Improving the quality and capacity of State-based judicial and non-judicial mechanisms.

# The United Nations Guiding Principles for Business and Human Rights (UNGPs)

On June 16, 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles for Business and Human Rights (UNGPs), ending decades of divisive debate over the human rights responsibilities of businesses. The UNGPs, which were developed by Professor John Ruggie, provided the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and continue to provide the internationally accepted framework for enhancing standards and practice regarding business and human rights. The UNGPs have enjoyed widespread uptake and support from both the public and private sectors. By the end of 2017, 21 countries including the UK, Germany, the Netherlands, the United States, among others, have produced National Action Plans for Business and Human Rights and 23 other countries are in the process of developing their own national action plans. In Southeast Asia, Thailand, Malaysia, Indonesia and the Philippines have engaged in the development of the NAPs.<sup>1</sup> With respect to the business world, a growing number of MNCs have also incorporated the UNGPs in their sustainability framework and human rights policies.<sup>2</sup>

## The UNGPs contain 31 principles implementing the United Nations' framework of three pillars, including:

- **Pillar 1:** The state duty to **protect** human rights
- **Pillar 2:** The corporate responsibility to **respect** human rights
- **Pillar 3:** Access to **remedy** for victims of business-related abuses

## Fundamental Principle of Pillar 3: Access to remedy

*As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy.*

*(UNGPs Chapter 3 (A), section 25)*

The remedy includes state-based judicial mechanisms, state-based non-judicial grievance mechanisms and non-state based grievance mechanisms, including the enterprise-level dialogue and handling grievance via in-house mechanisms.

Within the framework of the project "Business and Human Rights in Trade Relations and Global Supply Chains in Viet Nam" - funded by the European Commission (hereinafter referred to as the BHRTR Project), and developed by the Friedrich-Ebert-Stiftung (FES) together with the Centre for Development and Integration (CDI), a baseline study was conducted to review the implementation of the Pillar 2 (Respect) and Pillar 3 (Remedy) of the United Nations Guiding Principles in the global supply chains of garment, footwear and electronics in Viet Nam. This paper will summarise the outcome of the baseline study in improving the compliance with the international labour standards and the practices of remedies available for the workers in the supply chains in Viet Nam. The report will also extend recommendations in order to improve the existing remedies with the view to ensure that any violations to labour standards in the supply chains will be detected and effectively and fairly resolved.

# Major labour issues in the garment, footwear, and electronics supply chains in Viet Nam

## *Gender-based discrimination is still widespread*

Independent investigations by third-party organisations, and audits by first-party have identified possible discrimination against pregnant women. For instance female workers may be asked to have urine test in the electronic firms or to jump on the spot in some garment factories to filter out the pregnant workers from the recruitment process.<sup>3</sup> Some factories have reportedly required their female workers not to get pregnant for a certain period of time. According to the 2018 Survey by over 238 electronic workers in Hai Phong and Dong Nai, 28.6% of the surveyed workers claimed that their companies had rules on the non-pregnancy period (around 1-2 years) for new workers.<sup>4</sup> Moreover, as reported by labour lawyers, the number of cases related to non-renewal of a fixed term contract due to pregnancy has been increasing.<sup>5</sup>

Discrimination in job assignments is not public but still persist. According to a 2016 survey, electronics managers said that it was better to recruit female assembly workers because: *"Men are not fit for this job [assembling] because they are not as hard-working, patient and obedient as women. The workers have to sit for long hours and work with very small details, that's why women with small hands are better than men. Also, managing women is easier. Men tend to be more aggressive and reactive to supervisors"*.<sup>6</sup>

The female workers are paid less than men in all wage components: A survey of CDI in 2016 pointed out that the pay gap of 13% in basic salary between male and female rank-and-file electronic workers was higher than the national gender pay gap of 10.5%.<sup>7</sup>

## *Overtime work beyond the legal limit, sometime under management's pressure*

Better Work Viet Nam recorded high non-compliance rate in terms of overtime among its member companies: 77% fail to meet monthly limits, 72% exceed annual limits and 44% fail to provide at least 04 days of rest per month to all workers.<sup>8</sup>

The VGCL Survey in 2018 shows that the average of monthly overtime hours in the footwear industry in 2018 is 40.7 hours, which is higher than the legal limit of 30 hours/month.<sup>9</sup> In the electronics industry, the CDI survey in 2017 found that over 70% of the surveyed workers constantly worked beyond the legal limit of overtime. During high-season months, nearly 70% of the surveyed workers had to work for more than 45 hours/month of overtime and the highest monthly overtime amount recorded is 150 hours/month.

Although low wages often urge workers to take up overtime work, it happens in a number of cases that workers are 'automatically' summoned for overtime without their consent. A survey by CDI in 2018 with electronic workers in Hai Phong and Dong Nai pointed out that 21.1% of the workers were frequently required to work overtime against their will. In particular, 5.04% of the surveyed workers were victimized and 1.2% threatened of dismissal if they refused to work overtime.<sup>10</sup> Forced and excessive overtime was also the cause of numerous collective labour disputes in recent years.

