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The Limits of Vietnam's Labor Reforms

Contrary to much reporting, Vietnam has not authorized independent workers' unions.

By Joe Buckley

Vietnam is a one-party state with a single, state-led union federation, the Vietnam General Confederation of Labor (VGCL). Over the past couple of years, however, a number of English language commentators have claimed that Vietnam has now legalized independent trade unions.

In 2019, just after the National Assembly approved a new Labor Code, Viet Nam News, the main English language newspaper of the state's Vietnam News Agency, published an article announcing that the country was "allowing independent unions." In May 2021, IndustriALL, a Global Union Federation to which three of the VGCL's sectoral union federations are affiliated, asserted that "independent trade unions are allowed to be formed at company level." And in November 2021, a pro-government English language vlogger stated that Vietnam "passed a law last year allowing independent unions." One could, then, be forgiven for thinking that independent trade unions that do not have to affiliate with the VGCL are now allowed in Vietnam.

The problem with these claims is that Vietnam has not allowed independent unions. Indeed, the claim only ever seems to be made by people writing in English; Vietnamese language media rarely, if ever, declare that independent trade unions exist.

There have been some changes to freedom of association rights. In November 2019, the National Assembly passed a new Labor Code, which became law in January 2021. Among a number of other changes, it allowed, for the first time, workers to form Worker Organizations (WOs) not affiliated to the VGCL. But to claim that WO's are independent unions is a significant misinterpretation (or perhaps in some cases a deliberate misrepresentation). They are not unions. WO's are only allowed to be formed at the individual enterprise level and are more limited in what they can do compared to unions. Unions, on the other hand, are part of the VGCL and therefore embedded in the countrywide structures of the Confederation. There are separate laws regulating each type of organization; the Trade Union Law regulates unions, while WO's fall under one chapter of the 2019 Labor Code.

The reforms were a result of two primary pressures on the state. First, trade deals, especially the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA), contained labor clauses requiring Vietnam to follow the eight fundamental conventions of the International Labor Organization (ILO). These deal with various aspects of labor rights, including forced labor, child labor, discrimination, and the independence of worker organizations.

Vietnam had already ratified six of the eight ILO conventions; the two that had not been ratified were conventions 87 and 98, which are seen as essential for worker organizations to form and operate freely. Convention 87 deals with the right of workers to form and join organizations of their own choosing without requiring prior authorization, while Convention 98 forbids

workers and employers from interfering with each other's activities. The trade agreements' labor clauses required Vietnam to ratify these two remaining conventions within a few years of the deals coming into force. Consequently, the National Assembly ratified Convention 98 in 2019, and will ratify Convention 87 by 2023.

The second pressure has come from below. Thousands of worker-organized strikes over the past 15 years or so have pushed the state to try and reduce strikes by improving labor relations systems. These have included, for example, establishing a body to negotiate annual minimum wage rises, improving collective bargaining, and experiments with bottom-up, grassroots union organizing. Such efforts have certainly had an impact, and over the past couple of years recorded strike numbers have hovered at just above 120 per year, down from 300-350 annually in the mid-2010s, and from nearly 1,000 in 2011. But the government and the VGCL still hope to further reduce strike numbers, and the freedom of association reforms are one of the latest incarnations of that effort.

There were those who were optimistic about what the reforms could bring in terms of labor representation, and those, like myself, who were much more skeptical. In practice though, up until now, not much has happened at all. This is because the 2019 Labor Code does not contain details about the practicalities of how WOs can officially establish and register themselves, such as which forms to fill in, which details to give, or which government office to submit the registration to. The relevant articles of the law say that these details are to be further regulated by the government. The details were supposed to be made clear in a further decree, but as of December 2021, that decree has not yet appeared, nearly a year after WOs became legal. This means, then, that WOs cannot yet legally exist in practice, as there is no way for them to register.

