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Preventing forced labour in the textile and garment supply chains in Viet Nam

Guide for employers

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2016

First published 2016

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Preventing forced labour in the textile and garment supply chains in Viet Nam : guide for employers/
International Labour Organization and Viet Nam Chamber of Commerce and Industry. – Hanoi : ILO
and VCCI, 2016

ISBN: 9789221307471; 9789221307488 (web pdf)

International Labour Organization; Viet Nam Chamber of Commerce and Industry

forced labour / clothing industry / value chains / employer / guide / Viet Nam

13.01.2

Also available in Vietnamese: Phòng ngừa lao động cưỡng bức trong chuỗi cung ứng ngành dệt may Việt Nam: Hướng dẫn dành cho người sử dụng lao động (ISBN: 9789228307474; 9789228307481 (web pdf)), Hanoi, 2016

ILO Cataloguing in Publication Data

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Printed in Viet Nam

FOREWORD

The past few decades have seen Viet Nam's garment industry emerge as an important driver of country's economy, making Viet Nam the fifth largest garment supplier in the world. Economic integration and trade liberalization have opened up great opportunities for the industry, but at the same time placed new expectations on business. One of these challenges is ensuring compliance with the fundamental labour rights established in the core labour standards of the International Labour Organization (ILO).

The elimination of forced labour is one of the four fundamental labour rights that the Trans-Pacific Partnership (TPP) Agreement members recently agreed to adopt and maintain in their laws and practices. Combatting forced labour has also been identified by the Association of South-East Asian Nations (ASEAN) Confederation of Employers (ACE) as a key priority as the region moves towards economic integration. With direct linkages to supply chains of major international brands, Vietnamese garment companies need to ensure that forced labour practices have no place in the industry.

This guide for employers is intended to help members of the Viet Nam Chamber of Commerce and Industry (VCCI) and other businesses in Viet Nam to assess, identify and mitigate risks of forced labour in their company operations and supply chains. We hope this guide for employers, and the guide for trainers supporting its dissemination, will inspire Vietnamese textile and garment companies to step up their efforts to ensure social compliance and help the industry as a whole to succeed in the global and ASEAN marketplaces.



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ACRONYMS AND ABBREVIATIONS

ACE	ASEAN Confederation of Employers
ASEAN	Association of Southeast Asian Nations
ETI	Ethical Trading Initiative
EU	European Union
GRI	Global Reporting Initiative
IFC	International Finance Corporation
ILC	International Labour Conference
ILO	International Labour Organization
MOLISA	Ministry of Labour, Invalids and Social Affairs
NGOs	Non-governmental Organizations
NICE	Nordic Initiative Clean and Ethical Fashion
SMEs	small and medium-sized enterprises
TPP	Trans-Pacific Partnership Agreement
UN	United Nations
UNTOC	UN Convention against Transnational Organized Crime
VCCI	Viet Nam Chamber of Commerce and Industry
VND	Vietnamese Dong
VGCL	Vietnam General Confederation of Labour

ACKNOWLEDGEMENTS

Preventing forced labour in the textile and garment supply chains in Viet Nam: **Guide for employers** has greatly benefited from valuable inputs from many people in Viet Nam and elsewhere.

First and foremost, we would like to thank business participants and local trainers for their active participation in several joint VCCI-ILO workshops on forced labour. The feedback received during training and consultation workshops organized in Ho Chi Minh City, Hanoi, Danang, Can Tho and Hai Phong in 2013 confirmed the need for practical guidance tools adapted to the Vietnamese context and legal framework. Development, testing and validation these tools involved two employers' training workshops organized in Ho Chi Minh City and Hanoi in June and November 2015, and one training of trainers workshop organized in Ho Chi Minh City in August 2015. We would like to express our appreciation for enthusiastic and useful inputs provided by participants in these workshops.

On the VCCI side, development of these tools has been spearheaded by VCCI President Vu Tien Loc, with contribution of Phung Quang Huy and Tran Thi Lan Anh from VCCI Hanoi, and Le Thanh Thuy from VCCI Ho Chi Minh City. On the ILO side, the team involved in development of these tools included Marja Paavilainen, Vu Kim Hue and Gary Rynhart, as well as consultants Julia Borgianni Batho and Alex Phuong Nguyen. Contributions from Nguyen Hong Ha, Nguyen Thi Thanh Thuy, Beatrix Vahl, and other colleagues in the Better Work Viet Nam team were also instrumental in successfully organizing the validation workshops and aligning the tools with the policies of the Better Work programme. Special words of thanks go to Nguyen Van Binh in the Legal Department of Ministry of Labour, Invalids and Social Affairs (MOLISA) for his contributions during the validation workshops, and his thorough review of the chapter on Vietnamese legal framework.

Funding for this publication was provided by the Irish Government's programme for overseas development (Irish Aid), through the ILO project titled Forced Labour Action in the Asian Region (FLARE).

The ideas, opinions and comments within this publication are entirely the responsibility of its author(s) and do not necessarily represent or reflect Irish Aid policy.

INTRODUCTION

This **guide for employers** on preventing forced labour in the textile and garment supply chains in Viet Nam is intended to help members of the Viet Nam Chamber of Commerce and Industry (VCCI) and other businesses in Viet Nam to assess, identify and mitigate risks of forced labour in their company operations and supply chains. It was jointly developed and issued by the VCCI and the ILO to serve as a reference guide for company managers and staff responsible for human resources management and social and legal compliance issues in Vietnamese textile and garment enterprises.

The guide for employers includes practical information on why employers should take action against forced labour and provides clear guidance on how to implement such measures. It also provides useful information on the international and national legal frameworks prohibiting forced labour.

The guide for employers is comprised of the following four chapters:

- Chapter 1. What is forced labour, and why should businesses know about it?
- Chapter 2. Legal aspects of forced labour
- Chapter 3. Guiding principles on eliminating risks of forced labour in company operations
- Chapter 4. How can employers take action against forced labour?

The guide for employers also includes a **red flags checklist for compliance assessment**, which provides companies in the textile and garment sector in Viet Nam with a tool to assist them in assessing risks of forced labour in their operations, supply chains and subcontracting networks. The red flags checklist for compliance assessment can be found in Annex 1 of the guide for employers.

The guide for employers is supplemented by a **guide for trainers**, which is designed to support its implementation. The guide for trainers is intended as a tool for organizations and individuals facilitating training on human resources management and social compliance issues for Vietnamese textile and garment enterprises.

What is forced labour, and why should business know about it?