## ***Wages below a livable standard lead to many consequences***

According to the 2018 Survey on Wages by the VGCL's Institute of Workers and Unions (Viet Nam General Confederation of Labour), the basic salary paid to workers in the three industries is around VND 4,200,000/person/month. About 50% of the surveyed workers are paid at the regional minimum level and 5-10% workers in each region are paid below the legal minimum wage.<sup>11</sup> The total income of workers in footwear surpasses those in the other two industries due to the significant amount of overtime. Still, the compensation for workers in the three industries during the regular hours remains much lower than the living wage benchmarks.

In addition to paying low basic salaries, many businesses deliberately cut employees' salaries by increasing piece rate, cutting subsidies and allowances. Some businesses change from seniority-based wages, to paying by piece rate, in order to avoid the high costs of the older workers, who are paid based on seniority.<sup>12</sup>

Wages are set arbitrarily by the employers and are mainly based on the legal minimum wages without any consultation or negotiation with workers and their representatives. The payment of a minimum wage and lower than a livable level is the consequence of having no genuine collective bargaining at enterprise-level but the employer has the full power to decide on workers' salary. When the basic wages are paid just at the minimum level and the total salary lags behind a living wage, the implications are obvious: Firstly, when wages paid during the regular hours drop far below a livable wage, workers are placed in the constant need to do overtime to achieve a sustainable income for their families and themselves. Secondly, wage-related issues continue to be of primary concern and complaint of workers as well as the main cause of strikes. In particular, wages have been the cause of over 40% of wildcat strikes.<sup>13</sup>

## ***Intervention of employers in union's activities is widespread***

According to Better Work Viet Nam 2017 assessment, the non-compliance rate in terms of employers' manipulation of union, decision making, management and activities is up to 34%. Around 60% of Better Work Viet Nam factories failed to comply in some way with the legal requirements in collective bargaining, of which the most common violations include not consulting the unions where the law requires and not securing over 50% of workers' approval of the CBA.<sup>14</sup>

The situation in footwear and electronics is similar. According to audit reports of first-tier footwear and electronic suppliers, over 50% of the audited companies failed to communicate with workers on the collective bargaining agreements (CBAs). Moreover, as much as 71% of the unions of the audited companies are led by high-ranking managers.<sup>15</sup> When the enterprise union is led by high-ranking managers, workers are deprived of the formal mechanisms to raise their voice, handle their grievances and bargain collectively with the employer to protect their own rights and improve their interests. It is natural that workers will raise their voice in informal ways. In particular, 80% of electronic workers resorted to the informal channel of talking to their team leaders for dialogue and grievances (these figures for footwear and garment are 55% and 34% consecutively).<sup>16</sup> Also, these three sectors are the most strike-hit sectors, accounting for more than 50% of strikes in Viet Nam.<sup>17</sup>

# Grievance mechanisms for labour violations

The procedures for settling labour grievances and disputes are provided by the Labour Code 2012, the Law on Complaint 2015 and the Law on Denunciation 2011. Apart from these laws, Decree 47/2010/ND-CP of the Government dated the 6May 2010 on Administrative Sanctioning of Violations specifies administrative violations, sanctioning forms and levels, remedies, competences and procedures for administratively sanctioning violations of the laws. Additionally, Decree 24/2018/ND-CP provides for the scope and procedures for handling grievances and denunciations in labour, employment, OSH, vocational training and sending workers abroad.

In accordance with the Labour Code and the Law on Complaint, when the worker has a grievance about a labour abuse/violation, s/he can choose to handle the grievance via in-house remedies, including the enterprise's dialogue and grievance mechanisms. After exhausting the in-house remedies, the worker may also place their complaint to the provincial labour inspectorate (Decree 24/2018/ND-CP) or contact the local labour mediator to handle the grievance as an individual labour dispute (Art. 201, Labour Code 2012). If the dispute is not solved by the labour mediator, or the worker does not agree with the Labour Inspectorate's decision, s/he can bring the case to the Labour Court. In certain cases, such as unlawful dismissal, violations regarding social insurance, abuses of domestic workers and overseas workers, the worker can take the case immediately to the Court without going through mediation (Art. 201, Labour Code 2012). Apart from these state-based grievance mechanisms, the worker may seek legal counselling from legal aid centers managed by the trade unions or non-governmental organisations.



# State-based judicial mechanisms



*'States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.'*

*Principle of state-based judicial mechanism, Paragraph 26,  
United Nations Guiding Principles on Business and Human Rights.*

## Labour court

The Labour Court is a specialized court that has the authority to settle collective and individual labour disputes and other labour disputes. Specifically, according to Article 32 of the Civil Procedure Code 2015, the Court settles individual labour disputes after mediation procedures have failed, except in cases such as disputes over labour discipline in the form of dismissal or over cases of unilateral termination of labour contracts; disputes over damage compensation or over benefit policy upon termination of labour contracts; disputes between household helpers and their employers; disputes over social insurance, health insurance, unemployment insurance or occupational accident insurance and occupational diseases; disputes over damage compensation between labourers and enterprises or non-business organisations sending labourers to work overseas under contracts. The Court also resolves right-based collective labour disputes which have been settled by the chairperson of the district People's Committees whose decision was disagreed by the employee collectives and/or the employer and which are not settled by chairpersons of the district's People's Committees within the prescribed time limit. In addition, the Court also resolves labour-related disputes including disputes over vocational training and practice; disputes over labour outsourcing; disputes over rights relating to trade unions, trade union expenditure; disputes over labour safety and labour hygiene; disputes over compensation for wildcat strike and other labour disputes, except for cases within the jurisdiction of other agencies and organisations as prescribed by law.

