

A decorative graphic consisting of a grid of dots in various shades of gray and red, arranged in a pattern that suggests a world map or a network of connections.

Trade Unions in Transformation

Enhancing and Mobilizing Structural and Organisational Power to Better Protect the Rights and Interests of Workers in Vietnam

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- The rapid changes in the Vietnamese economy has put pressure on the Vietnam General Confederation of Labor (VGCL) to develop effective strategies to truly represent the interests of workers in Vietnam.
- The VGCL case underscores that by pooling the union's efforts and resources into the core union functions and by strengthening and applying its structural and associational power resources, while reducing the tasks assigned by the state and the party, the VGCL would gain the autonomy needed to become a strong organization of the workers and members.
- Trade Unions in Transformation is an FES project that identifies unions' power resources and capabilities that contribute to successful trade union action. This study features among two dozen case studies from around the world demonstrating how unions have transformed to get stronger.



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Abstract

The Vietnam General Confederation of Labor (VGCL) has a high membership level and has long been officially recognized as part of the political system in Vietnam. However, the changes in the economic framework associated with the ongoing privatization process and growing low-wage manufacturing base in private and foreign enterprises has had an immediate impact and put pressure on VGCL to develop effective strategies to truly represent the interests of workers in Vietnam. Over the years, the VGCL has taken different changes and reforms to overcome these challenges. Using the power resources approach while analyzing the efforts of VGCL to develop its »capabilities« to strengthen and mobilize its power resources, this paper aims to explain and theorize how the decision to »change« has been made and realized and, to what extent, gains have been made for VGCL. Apart from the findings of what have been done and achieved by VGCL, this paper also aims to emphasize the importance of pooling its limited resources into core union activities and echoing the voice of the workers to sustaining success.

1. Introduction

1.1 Economic and Labor Situation in Vietnam

Since 1990, Vietnam's Gross Domestic Product (GDP) has nearly tripled, with an average annual GDP growth rate of 7.5 percent with the exception of the global economic crisis in 2008. Economic growth fell to 6.2 percent in 2008 and 5.3 percent in 2009, and since then has recovered to a range between 6 and 7 percent. Despite the economic crisis, the percentage of the population below the poverty line, estimated at still 58 percent in 1993, has fallen to below 12 percent in 2009, and inequality as measured by the Gini coefficient has remained relatively stable on global average and is considerably lower than in China or Brazil. Domestic resources for development have increased and international trade and foreign direct investment dramatically expanded over the past two decades (United Nations 2010, Vietnam General Statistics Office – GSO 2011). Currently, there are a number of fiscal challenges at play, but the growth rate for 2016 is estimated at around 6 percent.

According to the General Statistics Office (GSO) Labor Force Survey (2015) from the 4th Quarter of 2015, the population of Vietnam has reached 69.6 million persons aged 15 and above, of which 54.6 million constitute the labor force. In 2015, this number was composed of 53.5 million employed workers and more than 1.09 million unemployed workers. However, similarly to in other developing countries, the informal sector is dominant in Vietnam. Wage earners, or workers in the formal sector, accounted for about

34.8 percent of total employed workers at the time of the study, equivalent to 18.2 million workers (ILO, 2015).

In Vietnam, the average nominal wage increased 26.8 per cent per year between 2006 and 2010, with real wages increasing by an average of 12.6 per cent on a yearly basis (ILO Office Hanoi, 2012). However, according to the ILO Global Wage report 2014/15, the average monthly wage in Vietnam was 197 US dollars in 2013. This number was equivalent to about one third of average monthly wage in Malaysia and China (651 US dollars and 613 US dollars respectively) and about half of average monthly wage in Thailand (391 US dollars) in the same year. As such, wages in Vietnam remained one of the lowest in the region. Increasing wages and the need to remain competitive to attract foreign investment and keep high GDP growth created a dilemma for Vietnam, since labor productivity is growing much slower than wages.

The changes in Vietnam's economic framework detailed above had an immediate impact on the Vietnam General Confederation of Labor (VGCL). Due to the ongoing privatization process; the pressure for a low wage manufacturing base; the high inflation rate; and the growing relevance of private and foreign enterprises, the VGCL was no longer able to rely on its membership concentrated in the state owned enterprises. The state sector provided the VGCL with access to institutionalized power, but did not guarantee the development of effective strategies for organizing in the private sector required to truly represent the interests of workers in Vietnam.



1.2 Labor Relations and the Trade Unions in Vietnam

Trade unions in Vietnam are closely tied to the Communist Party of Vietnam (CPV) and are an integral part of the socio-political system. In its statutes, the Vietnam General Confederation of Labor (VGCL) has three declared functions, namely »to represent and protect the lawful and legitimate rights and interests of workers, office employees and other working people; to participate in State affairs' governance, socio-economic management, and monitoring and oversight of the operations of State agencies and economic organizations; to educate and motivate workers to bring into play their right as masters of the country, fulfill their citizens' obligations, and build and defend the socialist Vietnamese homeland«. In order to fulfill this »political mandate«, the VGCL has to represent and protect the rights and interests of its members as well as workers in general, but also fulfil the role as envisaged as for the development of the country.