1.1 What is forced labour?

Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities. Forced labour, contemporary forms of slavery, debt bondage and human trafficking are closely related terms, though not identical in a legal sense.

Forced labour is the antithesis of decent work. It exists in all regions of the world and occurs in many economic sectors, often emerging in the edges of the labour market where regulation is insufficient, law enforcement poor and workers have no opportunity to organize. While forced labour is a globally pervasive phenomenon, addressing it in the Asia-Pacific region is particularly important. According to ILO estimates, in any given moment, at least three in every 1,000 people in the Asia-Pacific region are trapped in jobs into which they were coerced or deceived and which they cannot leave.¹



Between decent work and forced labour: a continuum of exploitation



¹ ILO. 2012. Global estimate of forced labour (Geneva).

Poor working conditions and forced labour are not interchangeable terms: substandard conditions of employment are likely to constitute labour law violations, while the imposition of forced labour is usually perceived as a serious criminal offence. Forced labour lies at the extreme end of a continuum of experiences and situations, from decent work ranging through minor and major labour law violations, to the most extreme and criminal forms of labour exploitation.

Understanding the notion of a continuum of exploitation in the context of forced labour is not only crucial for the identification of potential abuses that might be present in company operations and throughout supply chains, but it also helps in determining the adequate interventions a company might need to implement in order to address compliance issues and prevent forced labour.

Moreover, companies facing allegations of forced labour are likely to be liable to criminal prosecutions and might suffer significant reputational and financial damage, both as a consequence of lengthy lawsuits and as a result of buyers' divestment. Thus, improved understanding of forced labour and related practices will likely contribute to the development and implementation of more effective risk mitigation strategies.

Freedom from forced or compulsory labour is one of the fundamental rights protected by ILO Conventions. As core international labour standards, the Conventions pertaining to forced labour (the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105))² have the status of universal human rights instruments, meaning that their terms are binding on all ILO member States, irrespective of ratification.³ The rights enshrined in these instruments apply to all persons, regardless of an employment relationship.

² Convention No. 29 and Convention No. 105 are explained in detail in Chapter 2.

³ Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (adopted by the ILC in 1998) establishes that "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions", which include the elimination of all forms of forced or compulsory labour.

Box 1

Examples of situations that may involve forced labour or trafficking in persons for forced labour

- Workers are unable to leave employment due to impossibility of repaying a debt owed to the employer or recruitment broker.
- Workers have been lured into a job, through false information about the working and living conditions provided by the employer or recruiter.
- Workers' identity documents and personal possessions are retained by the employer in order to prevent them from leaving.
- Workers are unable to refuse to undertake overtime work beyond legal limits, under threats of punishment or dismissal.
- The accommodation provided by the employer is constantly monitored by guards or security cameras, restricting workers' freedom of movement.

1.2 The business case for combating forced labour

Why should businesses take action against forced labour? And why should companies in Viet Nam's textile and garment sector in particular take measures to prevent and address forced labour?

Most countries around the world have adopted specific legal provisions prohibiting forced labour and related practices. Consequently, companies operating in those countries must take measures to prevent and address labour exploitation in order to comply with domestic laws.

In addition to fulfilling companies' obligations under national and international laws, preventing and addressing forced labour throughout the employment cycle and along supply chains is also likely to bring benefits in terms of protecting brand reputation, reducing staff turnover and attracting responsible investment. These and other aspects are explained in detail below.

1.2.1 Avoid lawsuits and risks of criminal prosecution

It is the legal responsibility of all companies to comply with the laws of the countries in which they operate. This requires taking measures to prevent violations from occurring in the first place, but also to address infringements, once identified.

Failure to comply with such obligations may lead to criminal and civil liability, as well as administrative penalties. Moreover, companies associated with poor legal compliance standards face risks of financial loss due to costly lawsuits and fines, as well as potential risks of divestment due to a tarnished brand reputation.

Under Vietnamese law, forced labour is prohibited in Article 8.3 of the 2012 Labour Code and criminalized in Article 297 of the Penal Code 2015. Trading in persons and trading in children offenses in Articles 150 and 151 of the Penal Code also cover trading for purpose of forced labour.

Box 2

Case example: *United States v. Lee*

In one of the most prominent cases of trafficking for forced labour prosecuted by the U.S. Department of Justice, Mr Kil Soo Lee, the owner of a garment factory in American Samoa, was accused of mistreating 250 Vietnamese and Chinese nationals, mostly young women, who worked as sewing machine operators. Mr Lee, whose factory supplied garment to top US retailers, was found guilty of involuntary servitude and conspiracy to violate the civil rights of workers, and was sentenced to 40 years imprisonment.

The victims, some of whom were exploited for up to two years, were forced to work through extreme food deprivation, beatings, and physical restraint. The victims were held in a barracks on a guarded company compound, had their passports confiscated and were threatened with deportation, economic bankruptcy, severe economic hardship to family members, false arrest, and a host of other consequences.

Source: *United States v. Kil Soo Lee, Hawaii (2001)*. Available at https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2005/united_states_v_lee.html [16 July 2015].

1.2.2 Build and preserve corporate reputation and brand image

In a highly interconnected world, where companies, suppliers, customers and stakeholders are linked by globalized markets and supply chains, reputational risk management is perceived as one of the main strategic business issues, while a company's reputation is considered as a key, invaluable asset. Being associated with forced labour in company operations or supply chains can cause serious damage to the reputation of the company, which may be impossible or very difficult to restore.

With direct linkages to supply chains of major international brands, and due to the increasing globalization of Viet Nam's own brands, Vietnamese garment enterprises are becoming increasingly aware of their own brand image and corporate reputation.

Reputational risk can be understood as an actual or potential impact on business revenue and company value arising from negative stakeholder or customer opinion. While a tarnished brand reputation can result in substantial financial loss and affect a company's credibility, investments in the development of a strong corporate reputation are likely to yield positive results in terms of customer and investor trust, and market value. Management of

reputational risks associated with substandard working conditions and abusive employment practices is also likely to increase staff motivation and reduce costs associated with high employee turnover.

In the case of allegations of forced labour, reputational risks can also stem from sustained campaigns by influential NGOs, which in turn is likely to result in additional costs for companies in terms of management of time and resources.

Against this background, increasing efforts to meet global standards on the prevention and elimination of forced labour is an essential step for building and preserving brand image and minimizing risks of reputational damage.

1.2.3 Meet the expectations of international buyers

In recent years, a number of prominent garment and apparel companies worldwide have seen their image negatively affected by allegations of forced labour in their supply chains. This resulted in increased international scrutiny and pressure from stakeholders and customers, leading companies to develop and implement voluntary initiatives to promote compliance with international labour and human rights standards.