According to the Supreme Court, the number of labour cases submitted to the court has increased quickly from 745 in 2000 to 1,700 in 2008. Especially between 2008 and 2013, this figure rocketed to over 4,000 cases (see Table 1). All of the labour cases accepted by the court were individual labour disputes. Over the past decades, only 04 strikes were brought to the court but were not accepted, while two collective labour disputes (one in Hanoi and one in Hai Phong) were suspended. Most of the labour disputes handled in the court occurred in industrialised provinces such as HCMC, Binh Duong, Can Tho, Hanoi, Hai Duong, Vinh Phuc. The majority of labour disputes happened in foreign-invested companies.

**Table 1: Number of Labour Disputes Settled at the Court**

Year	Labour Disputes
2000	745
2001	690
2002	805
2003	652
2004	714
2005	950
2006	820
2007	1022
2008	1701
2009	1890
2010-2011	N/A
2012	3117
2013	4470
2014	4682

*Source: Evaluation Report of the Law on Complaints, Supreme Court, 2015*

According to the labour lawyers who have represented workers at the labour court, most of the cases brought to the court are about unlawful dismissal, unilateral termination of employment contracts, and work accidents.

*“The workers tend to sue the employer at the court only when they have been terminated from work or got serious work accidents without proper compensation from the employer. If the worker is still working, they tend to file a grievance for mediation rather than going to the court”.<sup>18</sup>*

*Interviews with a union labour lawyer of a trade union legal aid center, 2018 September*

It is estimated by the labour lawyers that workers tend to win 90% of the labour cases brought to the court. However, according to Pham Cong Bay, a senior official of the People's Supreme Court, many challenges to handling labour cases in court still remain, including:<sup>19</sup>

- **First**, the law provides that the disputants are responsible for acquiring evidence for the case. In many cases, the workers do not have sufficient resources to acquire the necessary evidence to present to the court;
- **Second**, the labour legislation remains incomplete and ambiguous in a number of areas. For instance, Art. 38 of the Labour Code provides that the employer can unilaterally terminate the employment contract if the worker repeatedly fails to accomplish work assignment. However, the accompanying decrees and circulars fail to specify the criteria to define the terms '*repeated failure to accomplish work assignment*', which often makes it difficult for the court to issue a judgement.;
- **Third**, the time for a labour case to go through the court procedure ranges from one to two years. Although the employer is supposed to pay the worker the regular wages during this time, it remains difficult for the worker to commit to the whole procedure, due to their financial limitations;
- **Finally**, even in the case of the worker winning the case, it is challenging to ensure that the employer comply with the court's judgment including reinstatement of the worker, public apology or compensation, among others.

# State-based non-judicial mechanisms

## *Labour inspectorates*

The responsibility of the labour inspectorates in handling grievances and denunciations in labour, employment, OSH, vocational training and sending workers overseas is specified in Decree 24/2018/ND-CP issued on 27 February 2018. In accordance with Decree 24/2018/ND-CP, a worker is eligible for placing a grievance against the employer within 180 days after the decision that s/he wants to complain is made. The first grievance must be made to the employer and if the worker does not agree with the settlement of the employer, s/he can place the second grievance to the Chief Labour Inspector of the province. The Chief Labour Inspector organises dialogues between the worker and the employer and issues the decision upon the grievance based on the evidence presented by the two parties. If the worker does not accept the decision of the Chief Labour Inspector, s/he can bring the case to the Labour Court.

The workers, through their local unions, can also send complaints to the local labour inspectorate if they identify violations by the employers. The labour inspectorate then can conduct an inspection visit to the companies.<sup>20</sup>

The capacity of the labour inspectorate, however, has been put into question for a number of reasons such as the limited number of labour inspectors both at national and local levels compared to the number of enterprises, among other. There are over 700 labour inspectors in Viet Nam, while the number of enterprises is about 500,000. Another problem is the transparency of inspectors. According to the Provincial Competitive Index Survey of VCCI, 45% of FDI companies claimed that they had to pay informal fees to the inspectors in 2017.<sup>21</sup>

According to the National Labour Inspectorate Office, the labour inspectors conduct 4,500-5,000 inspections every year with 25,000-30,000 violations identified.<sup>22</sup> Despite the large number of violations, a modest number of 700 enterprises are sanctioned each year. The labour inspectors face limitations from the local authorities. For instance, an inspection should not last for more than half a day and the plan for an inspection must be approved by the provincial government.