However, the ever-growing influence of foreign investors, the casualization of labor contracts and an increase in strike action has put pressure on the Vietnam General Confederation of Labor (VGCL), the only officially recognized trade union in Vietnam. This strike action reached its peak in 2011, with nearly 1,000 strikes and work stoppages, whereas in 2012, the figure fell to 539 cases of industrial action, falling again to 315 in 2013 and 269 in 2014 respectively. This pressure has an impact on both the ideological self-image of the VGCL as well as its organizational behavior. It faces a difficult political dilemma: if the situation remains unchanged and VGCL does not face the challenges of changing labor relations, workers will nevertheless fight for better working conditions and render the official trade unions obsolete. At the same time, if the VGCL starts to perform its role as a genuine representative of the interests of workers in Vietnam, it must reallocate resources from other work assigned by the party and the State to core union activities, and thus become more independent from them (Do/Schweisshelm, 2016).

This paper argues that the VGCL has to gradually transform by increasing its structural and associational power whilst maintaining its institutional power in the political system in Vietnam and expanding its political autonomy. As a membership-based organization, professional col-

lective bargaining is an important tool for such a transformation process to succeed, with external capacity building from international trade union organizations playing an important role.

The paper will further reflect on the situation of the VGCL with a conceptual background in Schmalz-Dörre's *power resources* approach and describe the union's changing strategies through this framework. It should be noted that the renewal of the VGCL is a »work in progress« and will be influenced further by changes in the legal framework for industrial relations in Vietnam in line with obligations resulting from processes of international economic integration. This may also have an impact on the trade union system in Vietnam in general, the scope of collective bargaining and, in particular, the right to strike.

2. VGCL through the Lens of the Power Resources Approach

2.1 Four Dimensions of Trade Union Power

2.1.1 Structural Power

Theoretically, the VGCL commands structural power in that the right to strike and work stoppage is guaranteed by the constitution and labor law. Since the manufacturing industries in Vietnam are an important part of the global value chains, especially in the electronics, textiles, garment and footwear industries, disrupting the final assembly processes will have an impact on the forward linkage chains of the big multinational corporations in this sector. It should be noted, however, that these are fluid manufacturing industries that are easily to relocate; in the garment and footwear value chains in particular, international brands enjoy a monopsony that easily allows them to shift orders and production to alternative suppliers. Only the capacity to organize industry-wide strikes would help in such a situation.

However, in practice the right to strike, and thereby the exercise of structural power, is severely limited through various legal provisions involving time-consuming procedures. Almost all of the numerous strikes over the past few years were so-called *wildcat* strikes, organized directly by workers in these industries. The VGCL was partially involved in the mediation phase, but never led



a strike as such.¹ Usually, the VGCL uses its institutional power in the form of access to the Communist Party of Vietnam (CPV) and government agencies to help fulfill the demands of workers on strike. The associational power of the VGCL on the factory floor would not be sufficient to achieve similar results without its institutionally-derived leverage.

In terms of economic conditions and structural power, the union is assisted by the fact that in certain regions of Vietnam there is a labor scarcity. A labor shortage is even projected from 2017 onwards for a period of several years, due in large part to Vietnam's rapid international integration expecting to attract more FDI-export companies in the low wage sector. Therefore, labor mobility is high, since the competition for on the employment market is increasing (MOLISA, 2016), in turn improving the workers' bargaining position. The fact that employers have voluntarily joined an existing collective bargaining agreement (CBA) in the garment industry to avoid labor fluctuation indicates this increasing bargaining power.

2.1.2 Associational Power

According to figures provided by the VGCL, total membership increased from 7.3 to 9.2 million between 2011 and 2016. At the time of writing, membership in the private sector exceeds that in the state and public sector. Total national union density stands at nearly 50 percent. Since the Vietnamese government is gradually »equitizing« state-owned enterprises, and this will be reinforced by the upcoming Free Trade Agreements creating a level playing field between state-owned, private Vietnamese and foreign enterprises, pressure on VGCL is growing to step up organizing in non-state enterprises.

Besides the one percent trade union membership fee, all enterprises in Vietnam have to pay a two percent trade union tax based on the total wage bill. In addition to these sources of income, the VGCL receives govern-

ment subsidies and owns several enterprises. A Trade Union Research Institute and two Trade Union Universities are also attached to the VGCL (Do/Schweisshelm, 2016).

However, organizational autonomy and efficiency is rather weak as the Communist Party exercises a significant degree of control on finances and human resources, diverting a significant amount of resources and energy to activities that are non-core union activities under the »political mandate«. Union members participate regularly in the VGCL's cultural activities, but not in its internal democratic processes. Class consciousness is developing among the grassroots workers who participate in wildcat strikes, but there is no coherent trade union identity. Furthermore, since most wildcat strikes happen on an isolated, short-term basis in individual enterprises, they do not generate any associational power on the grassroots level nor for the VGCL as a whole. The VGCL has meanwhile developed a masterplan to achieve more autonomy from the CPV in terms of human resources and organizational structures, though not in terms of political affiliation.

The high union density and the institutional power the VGCL enjoys open channels to force employers into collective bargaining agreements (CBAs). However, the union's centralized structure and the limited existence of sectoral CBAs thus far, though they are allowed by law, act as constraints on this strategy. Furthermore, even though the VGCL considers itself to have a well-covered structure from central level to grassroots level, none of its industrial affiliates have succeeded in performing as a genuine national industrial union. The union's masterplan here proposes profound changes in its organizational structures, with more emphasis on grassroots unions and industrial level representation.