Initiatives adopted by international brands include, among other measures, codes of conduct encompassing core international labour standards and corporate social responsibility programmes. Other initiatives include tailored human rights due diligence strategies, most of which are targeted not only at companies' own operations and customer relationships, but also at the broader range of business activities and partnerships, including manufacturers, raw material suppliers, subcontractors and logistics providers.

In this context, respect for fundamental labour and human rights, including on the elimination of forced labour should be considered a top priority for companies aiming to meet international buyers' expectations. Allegations of substandard working conditions and labour exploitation could lead to the suspension of supplier contracts, resulting in significant financial loss and affecting potential contracts with other buyers.

Moreover, due to the growing importance of Vietnamese textile and garment companies as major suppliers in the global market, measures to prevent and address forced labour might also contribute to the establishment and preservation of long-term partnerships with responsible buyers.

Box 3

Nike and migrant workers

In 2008, an Australian television channel alleged that around 1,200 migrant workers from Bangladesh, Viet Nam and Myanmar were exploited in a garment factory in Kuala Lumpur. The factory made t-shirts for Nike, among other international brands. Although the factory met minimum wage requirements, workers were housed in substandard accommodation, had their passports withheld and had excessive and unfair monthly wage deductions.

The practice of withholding passports was allegedly used to compel workers to pay their own employment-permit fees, ordinarily paid by the company.

Response: Nike investigated and confirmed the claims and implemented an immediate action plan to protect the rights of workers in its Malaysian supply chain. Nike required the supplier to make the following non-negotiable and immediate changes:

- Reimburse migrant workers for fees associated with employment (e.g. recruitment and work permit fees).
- Pay all future fees associated with employment as a cost of doing business.
- Provide a return airfare for workers wishing to return home, irrespective of contract requirements.
- Move workers into new Nike-inspected and approved housing.
- Provide workers with immediate and unrestricted access to their passports.
- Provide workers with access to a 24-hour Nike hotline to report violations.

Nike also committed to review its entire Malaysian contract factory base and required factories to institute these same policies. In addition, Nike engaged with local NGO Tenaganita to implement management training programmes in Nike supplier factories, targeting improved treatment of migrant workers.

Source: Nike Inc. 2010. Corporate responsibility report FY 07-09 (Beaverton), pp. 73.

1.2.4 Improve company productivity and profitability

Compliance with labour standards and improved working conditions will likely contribute to higher productivity and enhanced competitiveness for companies. Better working conditions and a healthier and safer work environment is likely to contribute to increased worker satisfaction and reduced employee turnover. Additionally, improved dialogue between workers and employers is likely to contribute to strengthened labour relations and reduce risks of labour unrest and work stoppages. Improved working conditions are also likely to reduce the risk of accidents, which could result in unforeseen expenditures in terms of worker compensation and absenteeism.

1.2.5 Build the reputation of “Made in Viet Nam” brand and attract socially responsible investment

Ensuring social and legal compliance can have a positive impact on the reputation of the Vietnamese textile and garment sector as a whole. Building a positive image for the “Made in Viet Nam” brand can assist in growing the country’s textile and garment industry and attract socially responsible buyers and investors.

Box 4

Preserving brand reputation: the Patagonia case

Since its establishment over 40 years ago, US-based sports apparel company Patagonia has focused on building its reputation as an environmentally and socially responsible enterprise. The company was one of the founding members of the Fair Labor Association – a US-based association dedicated to protecting workers' rights around the world – and has invested substantial resources to minimize risks of adverse impacts as a result of its operations.

Despite the company's efforts, internal audits conducted in 2011 identified multiple cases of forced labour and labour exploitation in Patagonia's supply chain, including among raw material suppliers and in mills producing fabric for the company in Taiwan.

Most of the workers employed by Patagonia's suppliers were migrants who had been hired indirectly by labour brokers and had been charged exorbitant fees in exchange for jobs. Other signs pointing to the exploitation of workers included the fact that labour broker fees were automatically deducted from workers' salaries and that workers' passports were confiscated by employers.

In response to the violations found, Patagonia improved its investment in corporate social responsibility by about ninefold over the course of five years. The company has partnered with independent organizations to strengthen the monitoring of the lower levels of its supply chain, and has reduced the number of first-tier suppliers in order to enhance its control over their practices.

Patagonia has also come up with a new set of standards for the employment of migrant workers, aimed at preventing abuses and educating employers and recruiters on acceptable hiring practices and working conditions.

Additionally, the company has required suppliers to reimburse workers for recruitment fees above the legal limits and, as of June 2015, all fees should be paid by the employer/supplier.

Source: White, G.B. 2015. 'All your clothes are made with exploited labour – Patagonia's human trafficking problem'; in *The Atlantic*, 3 June 2015. Available at <http://www.theatlantic.com/business/archive/2015/06/patagonia-labor-clothing-factory-exploitation/394658/> [16 July 2015].

1.2.6 Avoid risks of trade barriers and ensure compliance with emerging regional labour policies

A number of international trade agreements signed by Viet Nam include specific provisions requiring countries to protect workers' rights and adopt core labour standards. This is the case, for instance, of the recently agreed upon Trans-Pacific Partnership (TPP) and the European Union (EU)-Viet Nam Free Trade Agreement.

Increased international scrutiny stemming from prominent trade agreements is also likely to result in the adoption of stronger labour rights policies at the regional level, including within ASEAN. Indeed, forced labour has been identified by the ASEAN Confederation of Employers (ACE) as a key priority as the region moves to economic integration in 2015. The ACE Policy position paper on forced labour in migration (2015) outlines a firm commitment to the goal of combating forced labour and human trafficking, and set of recommendations to tackle it where it occurs, both nationally and regionally.

In this context, allegations of forced labour associated with a few companies in a country could potentially put the whole sector at risk, particularly due to potential trade barriers directly affecting exports. Thus, addressing risks related to forced labour is particularly important for companies looking to comply with emerging regional labour policies and aiming to benefit from prominent trade agreements.

1.2.7 Level the playing field and prevent unfair competition

Tolerance of forced labour in an industry works to the serious detriment of the law-abiding employers and enterprises in the same industry, who face unfair competition from those operating outside the law. The latest ILO estimates put illegal profits from forced labour in the Asia-Pacific region at US\$51.8 billion annually. Out of these profits, \$13.4 billion are made in the manufacturing, construction, mining and utilities sectors.⁴ Employers who exploit workers make billions of dollars in illegal profits generated from unpaid wages, undeclared taxes and social security contributions, among other violations. It is therefore in the interest of law-abiding enterprises in the same industry to take action against abusive practices to level the playing field and prevent unfair competition.