## *Labour mediation*

The Labour Code provides that the labour mediators, who are appointed by the provincial People's Committee, are responsible of handling individual labour disputes and rights-based collective disputes. However, as there has been no collective dispute that follows the legal settlement procedure, the labour mediators have instead worked closely with the local strike taskforce to resolve wildcat strikes. Despite the importance of labour mediators, the provinces with high level of labour disputes have been struggling with recruiting more qualified labour mediators. For instance, Binh Duong and Ho Chi Minh city, two of the most industrialised provinces, have one labour mediator for every 1,000 companies.<sup>23</sup> The labour mediators must have good knowledge of the labour legislation and at least three years of experience in industrial relations and dispute settlement.<sup>24</sup> Yet, the budget for labour mediators remains limited and most of the current labour mediators are working on part-time basis.

Despite their limitations, the labour mediators have handled a growing number of labour disputes and wildcat strikes. For instance, between 2008 and 2013, the 108 labour mediators in HCMC resolved 6,248 disputes including 5,715 individual disputes and 569 wildcat strikes.<sup>25</sup> The rate of successful mediation by the labour mediators is high. In the case of HCMC, 70.5% of individual labour disputes and 93.1% of wildcat strikes were successfully settled through mediation.

# Mechanisms to support workers accessing remedy measures

It is not easy for employees to get information about judicial and non-judicial grievance mechanisms without the knowledge of laws and grievance procedures. Therefore, the mechanisms to support employees to access the complaints process are extremely important. The non-state based grievance mechanisms for workers can be classified into two groups: (i) the legal aid centers of the trade unions; and (ii) the legal-counselling organisations and individuals.

## Trade Union's Legal Aid Centers

The first legal aid center was established in 1991 and by far, there are 53 legal service units within the VGCL structure. There are two forms of legal service units: either as a legal advice office integrated in the provincial/sectoral federation of labour or as autonomous Legal Advice Center focusing only on legal tasks. There are 16 Legal Advice Centers (LACs), mainly located in industrialized provinces. These LACs can recruit lawyers in addition to their official personnel quota. The legal service points of the VGCL have two main functions namely law dissemination and providing legal protection for workers. In terms of legal protection, the legal aid centers either advise workers to settle grievances at the workplace or represent the workers in court. Apart from the union members, the LACs also support non-union members and workers in the informal sector.<sup>26</sup> All services provided by the union legal aid centers for workers are free of charge.

The issues that the LACs have dealt with recently include: legal advice on social insurance policy; handling grievances for workers with regards to wages and shifting of job position; and representing workers in the labour court in cases of unlawful dismissal and work accidents.<sup>27</sup> According to the lawyers of the LACs, based on the contents of the employees' complaints, they will provide appropriate advices. In cases of which workers still working at the enterprise, the lawyers will advise them to settle through the complaint mechanism at the enterprise with the assistance of lawyers or labour mediators. In case of which workers have been terminated from work or have got serious work accidents without proper compensation from the employer, the lawyers tend to advise them to sue the employer at the court.

**Figure 1: The number of cases dealt with by provincial legal aid centers between 2013-2016**



Source: FES Viet Nam's Evaluation Report of the Union Legal Aid Centers, 2016.

However, the effectiveness of the union's legal aid centers varies among the provinces. According to an evaluation of the legal aid centers by the FES Viet Nam, only 10 out of 53 provincial legal aid centers have been active. As seen in Figure 2, most of the provincial legal aid centers dealt with fewer than 1,000 cases in the three years between 2013-2016. The LAC of Hanoi dealt with only 111 cases in 03 years whereas the LAC of HCMC took up 4,490 cases.<sup>28</sup>

Due to the varying degree of effectiveness of the union legal aid centers, their visibility for workers as a reliable source of legal counselling and protection also differs from one province to another. Dong Nai Legal Aid Center, the first and most famous legal service point of the VGCL system, claims to be the first choice for 80% of the local workers in need of legal protection.<sup>29</sup> For other provincial LACs, this figure can go to below 50% as workers tend to seek help from non-union legal aid centers. In particular, the coverage of the union LACs focus mainly on the formal sector, whereas the workers in the SMEs and household businesses have not been aware of these union-based mechanisms.<sup>30</sup>

### **Non-union Legal Aid Centers**

There is only a small number of lawyers and non-union legal aid centers specialised in labour law, the most prominent of which is probably the Viet Nam Judicial Support Association for the Poor (VIJUSAP). VIJUSAP is a non-profit organisation set up under the Ministry of Home Affairs in 2011. VIJUSAP provides free legal services to the poor, including poor workers. By 2018, VIJUSAP has six regional offices. Apart from the full-time lawyers, VIJUSAP offices can collaborate on part-time basis with members who are specialised lawyers to handle specific cases.

VIJUSAP organises law dissemination sessions in worker villages, through which they collect workers' grievances. The VIJUSAP lawyers will advise workers on the court procedure as well as supporting them in preparing the necessary documents and representing them in Court. VIJUSAP also set up a network of core workers in these villages to become legal trainers for the migrant workers and transfer grievances, if any, to the Association's lawyers. Each year, the VIJUSAP Office in HCMC, for instance, handles 20 cases to the labour court. According to the Director of VIJUSAP HCMC, most of workers' grievances are about unlawful dismissal of pregnant workers and older workers who are laid off because they are having higher seniority salaries.<sup>31</sup>

*The current trend of workers' grievances that we receive is the dismissal of workers on the basis of pregnancy and high seniority salary. The employers want to avoid high costs related to maternity as well as the older workers who are paid based on seniority. These cases happen mostly in smaller companies which are ill-informed*

*Interview with the Director of VIJUSAP HCMC, September 2018*

The study found that there is very little connection and collaboration between the legal aid centers inside the unions and those outside of the union system.