2.1.3 Institutional Power

Owing to its historical development as part of the independence movement and its special role in the political system of Vietnam, the institutional power of the VGCL is remarkable: according to Article 10 of the constitution, the VGCL is the representative of the total workforce in Vietnam. »Due to its proximity to state institutions and the CPV, the union can use political connections as a power resource. Even though the degree of its influence

1. Article 94 to 234 in the Labor Code stipulated the procedures to settle labor disputes including conciliation, arbitration etc. and steps to legalize a strike. The Government Decree 46/2013/ND-CP on the implementation of provision concerning labor disputes and Circular 08/2013/TT-BLDTBXH by the Ministry of Labor on the instruction of Decree 46/2013/ND-CP involve too many steps and time limitations to effectively organise a legal strike led by the VGCL.



e.g. on the labor law remains disputed, it can be assumed that the VGCL has some degree of policy influence (...)» (Banse, 2015).

The President of the VGCL is usually a member of the powerful Central Committee of the CPV, the highest body of the Party, and a member of the National Assembly of Vietnam. The organization is represented in all important tripartite bodies; has direct access to the Prime Minister on important economic issues; and is regularly consulted by the National Assembly on all draft laws that have an impact on the workforce. In light of this and the aforementioned exceptional position, its institutional power rests on the stability of the political system in the country. Therefore, a gradual reprioritization of power resources in favor of structural and associational power is needed and collective bargaining is considered to be an important mechanism in this context.

2.1.4 Societal Power

Within the power resources framework, the societal power resources available to the VGCL are rather limited. In the one-party state of Vietnam, NGOs and social movements are rare and often considered as »enemies of the prevailing political system«. The VGCL is one of the mass organizations in Vietnam that as such form a very active network of participation across society. Coalition building in this context is rather limited and further attempts to hold dialogue with NGOs on the labor implications of the international integration process have only just started recently. Another field where already some sort of civil society network has been formed is that of climate change and sustainable development issues.

Using public pressure i.e. discursive power for political objectives is not yet possible under the current political system. The importance of mobilizing the public and even the membership in collective bargaining processes is not yet appreciated.

2.2 The Missing Link between Power Resources and the Real Power of Trade Unions

As discussed earlier, the VGCL has many comparative advantages through which to build its structural and

associational power resources. However, in order to mobilize those power resources effectively, the VGCL must enhance its »capabilities« as defined by Christian Lévesque and Gregor Murray.

Among such capabilities, »learning« is one of the critical capabilities that the VGCL needs to develop more intensively. The »learning« capability entails fostering the ability to learn and to diffuse learning experiences throughout the organization, applying insights from the past (Lévesque and Murray, 2010). In the case of the VGCL, learning is required to mobilize structural, associational and even some institutional power resources: considering the historical development of the VGCL as part of a state-sector-only economy, where there is no conflict of interest between labor and capital under the classical Marxist-Leninist concept, the use of its structural power resource to disrupt the production process has thus far not been within the union's experience.

The same problem applies to collective bargaining. The VGCL made first attempts of collective bargaining from 1992 onwards after the transition to a free market economy in Vietnam. In the system of a centrally planned economy and under the ideological premise of no class conflict between labor and state capital, collective bargaining agreements were virtually unknown. Wages and working conditions had been determined exclusively by the state (Do/Schweisshelm, 2016).

In the years following the transition to market economy, collective bargaining and collective bargaining agreements continued to play hardly any role, in most cases representing only a symbolic policy. An internal VGCL survey in 2009 showed that nearly all enterprise collective bargaining agreements did not go further than those regulations stipulated under Vietnamese labor law. In other words, collective bargaining agreements have simply been a compilation of the existing law. Therefore, figures on CBA coverage given by the VGCL are high, but do not provide any useful information (see Table 1), and many companies did not observe the existing law even when it had been codified additionally in a collective bargaining agreement.

2. This is the total workers ELIGIBLE for collective bargaining but only 28.2 percent has been covered nationwide with in FDI, domestic enterprise, and state sectors.



Table 1: CBA Coverage (2011)

Sector	CBA Coverage
Nationwide	28.2 %
FDI enterprises	54 %
Domestic enterprises	30.85 %
State sector	70.6 %
Total Labor Force Eligible for CB	17.4 mil ²

Source: Author's calculations based on VGCL's unpublished statistics

The high membership rate also stems from the extremely high union density in the state sector. The capacity to unionize in the non-state sector is improving, but still limited, and is faced with considerable obstacles from employers. A more advanced learning capability is also required in this field to enable the VGCL to become more organized and representative in the fast growing private and FDI-sectors.

Concerning the VGCL's institutional power resources, there is clear evidence that it is consulted by the state, the parliament or other bodies during labor-related policy making process. However, its participation and engagement in the tripartite bodies established since 2007 have also required learning and the development and application of new strategies.

Lévesque and Murray also emphasize the »articulating capability« of the organization. Under their definition, this capability refers to constructing multi-level interaction and understanding, linking or bridging different levels of union action. In other words, the union on a local level must understand, support and be part of the action of the national organization and, in turn, the central organization must act on the demands and needs of the local union(s).