⁴ ILO. 2014. *Profits and poverty: The economics of forced labour* (Geneva).

Box 5

ASEAN Confederation of Employers (ACE) policy position on forced labour

ACE has identified combatting forced labour as a key priority as the region moves to economic integration. In April 2015, ACE adopted a Policy Position Paper on Forced Labour in Migration. In this policy, ACE and its members recognize the strong business case for employers to address and prevent forced labour, noting:

- Forced labour is morally unacceptable.
- Forced labour is a criminal act in both international and national laws across all ASEAN countries; failing to comply with legal obligations can lead to both criminal prosecutions and sanctions.
- Forced labour practices can lead to imposition of sanctions by trade partners; increasingly more trade policies include labour provisions, including binding prohibition of forced labour which if violated can result in trade barriers.
- A workplace free from forced labour is both an attractive attribute to reputation-sensitive buyers and a fundamental requirement by global buyers in their supply chains. Compliance may lead to commercial gains, such as more businesses and awarding of licenses to use a global brand name, while systematic failure to comply may lead to reduction in orders or even termination of contracts.
- The financial case for ensuring operations are free from forced labour is compelling given investors and financial institutions – with the objective of promoting responsible investment - are including social criteria such as labour standards in their assessments. Forced labour practices deter potential investors as well as cause existing investors to divest from the company/sector/country.
- The reputational cost of associating with forced labour allegations or findings is high, reflected through fall in sales and share prices, and because forced labour practices by one player can tarnish the whole industry and/or country.
- Forced labour tilts the playing field in favour of unscrupulous employers who benefitted from large illicit profits and artificially low labour costs to gain price competitiveness and win more businesses.
- Forced labour is one of the core labour standards, and appropriate application of core labour standards is found to enhance labour productivity, when sound and timely government regulatory and support policies are in place . Furthermore, business in compliance may receive beyond-compliance trainings from buyers to improve their efficiencies and hence productivity.

- Forced labour practices may lead to new cost items for business which were previously unaccounted for, such as increase in audit fees and/or penalties for violation imposed by buyers and governments.

The policy statement consolidates ACE's perspectives on the roles of ASEAN governments in supporting employers' efforts to address and prevent forced labour in labour migration.

Source: ASEAN Confederation of Employers (ACE). 2015. Policy position paper on forced labour in migration. Available at: <http://apmigration.ilo.org/resources/resource.2015-09-27.7867333349> [3 Dec 2015].

Box 6

Prohibition of forced labour in corporate social responsibility standards

The list below includes some of the voluntary corporate social responsibility initiatives specifically providing for the prohibition of forced labour:

- UN Global Compact
- International Finance Corporation's (IFC) Performance Standards on Labour and Working Conditions
- Global Reporting Initiative (GRI) Sustainability Reporting Framework
- ISO 26000: 2010 - Guidance on social responsibility
- The Ethical Trading Initiative (ETI) Base Code
- Fair Labor Association's Workplace Code of Conduct
- Social Accountability International - SA8000 Standard
- Nordic Initiative Clean & Ethical Fashion (NICE)

1.3 Are textile and garment sector companies at risk of forced labour?

The textile and garment sector is often cited as one of the main industries where labour rights violations and abuses such as forced labour are likely to be encountered. This section addresses some of the factors contributing to the high susceptibility of the industry to risks of forced labour. It also looks at the garment industry in Viet Nam, and presents some of the challenges that companies in this sector may find in relation to forced labour.

1.3.1 The garment industry in Viet Nam

The garment industry is an important driver to Viet Nam's economy. It represents the country's second largest export (after electronics) and largest formal employer, providing direct and indirect jobs to more than 2.5 million people (ILO and IFC, 2014). In 2013, the total export earnings originating from the garment sector reached nearly US\$18 billion, making Viet Nam the fifth largest garment supplier in the world (WTO, 2014).

More than 80 per cent of workers are young women who have migrated from rural areas and whose incomes improve the living standards of their extended families (Fontana and Silberman, 2013). The overall level of education of garment sector workers in Viet Nam is higher than in other large exporting countries, such as Bangladesh and Cambodia. While this translates into increased productivity, it also increases levels of labour mobility, as skilled workers are more likely to seek higher wages in other industries.

As in other emerging economies, including in South and South-East Asia, the competitiveness of Viet Nam's garment industry is strongly dependent on labour inputs and low labour costs. This heavy reliance on the industry's ability to attract and retain a large and cheap workforce has resulted in numerous allegations of labour rights violations, such as low wages, excessive overtime and poor working conditions. Such violations, if not effectively identified and addressed, could potentially deteriorate into a forced labour situation, posing risks of reputational damage, financial loss and legal liability for garment companies.

In addition to the labour-intensive nature of the industry, other factors that might increase risks of forced labour for garment companies in Viet Nam include challenges in the enforcement and application of labour laws, especially in the lower tiers of supply chains and subcontracting networks; weak monitoring of recruitment agencies and labour brokers; and increased international pressure to reduce production costs.

1.3.2 Textile and garment sector supply chains and risks of forced labour

Some of the factors contributing to the high susceptibility of the textile and garment sector to substandard working conditions and abusive practices globally include the labour intensive nature of the industry, the systematic pricing pressure by global buyers, and the national labour market and social policies in garment-exporting countries.

In addition, the complexity of the industry's supply chains and outsourcing processes often hinders the effective monitoring of recruitment and employment practices implemented by suppliers and subcontractors. Therefore, while many textile and garment companies are stepping up action in their own operations to meet expectations of international buyers, risks may still lurk in the lower levels of their supply chains and subcontracting networks.

For example, it is common for garment-export companies to use subcontractors to perform specific production functions, or to provide additional capacity during peak periods. These, in turn, might supply from other (formal or informal) companies, or engage other subcontractors in order to reduce costs, increasing the chances of labour law violations and exploitation of workers. In many cases, the use of subcontractors may be completely unknown to buyers or even to companies in the upper tiers of the production chain.