## Non-State grievance mechanisms

This section will review the effectiveness of the grievance mechanisms available in the supply chains of garment, footwear and electronics in Viet Nam. Within the supply chains, there are 02 systems of grievance mechanisms: a system managed by the brands to handle workers' grievances in the supply chain and the internal grievance-handling mechanism at each supplying factory (Table 2).

**Table 2: Grievance mechanisms adopted by brands and suppliers**

Brands' Grievance Mechanisms	Suppliers' Grievance Mechanisms
Hotlines to local production office	Suggestion boxes
Email	Hotlines
Dialogue between the global and local sustainability teams	Open-door policy (approaching team supervisors, HR staff, other managers)
SMS-based grievance channel	Enterprise unionists
Web-based/App-based grievance channel	

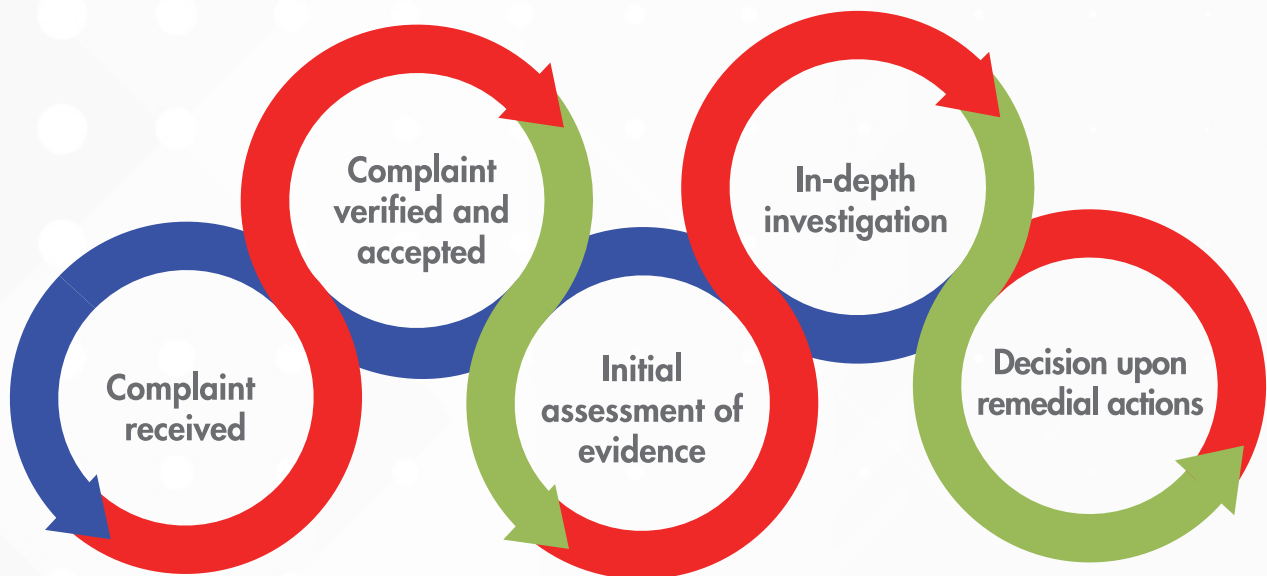
*Source: compiled based on a review of major brands' sustainability reports and previous studies*

### Grievance mechanisms provided by the brands

Hotlines are the most common channel of grievance for workers in the supply chains. The brands require the suppliers to post the hotline numbers in all noticeable spots such as notice board, factory gate and canteen. The hotlines can be managed by the brands' representative or by representative of a third-party (an NGO of which the brand is a member). The typical grievance-handling procedure has 03 steps: after receiving the complaints, the representative of the brand clarifies the complaint and collects the original information; then the brand assigns representative to conduct a visit to the factory for an in-depth investigation; Finally, the brand makes decisions upon remedial actions in case violations are detected (Figure 2).

However, the policy towards treating the complaints through grievance mechanisms by the brands varies. Most brands treat this as an internal and confidential process just between the brands and the enterprises, and some brands publicise all received complaints. For instance, FWF publicised all received complaints and the progress of addressing them on their websites.