The weakness of this capability is central to VGCL's problems thus far. A top-down approach of collaboration with the management in organizing as well as implementing cultural activities has been part of the union's culture for many years, since the time of the centrally-planned economy. Most campaigns are initiated at the central level of congress(es) or meetings of the Executive Committee and are sent down to the lower level for implementation. Lack of engagement of rank-and-file workers in this decision-making process has led to

reluctance from union members to participate in these campaigns or activities.

Many of these campaigns seek better welfare and promote the interests of the workers, but without good articulating capability, they do not provide for proper understanding among workers and union members and thus fail to gain adequate support from the grassroots. The articulating capability can also be understood as the two-way communication between the union and its members which means that the union would act based on the real demands and needs of the workers and union members.

3. Developing Capabilities and Utilizing Power Resources

In recent years, the VGCL leadership has recognized the importance of the lay membership more clearly and has made efforts to organize new union members. At its 9th Congress in 2003, a program to organize 1 million new members was adopted for the period of 2003–2008. In 2008, the 10th Congress of the VGCL adopted a further program to organize 1.5 million new members. Both programs ended up successfully meeting the new membership targets. Although the union membership increased during this period, a number of indicators suggest that the VGCL has not succeeded in addressing and representing the demands of many workers and their union members, especially those who are earning close to minimum wages with low working conditions in textile, garment, shoes and food processing industries. More than 3,000 strikes occurred from 2008 to 2012: put into perspective, the total number of strikes over the period 1995 to 2012 was 4,922 (VGCL, 2013). All of them were »wild-cat strikes«, not led by the local unions or following the legal procedures, and the vast majority were in non-state enterprises (about 97 percent).

It should be noted that the VGCL has made various efforts to overcome this problem. The VGCL has proposed and promoted a resolution to the Central Committee of the CPV on »Continuing to *build* the Vietnamese *working class* in the period of acceleration of national *industrialization* and *modernization*«, which was adopted by the Committee in early 2008. The resolution concerned the issues of revising, developing and implementing policies and laws to ensure the legitimate and lawful rights



and interests of the workers are promoted and to solve the urgent issues towards employment and livelihood of the working class. In November 2008, the 10th Congress of the VGCL also placed emphasis on improving workers' income; promoting social and medical insurance, childcare centers and other cultural establishments to serve the workers; representing the workers in collective negotiations; signing collective bargaining agreements and striving towards wider bargaining agreement coverage at industry level; actively engaging in developing and supervising labor-related policies and laws; and recruiting 1.5 million new members. These represent some of the main priority tasks and have been reinforced in further documents and policy statements. In short, the strategic choice was made to mobilize resources for the following areas: further developing the labor- and trade union-related legislation; organizing new members and workplace unions, especially in non-state sector; and promoting and enhancing the quality of collective bargaining. These priority areas intersect and largely support each other.

The VGCL would mobilize its institutional power resources to push forward the revised laws that provide better mechanism for strengthening its structural and associational power resources e.g. collective bargaining, trade union protection mechanism, better rights for workers, gaining trust of current members and recruiting new members. The strengthened power resources would in turn support the institutional power resource. However, as discussed earlier, this process requires different and additional capabilities that are not yet in place.

During the period 2010–2012, the VGCL took on the important task of engaging in the process of revising two fundamental laws, the Labor Code and the Trade Union law. The Labor Code had been adopted in 1994 and was revised several times in 2002, 2006 and 2007. The Trade Union Law had been in place since 1990, in the early days of the transition, when other market-based institutions had just begun to be created or had not yet come into being. This process required the VGCL to engage its learning capability both internally and externally. In the years since these laws were adopted, it had been observed that developments in the state of labor and the industrial relations system had thrown up more challenges and phenomena than the regulating laws could fully regulate, in the context of rapid economic transition. Therefore, from its own observations, the VGCL

developed its internal learning capability to find ways to help itself deal with new circumstances and to strengthen its other power resources. At the same time, it also made use of the expertise of international trade union and labor organizations in this field – or in other words, external learning capabilities. Different forms of exchange and sharing of expertise have taken place in the form of projects, conferences, seminars, research etc. In addition to learning capability, the articulating capability was also promoted through drafts of the two laws being presented and discussed thoroughly on different levels of the trade unions, probably the first time this level of consultation has occurred. The input from the lower level unions in fact also contributed to the internal learning capability given their experience of implementing the laws at the workplace or locality. The union-backed drafts were also supported by wide surveys conducted among workers.

Organizing has been recognized as a priority task since 2003. During the tenure of 9th and 10th Congress, about 3 million new members had been recruited. However, as mentioned earlier, the VGCL had been using the top-down manner and collaborating with employers in establishing new workplace unions and in conducting trade union activities.³ This led to a lack of participation of rank-and-file members in union activities and in many cases to the existence of union committees with many employer-nominated members, hindering the VGCL's ability to mobilize its structural and associational power resources when needed. To overcome this, the 10th Congress of the VGCL in 2013 adopted new statutes which stated in Article 17 that the new procedure to establish workplace trade unions would henceforth take a bottom-up approach. Again, external learning capability was required and was provided by technical cooperation with the ILO since 2013 under a pilot project framework. The results of the 3-year-implementation of the project will be expanded upon in the next section.