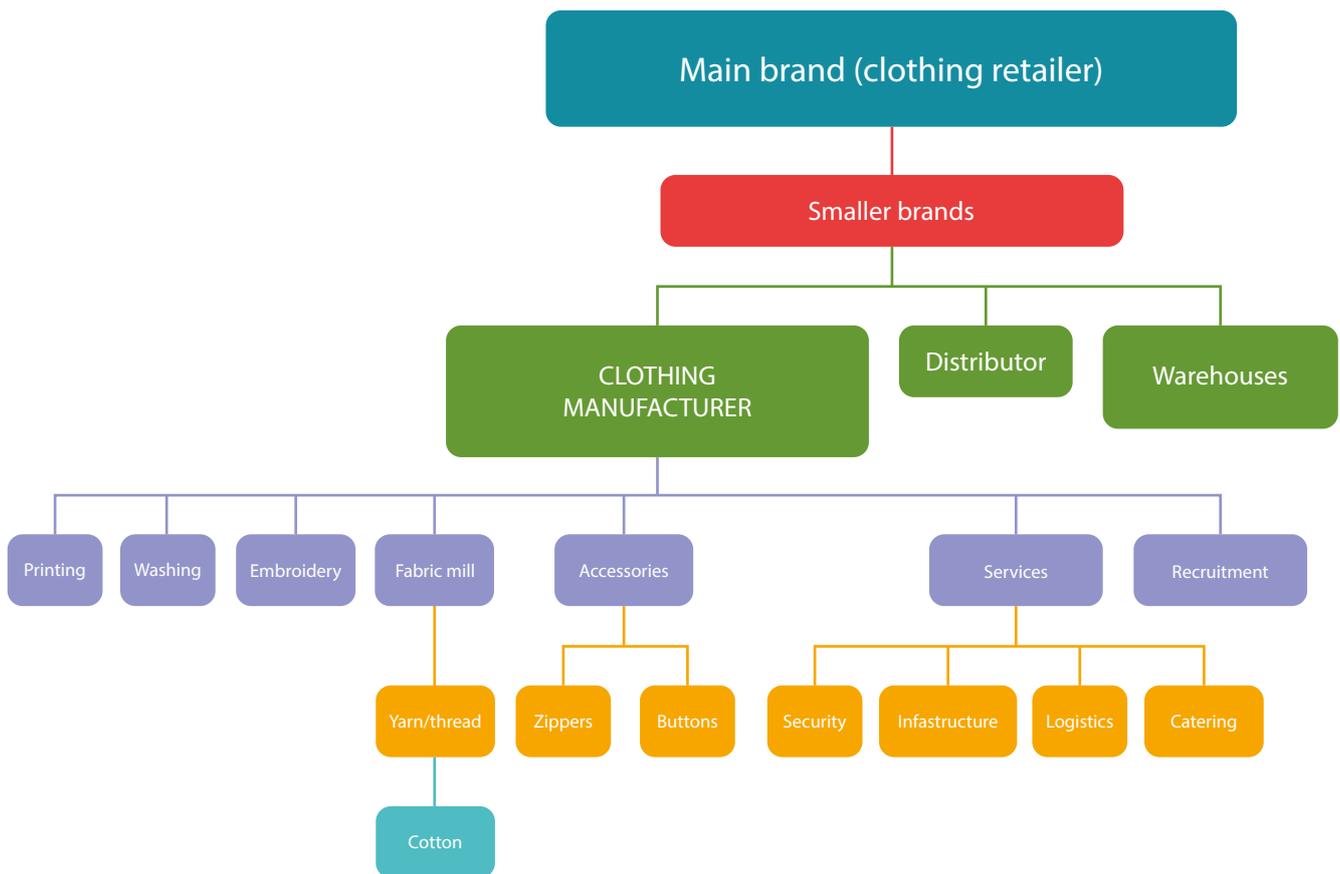
Suppliers and subcontractors may also recruit workers through informal labour brokers or unaccredited recruitment agencies, which increases the risk of abuses even further, including through the charging of exorbitant placement fees and through deception with regard to working and contractual conditions.

In the case of textile and garment companies, risks also emerge in the context of raw materials and textile production, including cotton harvesting and production. Thus, a number of textile and garment enterprises have developed and implemented specific measures to extend their supply chain management all the way to the bottom tier of the production network, including primary subcontractors and suppliers, but also suppliers of raw materials and logistics.

While allegations of substandard working conditions and labour exploitation in the supply chain may tarnish the image of both buying and supplying companies, strong supply chain management is one of the most effective ways of nurturing brand reputation with business partners, consumers and investors. In order to avoid financial and reputational risks stemming from allegations of forced labour and labour rights violations, companies are encouraged to effectively monitor practices within their own operations and throughout supply chains and subcontracting networks, as well as to disclose the measures adopted to address the issues encountered. Supply chain management strategies should also take

into consideration the need to inform and educate all actors along the supply chain with regard to national laws and international standards on fundamental workers' rights and on the prohibition of forced labour in order to ensure compliance with the company's standards.

Example of apparel industry supply chain



Legal aspects of forced labour

2.1 International legal framework on forced labour and trafficking in persons

Forced labour and trafficking in persons, in all their forms, are universally condemned practices. The elimination of all forms of forced or compulsory labour is notably one of the fundamental principles enshrined in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up [adopted by the ILC in 1998].⁵ As core international labour standards, the forced labour Conventions (Nos. 29 and 105) have the status of universal human rights instruments.

The ILO forced labour Conventions, and the respective Protocol⁶ and Recommendation⁷ to the Conventions, as well as other relevant international standards on forced labour and trafficking are explained in this section.

2.1.1 Prohibition of forced labour

The use of forced or compulsory labour is prohibited under Convention No. 29, which Viet Nam ratified in 2007.

Convention No. 29 defines **forced or compulsory labour** as follows:

All work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.

This definition of forced labour includes four elements:

- ✓ **“All work or service”** encompasses all types of work, employment or occupation. The nature or legality of the employment relationship is irrelevant. For example, informal sector work and sex work are within the scope of the definition of forced labour, if persons are coerced to work.

⁵ The other three fundamental rights recognized in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up are: freedom of association and the effective recognition of the right to collective bargaining; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. According to the ILO Declaration, all member States, even if they have not ratified the fundamental Conventions, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning these four fundamental rights.

⁶ Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).

⁷ Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

- ✓ **“Any person”** refers to adults as well as children. It is also irrelevant whether or not the person is a national of the country in which the forced labour case has been identified.
- ✓ **“Menace of penalty”** refers to various forms of coercion, such as threats of denunciation to authorities, threats of dismissal, violence, retention of identity documents, confinement or non-payment of wages. All workers should be free to leave an employment relationship without losing any rights or privileges.
- ✓ **“Voluntary offer”** refers to the free and informed consent of a worker to enter a given employment relationship. Deception in recruitment or coercion in employment undermine and exclude the voluntary offer or consent of the victim. Furthermore, free and informed consent has to exist throughout the employment relationship. While a worker may have entered an employment contract without any forms of deception or coercion, he or she must always be free to revoke a consensually made agreement.