**Figure 2: Typical grievance-handling procedure by brands**



*Source: compiled by the author based on review of complaint procedures of major brands*

There has not been any evaluation of the effectiveness of the grievance mechanisms by the brands; however, according to our interviews with the brands' CSR officers, most grievances raised through the hotlines are about unlawful dismissal.<sup>32</sup>

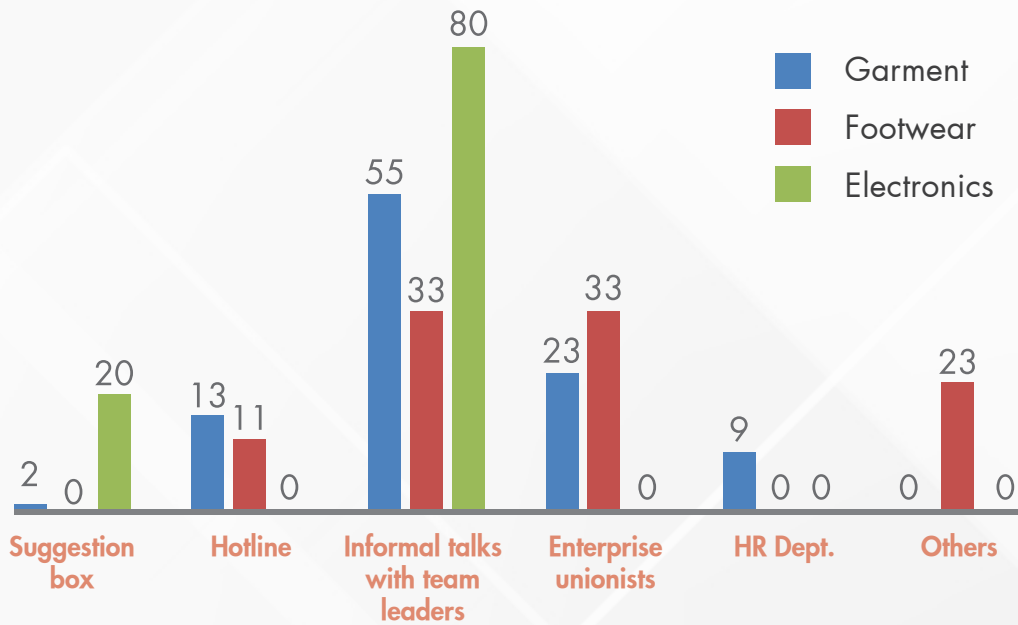
### **Internal grievance mechanisms of supplying firms**

Having a written procedure for handling grievances is a requirement in most brands' sustainability Code of Conduct for all the factories in the first tier. According to the labour auditors, 90% of first-tier suppliers have already developed the written procedure for internal grievances mechanism. Accordingly, workers' complaints can be sent through internal channels such as the enterprise union officials, management channels, suggestion boxes, hotlines, internal emails, etc. After the complaints are filed, the complaint handling department (usually HR department or Director's office) will collect information and arrange a settlement meeting with the participation of the complainant and the enterprise union official's representative.

Formal internal grievance mechanisms are in place but not effective. In the 2016 CLS Plus survey, which covered 110 workers from the suppliers in 1st-tier in the three industries, the result shows that the informal mechanism of workers talking to their team leaders was the most trusted channel of grievance-handling. Consequently, workers resorted to the informal channel of talking to their team leaders for dialogue and grievances and team leaders will also seek remedies for their complaints by informal ways. An effective complaint handling system depends as much on the capacity and sympathy of team leader as on the coordination of other management levels with team leaders in this handling process. However, this outcome has also manifested the low effectiveness of other formal grievance mechanisms such as the hotlines, suggestion boxes and enterprise union officials (see Figure 3). This fact proves that employees do not really feel safe when using formal mechanisms.



**Figure 3: Workers' most trusted channel for grievances (%)**

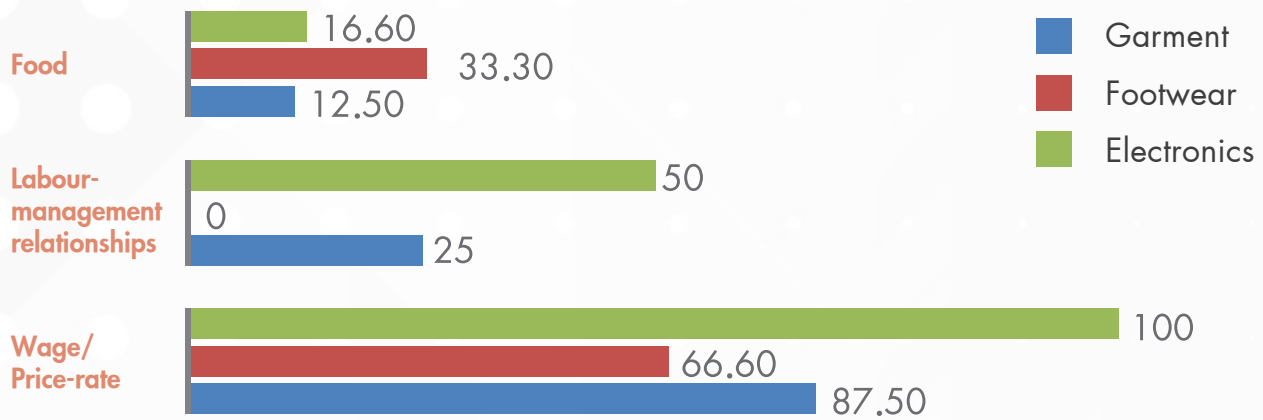


*Source: analysed based on the CLS+ 2016 survey's primary data*

A comparison of the grievance mechanisms in the three industries shows that the electronic industry lags behind in terms of the diversity of grievance channels. The electronic workers tend to turn to two channels only: either their team leaders or the suggestion boxes.