Another instrument identified by the VGCL to gain trust and confidence among workers and reduce the number of wildcat strikes is genuine and successful bargaining. The strikes that have been successful in most of the cases put pressure not only on the employers, but also on the VGCL itself. Where workers realize their own power

3. See explanation of top-down approach in the previous section.



beyond their union, the danger of VGCL becoming obsolete is all too real. The success of the strikes provided an important lesson. Collective bargaining with strikes as a means of last resort is therefore becoming an indispensable instrument for the VGCL in terms of securing its own survival and increasing its associational power in the long run (Do/Schweisshelm, 2016).

Without genuine collective bargaining, workers' wages are mainly adjusted as a result of the annual changes in minimum wages that are decided by the government. Since 2013, thanks to the new 2012 Labor Code, minimum wage setting is performed by the government upon recommendation of the National Wage Council, of which the VGCL is a member alongside the employers and the Government. The establishment of such a Council in itself represents one of the VGCL successes in the law revision process.

Since 2008, the Vietnam General Confederation of Labor (VGCL) has received support from the IG Metall as well as trade union support and solidarity organizations in promoting collective bargaining through training collective bargaining specialists and trainers for trade unions at primary level. Given the past activities' outcomes and continued demand for further events, a third round of training will occur in the period 2014–2016. Experience gained from past activities will be applied and trainees from previous training sessions will become trainers for the new groups. The VGCL has cooperated with trade unions in some countries with long history of trade unionism, such as Norway and Sweden, to enhance its learning capability in this field. It is worth mentioning that the ILO pilot project on bottom-up organizing also contributed to the objective of having real collective bargaining as it helps to build genuine trade unions and therefore avoid negotiations occurring between employer-controlled yellow unions and the employers.

The VGCL has also received external technical support in building capacity for legal aid officers. This was conducted in the form of training and developing the training manual used for the trade union education. Furthermore, opportunities were opened up for legal aid officers representing workers and union members in labor-related lawsuits to meet and exchange information in seminars with Judges and/or Chief Judges of the labor courts in different cities and provinces.

For the VGCL, some capabilities were gained during the change process and could be considered as part of the outcomes of this process. These will be discussed in the next section.

4. The Initial Outcomes of the Changes

4.1 Law Reform

The new Trade Union Law of 2012 is considered to be favorable to the VGCL. Among other measures, it enhances the protection of trade union officers; provides guidance for guarantee of financial matters for trade unions; and enhances the rights and obligations of unions from the upper levels to workplace unions. Consistent with the new Labor Code, the new Trade Union Law provides more protection to part-time trade union officers. For example, if the employment contract of a part-time trade union officer expires while the officer is still within the term of his or her office, then their employment contract must be extended until expiry of the term of office (Section 1, Article 25).

In non-organized enterprises, upon request of the workers, the immediate upper level trade union has the right and obligation to represent and protect the legitimate and lawful rights and interests of workers, including negotiating and signing collective bargaining agreements on their behalf.

The new Trade Union Law imposes a two percent trade union tax on a domestic or foreign employer based on the employee's total payroll as used to determine social insurance contribution, not including bonuses, overtime etc., even if the enterprise has no grassroots trade union. Although the 1992 Trade Union Law contained no requirement for such a tax, the two percent tax was introduced under Joint-Circular No. 119/2004/TTLT-BTC-TLD-LDVN dated 8 December 2004 («Joint-Circular 119») for domestic enterprises where there is grassroots trade unions and a one percent tax was imposed under Circular No. 17/2009/TT-BTC dated 1 January 2009 («Circular 17») for foreign invested companies where there is grassroots trade unions. The main argument for the trade unions to universalize the tax is for the protection of the lawful and legitimate rights of workers; organizing grassroots trade unions in all enterprises; and to fund the work of the immediate upper level trade union car-



ried out upon the request of the workers. 65 percent of the tax is kept for the grassroots trade unions, 35 percent has to be submitted to the upper level unions.

The new Labor Code provides for the elimination of forced labor; introduces the obligation for written labor contracts; and guarantees a certain wage level during the probation period. Particularly, the VGCL contributed significantly to drafting Chapter 5 of the new Labor Code. This chapter contains detailed procedures to implement social dialogue on the company level and provides a better mechanism to promote collective bargaining at the workplace. Under the labor code, a collective bargaining agreement at industry level defines and set up standardized working conditions and social responsibilities at industry level that cannot be lowered in agreements at enterprise level. However, since there are no employers' associations at industry level, industry-wide collective bargaining is still limited, although some Federations of Labor within select districts and provinces are testing the possibilities of multi-employer bargaining in selected industries.

The new Labor Code limits overtime to not exceed 30 hours per month and 200 hours per year, with the exemption that the maximum additional working hours in special cases prescribed by the Government may not exceed 300 hours per year. Article 115 adds one more day to the annual Tet public holidays, the traditional New Year. However, as with many laws in Vietnam, enforcement of these protective regulations is rather weak.