Countries ratifying Convention No. 29 have the obligation to suppress the use of forced labour in all its forms within the shortest possible period. To this end, **ratifying States are required to take measures to ensure that the use of forced labour is punishable as a criminal offence, and that the penalties imposed are adequate and strictly enforced.**⁸

⁸ Article 2(2) of Convention No. 29 provides for certain forms of compulsory work or service that, under specific circumstances, fall outside of the definition of forced labour. These five exceptions include: Any work or service exacted in virtue of compulsory military service laws for work of a purely military character; any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the work is carried out under the supervision and control of a public authority and that the individual concerned is not hired to or placed at the disposal of private individuals, companies or associations; any work or service exacted in cases of emergency; and minor communal services, being performed by the members of the community, in the direct interest of the said community.



Other ILO standards on forced labour

In addition to Convention No. 29, international standards on the elimination of forced labour are set out in the following ILO instruments:

- **Abolition of Forced Labour Convention, 1957 (No. 105):** prohibits the use of forced or compulsory labour (including compulsory prison labour) in specific circumstances, namely:
 - (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
 - (b) As a method of mobilizing and using labour for purposes of economic development;
 - (c) As a means of labour discipline;
 - (d) As a punishment for having participated in strikes; or
 - (e) As a means of racial, social, national or religious discrimination.
- **Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29):** Protocol No. 29 supplements Convention No. 29 by establishing legally binding standards on measures to prevent and address forced labour and trafficking in persons, and to provide protection and access to appropriate and effective remedies to victims.
- **Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203):** Recommendation No. 203 supplements both Protocol No. 29 and Convention No. 29. It provides non-binding guidance on the specific measures to be taken by member States in giving effect to their obligations with regard to the prevention and elimination of forced labour, the protection of victims and their access to effective remedies, including compensation.



The responsibility of businesses to respect human rights and core labour standards

While the primary duty to implement the legal obligations set in international labour treaties rests with Governments, employers and businesses have an important role to play in combating forced labour.

Protocol No. 29 requires States to support due diligence in the public and private sector.⁹ According to Recommendation No. 203, which provides non-binding guidance on the implementation of the Protocol, member States should support employers and businesses to identify, prevent, mitigate and account for how they address the risks of forced labour in their operations, or in products, services or operations to which they may be directly linked.¹⁰

The language used in Protocol No. 29 and Recommendation No. 203 reflects the framework set out in the **UN Guiding Principles on Business and Human Rights**, which includes the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for greater access by victims to effective remedies, both judicial and non-judicial.¹¹

According to Principle 12 of the UN framework, “the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.”

See **Chapter 3** for practical guidance on how to eliminate risks of forced labour in company operations, including recruitment, employment and sourcing practices.

⁹ Article 2(e) of the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).

¹⁰ Paragraph 4(j) of the Forced Labour (Supplementary measures) Recommendation, 2014 (No. 203).

¹¹ UN Office of the High Commissioner for Human Rights (OHCHR), 2011. UN Guiding Principles on Business and Human Rights.

Available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [21 July 2015].

2.1.1.1. The ILO indicators of forced labour

The ILO indicators of forced labour are intended to help in the identification of a potential situation of forced labour. The indicators represent the most common signs or “clues” that point to the possible existence of a forced labour case.

While the presence of a single indicator may, in some cases, imply the existence of forced labour, most cases of forced labour will feature several indicators, which may need to be considered in conjunction.

Below is a non-exhaustive list of forced labour indicators created by the ILO:¹²

- **Abuse of vulnerability:** Specific groups of workers might be more at risk than others, including migrant workers, indigenous and tribal peoples, and low-skilled workers. An employer might take advantage of a worker’s vulnerable position, for example, to lure him/her into exploitation or to prevent the worker from leaving the job.
- **Deception:** Victims of forced labour are often recruited under false promises of decent, well paid jobs. In such cases, their ability to consent to the work to be performed is hindered by the element of deception.
- **Restriction of movement:** Forced labourers may be locked up and guarded to prevent them from escaping, at work or while being transported. Forced labourers may also have their movements controlled inside the workplace, through the use of surveillance cameras or guards, or through the retention of identity documents.
- **Isolation:** Victims of forced labour might be isolated due to the remote location of the worksite. However, workers may also be isolated within populated areas, where they might be kept behind closed doors or might have limited access to means of communicating with the external world.
- **Physical and sexual violence:** Victims, as well as family members and those with whom the worker has a close relationship, might be subjected to violence or might face threats of punishment.
- **Retention of identity documents:** The retention by the employer of identity documents or other valuable personal possessions might be used to prevent workers from leaving the job without risking their loss.

¹² ILO. 2012. *Indicators of forced labour* (Geneva).

- **Intimidation and threats:** For example, victims might face threats of denunciation to authorities or dismissal when they complain about the conditions of work.
- **Withholding of wages:** Workers may be obliged to remain with an abusive employer while waiting for the payment of wages that are being deliberately withheld.
- **Debt bondage:** Forced labourers are often working in an attempt to pay off a debt owed to the employer, which could be related to wage advances, loans or recruitment fees.
- **Abusive working and living conditions:** Substandard working and living conditions alone do not prove the existence of forced labour. However, abusive conditions should represent an “alert” to a situation of coercion that might be preventing the exploited workers from leaving the job.
- **Excessive overtime:** The determination of whether or not the obligation to perform overtime work constitutes an element of a forced labour situation can be quite complex. As a rule of thumb, if employees have to work overtime beyond the limits established under national law, under some form of threat (e.g. of dismissal) or in order to earn at least the minimum wage, this might indicate a situation of forced labour.

2.1.2 Prohibition of trafficking in persons

Trafficking in persons is prohibited in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), supplementing the UN Convention against Transnational Organized Crime (UNTOC). Viet Nam ratified the Trafficking Protocol in 2012.

Member States ratifying the Trafficking Protocol have the obligation to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives.