Wage-related issues are the biggest complaint for workers in all three industries, followed by labour-management relationship and food quality (Figure 4). Workers complain not only about low wages and allowances but also about the piece rate. Normally, these complaints can be channeled into a collective bargaining process between the enterprise union and the management. Yet, the fact is that these wage-related complaints are handled mostly via the informal channel (team leaders) and suggestion boxes.

**Figure 4: Complaints by workers in Garment, Footwear and Electronics (%)**



*Source: compiled by the author based on re-processing of CLS+ primary data*

The ineffectiveness of the grievance mechanisms tends to result in the accumulation of workers' discontent, which can either turn into high labour turnover, as workers choose to 'exit', or high rate of labour activism, as workers decide to walk out. According to the VGCL strike statistics, the garment, footwear and electronic industries are the most strike-hit sectors, accounting for over 50% of strikes in Viet Nam between 2009-2015.<sup>33</sup>

# Improving workers' accessibility to complaint and grievance mechanisms

## Box 1

### Effective criteria for non-judicial grievance mechanism

- a. **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b. **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c. **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- d. **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e. **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- f. **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- g. **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; Operational-level mechanisms should also be;
- h. **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances;

*(Section 31, UNGP Business and Human Rights)*

Viet Nam has got a comprehensive system of both state-based judicial remedy mechanisms, state-based non-judicial remedy mechanisms; as well as non-state remedy mechanisms and legal aid services for workers. The rate of labour dispute cases at court in which workers win is very high (90%) proves that the Labour Court is a very effective and trustworthy channel to protect the rights of workers.

However, statistics show that the complaints of employees are numerous in number and diverse in content, covering not only unlawful dismissal and work accidents, but also about the payment of wages, working hours, gender-based discrimination, and intervention of management in union's activities, the number of complaints settled through existing judicial and non-judicial grievance mechanisms remains limited and also differs among provinces/city and labour groups. In particular, the access to these mechanisms seems to be better for workers in the formal sector in the industrialized provinces where they are supported by the legal aid centers and counsellors. Workers in the SMEs, informal sector and especially those in less industrialized provinces where the legal support services are under-developed, the access to remedies faces with more difficulties.

There is a strong relationship between the efficiency of non-legal mechanisms in the government sector and non-government sector, with emphasis on legal aid activities and accessibility of employees to legal procedures. Specifically, employees have a high demand for using complain procedures outside of the enterprise when internal complaint procedures fail to properly work. However, the accessibility of complaints procedures outside of the enterprise mainly depends on the level of support that legal aid services, e.g. trade union legal aids, can be provided. The employees lack awareness as well as resources to use both legal and non-legal complaint procedures outside of the enterprise. Based on the effective criterias by the UN Guidelines on Business and Human Rights (Box 1), the state-based and non-statebased non-judicial mechanisms are weak in two aspects: accessibility and equitability. If the accessibility and equitability of non-judicial mechanisms are strengthened, it will also make the efficiency of judiciary better.

Therefore, in order to have an overall improvement of remedy measures under the guidance of the UN Guidelines on Business and Human Rights, we propose three recommendations as follows:

## **1. Improving the internal grievance-handling procedure in enterprise and within the supply chains**

- The brands and the enterprises should deliver frequent training on internal complaint mechanisms and procedures to workers;
- The brands and the enterprises should assess the effectiveness of the internal grievance mechanisms at enterprises and in the supply chains. In particular, such assessments must be consulted with the workers to ensure the reliability and validity of evaluation data. If current mechanism proved to be inefficient, enterprises should make suitable adjustment to meet the need and condition of workers;
- Local trade unions should support workers through the grievance-handling procedure, including support in collecting information and evidence, as well as consulting during the grievance process;
- Documentation of good practices in building an internal grievance mechanism to share among the enterprises and suppliers in the supply chains.

## **2. Improving workers' accessibility and ensuring the effectiveness of these state-based judicial and non-judicial grievance mechanisms**

- Building a network between trade unions' legal aid centers and non-trade unions centres specializing in labour issues to enhance information exchange and collaboration;
- Expanding the coverage of legal information sharing activities by the legal aid centres to workers in the SMEs located outside of the industrial zones. Possibly conducting simulation courts to disseminate information at the workplaces, industrial zones or dormitories;
- Sharing experiences by successful legal aid centers to other centres;
- Establishing networks or legal clubs (offline or online based on social media sites like Facebook, Zalo...) between workers so that they can support each other on basic legal issues;
- Developing mobile phone applications on labour laws, grievance procedures and legal aid services for young workers.