There is a separate Chapter on regulations of women workers aiming at the promotion of gender equality concerning recruitment, managing at work, training, working and rest hours etc. The biggest achievement in this respect is the increase of maternity leave from 4 months to 6 months with full pay. This is result of continuous lobby work done by the VGCL.

In general, the two laws provide the VGCL with better mechanisms to organize new trade unions and members, have better protection for trade union officials and facilitate detailed obligations and procedures for collective bargaining.

An important new institution was established through Article 92 of the Labor Code, warranting further discussion concerning the capabilities developed and made use

of by the VGCL. The National Wage Council (NWC) is the tripartite body that advises the government on setting up minimum wages. As a 15-member Council with 5 members from each party, government, employers' and workers' organizations, the negotiations for setting up the minimum wage in 2014 were tough and took several rounds of negotiation to reach a decision. The minimum wage increase was 15 percent in 2014, 14 percent in 2015, and 12.4 percent in 2016. To achieve this result, the VGCL had to develop its economic research capability by attaining figures on the minimum living standards of the workers. The findings of the research by Institute for Workers and Trade Unions (ITUW) – a VGCL think tank- in 2012, with technical support of the FES, had been the grounds for demanding a 20 percent increase in the minimum wage in the negotiations of 2013. The ITUW research showed that the minimum wage covered only 70 percent of minimum living standards. This meant pressure was placed on the Communist Party and National Assembly of Vietnam to establish a mechanism to increase minimum wages to match minimum living standards by 2015. Vietnam is the only country in South East Asia to have an officially binding policy of bringing the minimum wage in accordance with living wage levels. For various reasons, the mechanism was delayed to 2018. However, VGCL found an effective tool to back its argument for higher wage increases by repeating this study annually. The minimum wage increase in 2017 of 7.4 percent is expected to meet with 90 percent of the minimum living standards. The VGCL also, to some extent, succeeded in publicizing its findings through its network of labor newspapers (both national and local level) to mobilize the support of workers and union members and trade union officials. Their interviews, comments on the proposed demand of the VGCL have been widely circulated. Through this minimum wages campaign, VGCL has gradually developed its »researching«, »articulating« and »framing« capabilities.

4.2 Bottom-up Organizing

The new approach to organizing has been formalized by the revision of Article 17 of the VGCL Statutes at the 11th Congress. This new concept, the »bottom-up«, worker-centered approach, was based on awareness of the need for VGCL to reform its methodology to be a genuine trade union organization representing the rights and interests of workers and members. This also emerged in



light of the fact that there had been a high number of executive committees of grassroots trade unions composed of human resource staff from the company, weakening the position of the grassroots unions in negotiations, prevented the participation of rank-and-file union members, and in turn widening the distance between the unions, their members and the workers in general. The bottom-up organizing approach was supposed to establish new trade unions based on the demands of the workers themselves, which is expected to engage the rank-and-file union members to all activities for their own interests.

The ILO Industrial Relations Project funded a pilot project from 2014 to 2017 to assist the VGCL in this regard and also provided it with technical experts to develop the capacity for its organizers. The project's original objective was to form 25 grassroots trade unions by this new approach. It is worth noting that this pilot project has been implemented in the context of Vietnam's global integration through various upcoming free trade agreements, including the Trans-Pacific Partnership and the European-Vietnam Free Trade Agreement (EVFTA).⁴ The country is thereby expected to enter a new era of industrial relations where workers will be given the freedom to organize or join organizations of their own choosing, in full respect of the ILO Declaration on Fundamental Principles and Rights at Work. These unions then may or may not choose to affiliate to the VGCL. That together with the new VGCL Statutes can explain why the VGCL also mobilized its own resources on top of the support of the ILO to implement this pilot project. The report of the VGCL in April 2016 states that there have been 323 new grassroots trade unions with about 24,000 new members being organized by this new approach. Although ILO technically supported this process, the impulse for change also came internally.

Based on the internal assessment of the pilot project, these policies have been implemented by the VGCL leadership through the Organizing Department and have been integrated into the policies of the Federations of Labor and other units of the VGCL.⁵

4. In light of the Presidency of Donald Trump in the U.S, the Vietnamese National Assembly has postponed the ratification of the TPP until further notice. However, the Central Committee of the Communist Party has confirmed in its Resolution No. 6 of November 2016 that it will pursue the policy of international integration and go ahead with labor law reform.

5. As the new approach of organizing originated from the revision of the VGCL Statutes, the efforts done under the framework of the pilot project have been assessed by VGCL for being implemented in a wider scope

Recently, VGCL claimed that it had increased its membership to 9.2 million with more than 123,000 workplace unions. The 323 new grassroots trade unions and 24,000 new members mentioned above are insignificant compared to traditionally organized unions. However, as the Director of ILO Office in Vietnam said during a meeting in June 2016, these efforts have shown that „trade unions can represent workers, through bottom-up organizing and bargaining, for the first time since Doi Moi. It's a signal that the trade unions' Doi Moi is around the corner« (ILO, 2016). These new grassroots unions and members constitute a real increase in associational power, unlike the gains that have been made through the tradition top-down approach.