The Trafficking Protocol defines trafficking in persons as:

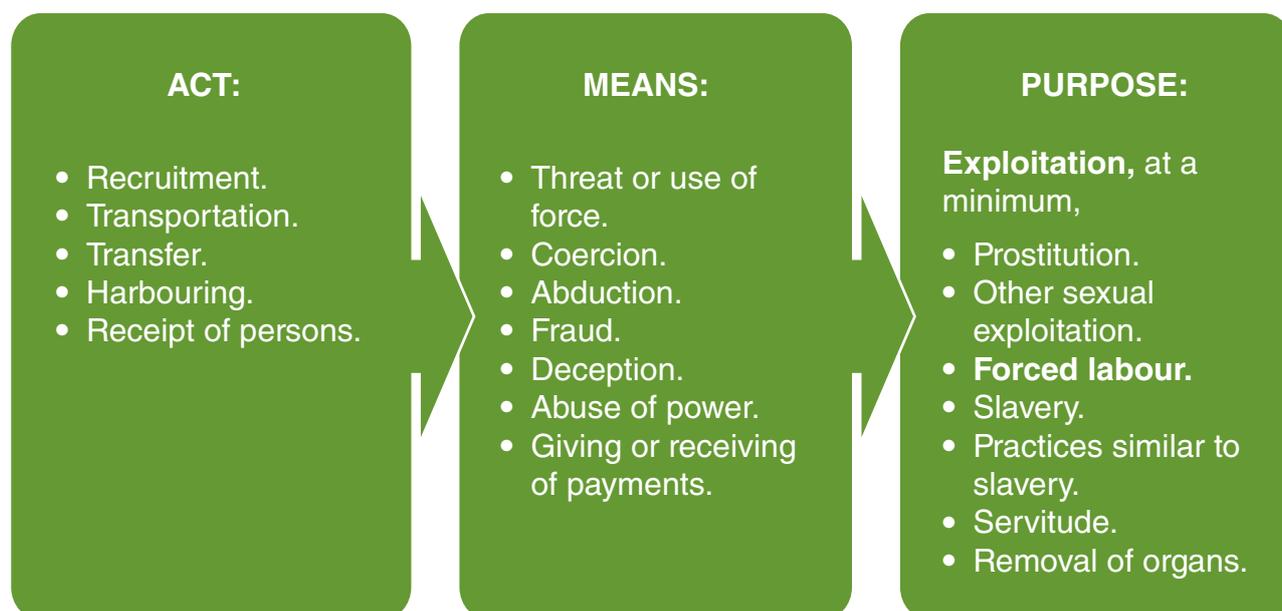
Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In the case of children, an act committed for the purpose of exploitation is considered to constitute trafficking even if none of the specified means is used. In all cases, the consent of a victim of trafficking to the intended exploitation is irrelevant where any of the specified means has been used.

The concept of forced labour is closely related to the concept of trafficking in persons. Trafficking in persons is often understood as a process that leads to different exploitative outcomes, one of which is **forced labour**. Protocol No. 29 explicitly provides that measures to address forced labour must include specific action against trafficking in persons for the purposes of forced labour.¹³

Elements of the trafficking in persons definition



¹³ Article 1(3) of the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).

2.2 Vietnamese legal framework on forced labour and trafficking in persons

2.2.1 Prohibition of forced labour in Vietnamese Labour Code

Forced labour is prohibited under Article 8(3) of Vietnamese Labour Code, 2012. Article 3(10) of the Labour Code defines forced labour as follows:

"To extract forced labour" shall mean to use force, or to threaten to use force or a similar practice to force a person to work against his or her will.

The Labour Code also prohibits certain practices that might be related to a situation of forced labour. These practices prohibited by the Labour Code include, most importantly:

- Deception in recruitment practices (Article 8.6)
- Retention of identity documents (Article 20.1)
- Requirement of deposits before employment (Article 20.2)
- Violations of workers' right to overtime pay (at least 150 per cent the standard wage on a regular day, 200 per cent on the weekend and 300 per cent for work on public holidays) (Article 97)
- Excessive wage deductions (monthly deduction must not exceed 30% of the net monthly wage of the employee, after the payment of compulsory taxes and social insurance) (Article 101)

In addition, the Labour Code provides a specific requirement to comply with regional minimum wages (Article 90.1). It establishes that any delays in wage payment, where unavoidable, must not exceed one month and the wage must include interest not lower than that set by the State Bank of Viet Nam (Article 96). The Labour Code also establishes that workers have the right to unilaterally terminate their contract in situations of maltreatment and harassment (Article 37).

On underage workers, the Code specifies that those younger than 15 are only allowed to work part time (20 hours per week) and prohibits employers from asking minors to work night shifts and overtime.

Decree 95/2013/ND-CP and Decree 88/2015/ND-CP support the implementation of the Labour Code and other labour regulations by providing sanctions for a number of violations that might be related to a situation of forced labour.

Box 7

Case example: Forced labour in a garment factory, Viet Nam

In 2013, 12 children of the Khmu ethnic group were rescued from a garment factory in Ho Chi Minh City, Viet Nam. From a mountainous town 2,100 kilometres away, their parents entrusted the children to recruiters promising vocational training and additional income for the family. The children, however, spent the next two years locked in a cramped room making clothes for a small garment factory, for no pay. They were made to work from 6 a.m. until midnight and were punished with beating if they made a mistake.

Following the police raid the factory owners were fined US\$500 for violating the labour code and the factory was closed down. However, there was no further prosecution.

Source: Brown, M. 2013. "Vietnam's lost children in labyrinth of slave labour," in *BBC*, 27 Aug. 2013. Available at: <http://www.bbc.com/news/world-asia-23631923> [3 Dec 2015].

2.2.2 Criminalization of forced labour in Vietnamese Penal Code

Article 297 of the Vietnamese Penal Code 2015 establishes criminal sanctions for forced labour. Forced labour offense was added in the Penal Code in 2015 to bring Vietnamese legal framework to closer conformity with Convention No. 29.



Article 297. Forced labour

1. Those who use violence, threaten to use violence or other means to force other persons to work, in one of these following circumstances, shall be subject to a fine of between fifty million and two hundred million dong, non-custodial reform for up to 3 years or be sentenced to between 06 months and 03 years of imprisonment:
 - (a) Have been administratively sanctioned for these acts or sentenced for this offence but not yet entitled to criminal record remission and repeat their violations;
 - (b) Intentionally cause injure or cause harm to the health of 01 person with an infirmity rate from 31% to 60%;