### 3. Improving the quality and capacity of judicial and non-judicial mechanisms

- Building capacity on labour relations for prosecutors of labour-related cases. Judges in labour-related cases need to be provided with in-depth training on labour relation issues and ways how to result in least damage to both the employees and employers. Additionally, establishing pool of experts who are eligible to become jurors at labour trials. These experts can be specialists working in DOLISAs, labour law lawyers, trade union experts, etc;
- Conducting regular exchange between the representatives from the Labour Court, trade unions, business associations and law makers to discuss discrepancies in the law system related to the grievance procedures, and other legal proceedings which are unfavourable to labour relations at the workplace;
- Strengthening both the quantity and quality of labour mediators by increasing the resources and operating costs for mediators, especially in industrialized provinces – where most of the labour disputes take place;
- Developing tailored training/courses at law schools and universities in order to create a pool of independent, competent and full-time mediators;
- Providing training on labour issues in global supply chains for labour inspectors, labour mediators and union legal advisors to ensure appropriate approaches to labour-related issues in the supply chains.

## Note

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- <sup>1</sup> Update on the countries with NAPs can be found here: <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx>
- <sup>2</sup> By 2018, 40 companies from four sectors including apparel and footwear, extractives, food and beverages and information and communications technology have shared their human rights disclosure to the UNGP Reporting Database (<https://www.ungpreporting.org/reporting-insights-trends-are-companies-making-the-commitment-to-respect-human-rights/>)
- <sup>3</sup> Audit reports of electronic firms in Vinh Phuc and Bac Ninh; Better Work Viet Nam’s 2017 Compliance report
- <sup>4</sup> CDI, 2019: Baseline study for the Project on Empowerment of migrant workers in Viet Nam (to be published)
- <sup>5</sup> Interviews with labour lawyers at Dong Nai Legal aid Center and VIJUSAP Ho Chi Minh city, September 2018
- <sup>6</sup> Do, Q. Chi. Vietnam Country Study: Labour Standards in the Garment Supply Chain. Utrecht: CNV International, 2016.
- <sup>7</sup> Information from the General Statistics Office: <http://www.gso.gov.vn/default.aspx?tabid=382&idmid=&ItemID=18667>
- <sup>8</sup> Better Work Viet Nam Annual report 2017. (Link: <https://betterwork.org/blog/portfolio/better-work-Viet-Nam-annual-report-2017/>)
- <sup>9</sup> Institute of Workers and Unions. 2018. Wages, income, expenses and living standards in 2018. Internal report
- <sup>10</sup> CDI. 2018. Baseline research for the Project on Empowerment of Migrant Workers in Viet Nam (to be published)
- <sup>11</sup> Institute of Workers and Unions. 2018. Wages, income, expenses and living standards in 2018. Internal report
- <sup>12</sup> Institute of Workers and Unions – Oxfam Viet Nam. Survey of Wages in the Garment Supply Chain (upcoming)
- <sup>13</sup> Anner, Mark. “Stopping the Race to the Bottom: Challenges for Workers’ Rights in Supply Chains in Asia”. FES Briefing Paper. Hanoi: FES Vietnam, December 2015. <http://library.fes.de/pdf-files/iez/12321.pdf>
- <sup>14</sup> Better Work Viet Nam Annual Report 2017
- <sup>15</sup> Audits assessment report of 26 factories in Footwear and Electronics sector
- <sup>16</sup> Do, Q. Chi. 2017. “The missing link in the chain? Trade regime and labour standards in the garment, footwear and electronics supply chains in Vietnam”. FES Working Paper (<http://library.fes.de/pdf-files/bueros/vietnam/13334.pdf>)
- <sup>17</sup> VGCL strike statistics
- <sup>18</sup> Interview conduct in 2018 November 11/2018
- <sup>19</sup> Pham Cong Bay. 2009. Settlement of labour disputes at the people’s court: From law to practice and recommendations. Tap Chi Luật Học 9(2009)
- <sup>20</sup> Interview with the labour inspectorate of Da Nang, July 2016
- <sup>21</sup> VCCI. 2018. Provincial Competitive Index Report. Link: <http://pci2017.pciVietNam.vn/uploads/pci2017/PCI-2017-day-du.pdf>
- <sup>22</sup> <http://thanhralaodong.gov.vn/tiep-dan-va-giai-quyet-khieu-nai-to-cao/hon-25-000-sai-pham-ve-phap-luat-lao-dong-tai-viet-nam-39376.html>
- <sup>23</sup> <https://laodong.vn/cong-doan/1000-doanh-nghiep-moi-co-1-hoa-giai-vien-137219.bld>
- <sup>24</sup> Decree 46/2013/ND-CP
- <sup>25</sup> <https://laodong.vn/cong-doan/1000-doanh-nghiep-moi-co-1-hoa-giai-vien-137219.bld>
- <sup>26</sup> Interview with the Director of Dong Nai Legal Aid Center, October 2018
- <sup>27</sup> Ibid
- <sup>28</sup> FES Viet Nam. 2016. Evaluation Report of the Union Legal Aid Centers. Internal Report.
- <sup>29</sup> Interview with the Director of Dong Nai Legal Aid Center, October 2018
- <sup>29</sup> Ibid.
- <sup>30</sup> Ibid.
- <sup>31</sup> Interview with the Director of VIJUSAP HCMC, September 2018
- <sup>32</sup> Interviews with representatives of FWF, Colosseum and VF
- <sup>33</sup> VGCL’s strikes statistics



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