4.3 Real Collective Bargaining and Quality Collective Bargaining Agreements⁶

At its 11th Congress in July 2013, the VGCL decided to significantly step up the campaign to attain more and better quality collective bargaining agreements beyond the level of individual enterprises, and has made a degree of progress since then. The VGCL has put more effort into training of staff at the Federations of Labor at provincial level or in industrial zones in professional negotiation, as well as into train honorary trade union officials on the grassroots level in basic principles and the legal framework for collective bargaining, membership involvement, negotiation strategies and techniques etc. According to the law, involvement of grassroots members in collective bargaining takes place through direct feedback to the negotiation team on the formulation of demands and assessment of the offers made by the employer. Within the framework of the project involving the IG Metall and other support organizations, 70 experts have been trained in five modules lasting for five weeks altogether. The VGCL presidium has provided them with financial incentives and career perspectives. Also, at the head office level, additional staff and resources have been provided with the purpose of professionalizing collective bargaining. Within the Department for Industrial Relations at the VGCL Head Office, a Division for Collective Bargaining with three staff was newly created. Several experts trained have been used by the

6. For legal provision on collective bargaining in Vietnam, see Labor Code 2012, Chapter V, Section 2-5, Labor and Social Affairs Publishing House 2013, <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>



VGCL in conducting collective bargaining training courses for other trade union colleagues.

The merely formal character of collective bargaining agreements is slowly and gradually changing. Since the end of 2014, the VGCL has been systematically evaluating the quality of collective bargaining agreements in comparison to the law by means of an electronic databank in which all agreements will be stored, evaluated and graded based on criteria developed by the VGCL corresponding to the regulations in the labor law. Categories for this evaluation include food supply for shift workers; a 13th monthly wage; New Year bonuses; allowances for transportation and accommodation; support in case of illness; birthday gifts; organized vacation and recreation for the workers; building of social facilities; additional accident insurance for workers; and special care for female workers. The first results from 1,010 collective agreements from all over the country and various industries as of November 2015 showed that about 29 percent could be graded better, and 15 percent significantly better, than the law. However, the figures also show that around 56 percent are only negligibly better than the law or even just a copy of provisions in the labor code. 85 percent of the score of this grading refers to material regulations of the agreement, 15 percent reflect the involvement of workers in the bargaining process and the implementation of the agreement. This initiative originated from the aforementioned pilot project for the development of an electronic databank of collective bargaining agreements with the financial and technical support from VGCL's international partners. Aware of the significance of this databank of CBAs, VGCL has mobilized its own resources to cover 47 Federations of labor on top of the original 10 federations of labor funded by the project.

Furthermore, there have been some achievements in collective bargaining at sectoral level in recent years. The amount of companies participating in an industry-wide collective bargaining agreement in the textile and garment industry, for which first target were 130 textile and garment companies⁷ across the country, has been raised

7. The vast majority of these 130 companies are equitized, former state-owned companies under the conglomerate Vietnam Textile and Garment Corporation (VINATEX) which controls about 15 percent of Vietnam's total garment exports. Nearly all 125.000 members of the Vietnam Textile and Garment Workers Union under VGCL which is party to the collective agreement, are working in VINATEX companies. Since these companies are still subject to the institutional power of the VGCL, they were targeted first. The coverage of workers in private Vietnamese and foreign direct invested garment companies though this sectoral agreement is still very limited.

constantly, as the figures below show. Among others, this agreement regulates payment at higher percentages than the minimum wage; improved meal allowances; better wages in the probation period; and a shorter time required to move up the pay scale of the companies.

Industry Wide Collective Bargaining Agreement of Textile and Garment Industry Vietnam:

- 1. Conclusion: on 24/6/2010 with 69/130 companies participating.
- 2. Conclusion: on 24/6/2011 with 89/130 companies participating.
- 3. Conclusion: on 24/3/2014 with 100/130 companies participating.

Further industry-wide collective bargaining agreements of the textile and garment industry have been concluded on province level, such as in Binh Duong province with 15 participating companies in 2014. The second national industry-wide collective bargaining agreement was concluded in March 2014 with 35 companies in the rubber industry, a very important sector in Vietnam, involved. Other industrial trade unions currently negotiating a sectoral collective bargaining agreement include the Railway Trade Union of Vietnam, the Trade Union in the Agricultural and Plantation Industry and the Trade Union of Construction Workers.

Additionally, trade unions on province level intend to negotiate and close collective bargaining agreements for groups of companies, involving trained collective bargaining experts, occurring for example in Dong Nai province for six Japanese automobile suppliers, with similar attempts in Hai Phong and Hung Yen provinces. The ILO has started a pilot project on »multi-employer collective bargaining«. This project was implemented alongside the bottom-up organizing project because the goal of securing benefits through the bargaining agreements could attract workers to join or form unions. In Hai Phong, four out of the five enterprises participating in this collective agreement had also formed trade unions.

The results in the field of collective bargaining so far are remarkable in a Vietnamese context because as described above, VGCL has decided to only consider agreements relevant when their provisions go beyond



the legal provisions. However, the developments should not conceal the fact that genuine collective bargaining is still relatively marginal to the VGCL's work, not yet considered as a »core function«. Still, the most important obstacle for genuine collective bargaining is that strikes are not foreseen in the VGCL's negotiation strategy as a means of last resort. The power and impact of official collective bargaining will always be limited and workers will still have to find their own ways of bargaining (Do/Schweisshelm, 2016).

