

Is there a glimmer of hope for Vietnamese workers?

Friday 28 February 2020, by [SAN JUAN Eric](#) (Date first published: 18 February 2020).

Last November, the Vietnamese National Assembly took a long-awaited decision on a demand that came from both inside and outside the country: [the authorisation - at an enterprise level - of worker representative organisations](#) from 2021. The measure, included in a reform of the labour code, was accompanied by two others: the retirement age will gradually increase to 62 for men and 60 for women (currently 60 and 58 years, respectively) to counteract the ageing of the population; and the working week will stay fixed at 48 hours, although some political leaders are [calling for it to be reduced to 40.](#)

Worker representative organisations are not trade unions, despite been widely reported as otherwise - including in an earlier version of this article. Unlike unions, worker representative organisations cannot grow (at a sectoral or regional level) beyond the company in which they operate; its activities are limited to the enterprise. With regards to financing, unlike what happens with trade unions in Vietnam, these organisations are funded by workers' dues, without the contribution of the company or the state, according to Joe Buckley, a researcher from SOAS, University of London (School of Oriental and African Studies).

While it remains to be seen how it will be implemented, [the creation of a dual system of worker representation](#) is still a major milestone in a society where the Communist Party, in power since 1975, stifles any attempt at civil association, while freedom of expression is increasingly restricted. Trade unions already exist in Vietnam, but they all affiliated to the Vietnam General Confederation of Labour (VGCL), a body linked to the Communist Party and therefore disinclined to support actions that upset the government.

“At present the unions work for the Party. Instead of defending workers' rights, they side with employers to protect their interests,” says Vũ Quốc Ngữ, director of the dissident organisation [Defend the Defenders](#).

The country's gradual opening up to trade in the last 25 years led some activists to believe that they could establish independent unions, especially following the entry of Vietnam into the World Trade Organisation (WTO) in 2006, but the communist regime showed it was not yet willing to accept that. The most notable attempts were those of the Independent Trade Union of Vietnam in 2006 under the leadership of Nguyễn Khắc Toàn, and the Organisation of Independent Farmers, created in the same year by Đỗ Thành Công. Both groups were dismantled within months of their creation and their leaders were imprisoned, accused of propaganda against the state.

Dual pressure

So what has changed to make Vietnam now agree to accept some form of independent worker representation? According to most analysts, it was a combination of internal and external pressures. Within the country, despite the new laws against freedom of expression, dissenting voices were

making themselves heard more and more loudly, especially since [the rise in popularity of social networks](#) such as Facebook. In addition to these dissenting views, which still result in dozens of activists being sent to jail, in recent years workers have grown increasingly bold, stepping up the number of so-called 'wildcat' or unapproved strikes, [especially in foreign companies](#) (South Korean, Taiwanese, Chinese and Japanese, mainly), according to government data.

Vietnamese law has allowed strikes since 1994, but the slowness of the bureaucratic procedures imposed and the failure of the state trade union to act have led workers to opt for strikes outside the law. One of the most notorious took place last year, when thousands of workers protested for several days outside a factory and blocked roads in a province near Ho Chi Minh City, the most populous city in the country. Such movements are partly due to the lack of collective bargaining mechanisms, a deficiency that according to Professor Nguyễn Đức Lộc, of the Social Research Institute of Ho Chi Minh, will be corrected with the existence of independent worker organisations.

"It will allow employees to organise themselves and appoint their own delegates," he tells Equal Times. In addition, according to the professor, the emergence of these new groups will have a strong impact on self-employed workers, hitherto completely unprotected. "There is no legal status for them," he explains so independent worker organisations can be key to protecting them.

Together with the domestic factors, the new regulation is also for many analysts a result of Vietnam's opening up to the international economy. Authorising independent trade unions was a fundamental part of the negotiations between Vietnam and the United States on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a condition finally weakened by the United States' withdrawal from that treaty (negotiated by 12 states).

The last major agreement signed by Vietnam was the free trade agreement (FTA) with the European Union (EU), [ratified on 12 February by the European Parliament](#), which includes a section on sustainable development with the commitment to conform to international standards on human rights. The International Labour Organization (ILO) welcomed it because "it creates the necessary legal environment for employment in modern Vietnam and for its industrial relations."

Sceptical voices

More critical commentators, however, say the agreement with the EU is too vague and highlight the lack of sanctions in case Vietnam does not fulfil its commitments on human and labour rights. In addition, they doubt that the government will actually allow free trade unions in Vietnam. "Unless the Communist Party wants to carry out far-reaching political reforms, it will not allow the formation of independent unions that would threaten its political monopoly," says Vũ Quốc Ngữ of Defend the Defenders. Along the same lines, Claudio Francavilla, a Brussels-based expert from the human rights organisation Human Rights Watch, points out that Vietnam's criminal code would continue to limit freedom of association even if independent worker organisations are authorised. "The criminal code criminalises peaceful criticism. Maybe you can form a union that has some kind of activity, but you can go to jail for criticising a law," he says.

Although Vietnam has ratified ILO Convention 98 on collective bargaining and is committed to "making efforts" to comply with Convention 105 on the abolition of forced labour and Convention 87, which protects freedom of association, by 2023, neither have been ratified and Francavilla underlines the lack of guarantees.

"The self-imposed deadline of 2023 gives the government time to strengthen its control over independent [worker representatives] and can also postpone its implementation indefinitely without

violating the FTA. In addition, some articles of the penal code make it impossible to enjoy the rights contained in the ILO conventions,” he adds.

The International Trade Union Confederation (ITUC) emphasises that while the reform of the labour code is a “half step” towards freedom of association that “can create space for workers and independent organising”, there will be no possibility for independent trade unions to exist until ILO Convention 87 is ratified. This is why the European Trade Union Confederation (ETUC) asked the European Parliament not to approve the FTA with Vietnam until it had “ratified, or defined a binding roadmap to ratify [the Convention]”.

On the other hand, an unwanted effect of the current labour reforms, in Buckley’s opinion, is that it could serve to hinder grassroots labour activism: “I think that wildcat strikes have been a very effective way for workers to get their voices heard. They have had substantial achievements, such as: immediate demands being met at the workplace level; wage rises often keeping pace with productivity rises; forcing serious attempts at union and industrial relations reform; reversing a major change to the social insurance law in 2015. My view is that the current freedom of association reforms may well serve to reduce this existing and effective labour activism rather than provide a ‘glimmer of hope.’”

One of the most sceptical voices on the possibility of future freedom of association and the trade agreement with the EU has been that of [Phạm Chí Dũng](#), president of the Association of Independent Journalists of Vietnam, a group fighting for freedom of expression in the country. Dũng has remained in prison since [his arrest last November](#), a few days after publishing an open letter to MEPs in which he asked them to vote against the FTA to force Vietnam to improve human and labour rights. In his letter, Dũng said that the new labour code does not open the door to independent unions but to “a complicated process for those who want to establish non-state unions.” This old image of the Communist Party explains one of the reasons why it would be reluctant to allow freedom of association: the Hanoi government considers the unions “reactionary” because of the memory of the Solidarność union in Poland, which played a decisive role in the fall of the communist system in 1989.

This article has been translated from Spanish.

After its initial publication on 17 February 2020, this article has been updated to emphasise the fact that Vietnam has not authorised the formation of independent trade unions from 2021, but of enterprise-level worker representative organisations.

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