Vietnamese Reform Discourses

In the absence of any actual WOs coming into being, Vietnamese discussions of the reforms have largely fallen into one of three perspectives. First, independent labor activists and observers have pointed out that WOs are not independent unions and that WOs cannot be established in practice, as detailed above, while also arguing that Vietnam needs independent unions.

An organization called, appropriately, the Vietnam Independent Union (VIU), has published a number of commentary pieces to this effect, as has Viet Nam Thoi Bao (Vietnam Times), the online newspaper of the Vietnam Independent Journalists' Association. The articles make similar points: WOs are not unions, have significant limitations compared to unions, and cannot actually be established yet as the decree regarding the practical steps to do so has not appeared.

Similarly, T.K. Tran, a Stuttgart-based observer of Vietnamese labor politics, has written a number of articles for BBC Vietnamese during the course of 2021, which, taken together, constitute a critique of the VGCL and the Labor Code, as well as an argument as to why Vietnam should allow independent unions. The articles focus on certain labor issues, such as the mass return migration of domestic migrant industrial workers from Ho Chi Minh City following the lifting of coronavirus lockdown restrictions, and argue that the VGCL cannot adequately address such issues from a pro-worker perspective. Tran's articles then argue that Vietnam needs real independent unions while highlighting the limitations of WOs compared to unions.

The second perspective is very much the counterweight of the first. Like the independent media, domestic state-owned Vietnamese media have also been busy stressing that WOs are not unions. These publications tend to add, though, that the VGCL is the legitimate representative of

workers, and that those who claim to set up independent unions are hostile to the government and want to overthrow it.

An infamous April 2021 article published in *Cong An Nhan Dan*, the newspaper of the Ministry of Public Security, talked of how hostile and opposition forces were using the cloak of “independent unions” to plot the overthrow of the government. It stressed that independent unions are still illegal in the new Labor Code, that the only legal union federation is the VGCL, and that the talk of “independent unions” is just a pretext used by those who want to overthrow the party and the state.

A two-part piece in *Quan Doi Nhan Dan*, the paper of the Central Military Commission of the Communist Party and the Ministry of Defense, also published in April 2021, analyzed an apparent plot behind negating the role of the Vietnamese trade union, insisting that the VGCL is not employer-dominated and that it does struggle for workers. A number of other articles dotted around Vietnam’s various newspapers present similar perspectives, attacking organizations such as the VIU and accusing them of having dishonest intentions and plots.

The third perspective, however, is perhaps the most interesting. VGCL officials and unionists have been stressing the need to become more representative of workers, given potential – and currently only hypothetical – competition from WOs. If the VGCL does not manage to become genuinely representative of workers, the argument goes, they may leave the organization and join WOs instead.

In December 2021, at a conference on the role of the VGCL in the context of Vietnam joining trade agreements, Ngo Duy Hieu, one of the Confederation’s vice presidents, repeated exactly this. He said that freedom of association is both a challenge and an opportunity – and that the VGCL needs to reform and reorganize in order to persuade workers to join or stay in the union.

This is being developed in concrete terms by the VGCL’s provincial labor federations. In their 2021-2025 plan, for example, the Hanoi labor federation aims to establish at least 400 new enterprise level unions per year, and to make sure that all have been trained in social dialogue and collective bargaining. Some have gone even further, with the vice president of the Nghe An provincial labor federation penning an op-ed saying that, among other things, the VGCL needs to start organizing strikes. This would be a significant change – despite thousands of strikes in Vietnam, there is no recorded case of the VGCL ever organizing one.

Despite this lively debate, given the issues that WOs face – not least the fact that they are currently unable to register – we may not see any actual WOs for a while. But that does not mean the legislation will have zero impact. The most significant changes may not be among independent organizations at all, but come from within the VGCL. If the progressive factions of the Confederation can use the existence of WOs – at least on paper – as a way to push the organization to try and become more genuinely representative of workers, we could indeed be entering an interesting period for labor and union politics in Vietnam.

The Author

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