5. Lessons Learned and Measures to Maintain VGCL's Successes

As stated, the transformation and renewal of the VGCL is a »work in progress« for which there were three main motivations, the first of which being the rise in informal labor activism in the form of strikes during difficult economic conditions and under employer repression. Workers had to take their fate into their own hands because of the passivity of the VGCL grassroots and upper-level unions under these conditions. The strikes, which in most cases resulted in workers' demands being met, put great pressure on the VGCL to renew itself and not sink into obsolescence. Only by being a genuine representative of workers and union members can the VGCL gain back the trust of the workforce and strengthen its role in the society (Do/Schweisshelm, 2016). Secondly, the internal will to change has been building for several years, having been discussed and recognized in official documents from time to time. A younger VGCL leadership with more awareness for international experiences has shown its political will for renewal by prioritizing its function of representing and protecting the rights and interests of workers. The cooperation and support of other national trade unions centers, global union federations and partner organizations for the last 20 years has provided VGCL with practical and useful experience in various areas of trade union activity and thereby contributed to this internal will. Thirdly, the international economic integration of Vietnam and the obligations attached to free trade agreements to revise the labor-related legal framework, especially those contained in the EU free trade agreement and the TPP, have created external pressure for further reform of the VGCL. Looking at these motivations for renewal in terms of the power resources approach, we see that existing power resources have not

necessarily corresponded to real power for the VGCL. It was a broader political context that has triggered the ongoing transformation process, supported by internal and external push factors that helped VGCL to develop more capabilities.

Most of the aforementioned factors in the change of internal culture and political will have also influenced the learning capabilities of the VGCL. These capabilities have been strengthened by the knowledge and experience that VGCL gained through its international cooperation with other trade unions and organizations. The areas covered included good practice of laws governing workers and trade unions in different countries; trade unions' experience of the bottom-up approach; different models of collective bargaining; and the experience of trade unions in conducting it. The wave of strikes which accelerated change also gave the VGCL a lesson in the extent to which the use of strikes may affect to the outcome of workers' demands. At the time of writing, the VGCL is even discussing the possibility of conducting the first legal, and therefore, union-led strike; research on strikes and guidance on steps to be taken for legal strikes is currently being carried out (VGCL, 2016). Though the feasibility of such action still remains sensitive given the political context, the VGCL's strengthened learning capability in this area has produced positive results and there is room for further action. Research, articulating and organizational flexibility capabilities have also been required and developed during the implementation of its new role as member of NWC and its experimental projects such as bottom-up organizing.

From this building of capabilities and in light of what has been achieved so far, it is arguable that the VGCL's strategic decision to mobilize its institutional power resources to lobby for the revision of two laws, the Labor Code and Trade Union Law, has in turn set good conditions for the strengthening its other power resources. Structural and associational power has been promoted accordingly thanks to favorable conditions under the new laws for an extension of union representation to non-unionized enterprises by both upper level and grassroots unions, and improved mechanisms for social dialogue and collective bargaining at the workplaces. These conditions, together with the strategic plan of action adopted by its Congress, have contributed to increasing membership of the VGCL and the development of the union's collective bargaining and legal aid systems.



The crucial point that we want to emphasize is that these achievements, though they are still far from reaching full renewal, were only gained by pooling the VGCL's many resources and efforts instead of trying to fulfill its many wider functions. As we know, trade union resources in general and the VGCL's more specifically are not unlimited. Therefore, mobilizing its resources for a limited number of targets is a significant step to achieving better outcomes. This is yet more pertinent in the case of the VGCL as it has many roles in the political system of Vietnam and therefore has to allocate resources to different activities. By pooling its efforts and resources into the core union functions and by strengthening and applying its structural and associational power resources, while reducing the tasks assigned by the state and the party, the VGCL would gain the autonomy needed to become a genuine organization of the workers and members. This would not diminish its institutional power resources but, on the contrary, would enhance the voice of the VGCL in the policy-making process.

The sustainability of its success depends largely on the political will of VGCL leadership to continue in this direction. There are positive signs that the VGCL will expand the pilot projects to a wider scale seen in the masterplan for reforming the organizational structure and methodology of its unions. All strategies have to take into account the principle that trade unions under any circumstances must strengthen the voice of the workers and act for and on their behalf. The VGCL has realized that in order to prioritize an increase in associational and, to a certain extent, societal power, the starting point of all activities has to be the membership. Changes in the internal union democracy are suggested in the masterplan for reform that is still being discussed in preparation for the VGCL congress in 2018. It intends to give more leverage and power to the membership; includes direct election of the Trade Union Executive Committee, as already practiced in the bottom-up organizing approach; and engagement of rank-and-files in unions' activities. This, in our view, is fundamental for the sustainability of the successes reached through VGCL's internal transformation in the long run.



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With Trade Unions in Transformation, the Friedrich-Ebert-Stiftung (FES) aims to direct trade union discourse at successful union work. Using the power resources approach, two dozen case studies analyze how unions were able to secure victories. For us, the Global Trade Union Programme of the FES, and our partners, learning from positive experience opens opportunities to reflect about strategic opportunities for unions in a rapidly changing environment. This project thus aims to analyze and strategize union action, including the needed transformation and mobilization of power resources within and outside the organizations.

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