- (c) Intentionally cause injury or cause harm to the health of 02 persons or more with the total infirmity rate of these persons from 31% to 60%.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and seven years of imprisonment:
 - (a) In an organized manner;
 - (b) Against two persons and above;
 - (c) Against persons under age of 16, pregnant women, old and weak or sick persons, persons with serious disabilities;
 - (d) Cause death to 01 person or intentionally cause injure or cause harm to the health of 01 person with an infirmity rate of 61% and above;
 - (d) Intentionally cause injure or cause harm to the health of 02 person with an infirmity rate of each person from 31% to 60%;
 - (e) Intentionally cause injure or cause harm to the health from 03 persons and more with the total infirmity rate of these persons of 61% or more.
 - (f) Dangerous recidivism;
 3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between 07 and 12 years of imprisonment:
 - (a) Cause death to 2 victims or more;
 - (b) Intentionally cause injury or cause harm to the health of 02 persons or more with an infirmity rate of each person of 61% and above;
 - (c) Intentionally cause injury or cause harm to the health from 03 persons and more with the total infirmity rate of these persons from 122% and above.
 4. The offenders may also be subject to a fine of between thirty million dong and one hundred million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

Prior to the 2015 Penal Code amendment, cases of forced labour were prosecuted under other Penal Code provisions. Provisions that were applied for cases of forced labour include: causing bodily harm (Article 104); the illegal arrest, custody or detention of people (Article 123); using fraudulent means to obtain property (Articles 139 and 140); breaching regulations on labour safety, labour hygiene, and safety in crowded places (Article 227); and bribing or coercing other persons to make false declarations or to supply untrue documents (Article 307).

Box 8

Case example: Forced labour in a wood processing enterprise in Viet Nam

In July 2013, a male worker who was subjected to abusive working conditions in a wood processing enterprise in Binh Duong province, Viet Nam, died after a failed attempt to flee by swimming across a lake of hundreds of square meters. This led to a wider police investigation of the enterprise, which revealed conditions of forced labour.

Workers were often requested to work hard for more than 10 hours. All of them were recruited through brokers and most of them belong to the Khmer ethnic group. The enterprise owner paid brokers a fee of VND 500,000 - 800,000 (US\$25-40) per worker, which was then deducted from workers' salaries. The personal documents of all workers were confiscated by the employer, and the company was surrounded by iron fences, a vast lake and guarded by dogs.

Workers lived onsite and were totally dependent on the owner for their necessities, including food and accommodation. During working hours, workers' mobile phones were seized so they could not communicate with anyone. Additionally, the employer always locked the door of the wood processing enterprise and monitored workers with eight security cameras.

"At first he told us to work a minimum of two months to be paid. However, after two months, he promised to pay our salaries after a year and forced us to continue to work if we did not want to lose our wages. Some workers wanted to quit even without being paid but he did not return personal papers to them and threatened them," a worker told police.

In July 2014, the owner of the wood processing enterprise, was found guilty of illegally detaining people under the Vietnamese Penal Code and sentenced to 25 months imprisonment.

Source: Nguyen, S. 2013. "Binh Duong: Labour abuse detected at wood processing enterprise", in *VietNamNet Bridge*, 19 June 2013. Available at: <http://english.vietnamnet.vn/fms/special-reports/77422/binh-duong--labor-abuse-detected-at-wood-processing-enterprise.html> [18 December 2014].

2.2.3 Criminalization of trafficking in persons in Vietnamese penal code

The Vietnamese Penal Code 2015 establishes criminal sanctions for several offenses relating to trafficking in persons. Two of these offenses explicitly prohibit **trafficking in persons for the purpose of forced labour**, namely trading in persons (Article 150) and trading in persons under age of 16 (Article 151).



Article 150. Trading in persons

1. Those who, by means of the use or threat of violence, fraud or resort to other tricks, commit one of the following acts shall be sentenced to between five and ten years of imprisonment:
 - (a) Transfer or receive human being for the purpose of giving or receiving money, assets or other physical benefits;
 - (b) Transfer or receive human being for the purpose of sexual exploitation, **forced labour**, removals of organs of the victims or for other inhuman purposes;
 - (c) Recruit, transport, harbor human being to commit the acts defined at points a and b of this section.

2. Committing the crime in one of these following circumstances, the offenders shall be sentenced to between eight and fifteen years of imprisonment:
 - (a) In an organized manner;
 - (b) For despicable motives;
 - (c) Cause mental and behaviour disorder for victims from 11% to 45%;
 - (d) Intentionally injure or cause harm to the health of victims with an infirmity rate of 31% or more, except for acts defined at point b of the clause 3 of the Article;
 - (d) Take the victim out of the border of the Socialist Republic of Vietnam;
 - (e) Against from two to five victims;
 - (f) Commit offence two times and above;

3. Committing the crime in one of these following circumstances, the offenders shall be sentenced to between twelve and twenty years:
 - (a) Being of professional characters;
 - (b) Removal of the victim's organ;
 - (c) Cause mental and behaviour disorder for victims from 46% or more;
 - (d) Cause death to victims or make them commit suicide;
 - (d) Against 6 victims or more;
 - (e) Dangerous recidivism.

4. The offenders may also be subject to a fine of between twenty million dongs and one hundred million dongs, to probation or residence ban for one to five years, or to confiscate all or part of their assets.



Article 151. Trading in persons under age of 16

1. Those who commit one of these following acts shall be sentenced to between seven and twelve years of imprisonment:
 - (a) Transfer or receive persons under age of 16 for the purpose of giving or receiving money, asset or other physical benefits except for humanitarian purposes;
 - (b) Transfer or receive persons under age of 16 for the purpose of sexual exploitation, **forced labour**, removals of the victims' organs or other inhuman purposes.
 - (c) Recruitment, transport, harbor persons under age of 16 to commit the acts defined at points a or b of this section. at points a or b of this section

2. Committing the crime in one of these following circumstances, the offenders shall be sentenced to between twelve and twenty years of imprisonment:
 - (a) Abuse position, authorised power;
 - (b) Abuse child adoption to commit the crime;
 - (c) Against two to five children;
 - (d) Against the persons that offenders are responsible for care and nurture;
 - (d) Take the victim out of the border of the Socialist Republic of Vietnam;
 - (e) Commit the offence two times and above;
 - (f) For despicable motives;
 - (g) Cause mental and physical disorder of victims from 11% to 45%;
 - (h) Intentionally injure or cause harm to the health of victims with an infirmity rate of 31% or more except for acts defined at point d of the clause 3 of the Article.

3. Committing the crime in one of these following circumstances, the offenders shall be sentenced to between eighteen and twenty years of imprisonment or life imprisonment:
 - (a) In an organised manner;
 - (b) Being of professional character;
 - (c) Cause mental and behaviour disorder for victims from 46% or more;
 - (d) Removal of the victim's organ;
 - (d) Cause death to victims or make them commit suicide;
 - (e) Against 6 victims or more.
 - (f) Dangerous recidivism.

4. The offenders may also be subject to a fine of between fifty million dongs and two hundred million dongs, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years, subject to probation for one to five years or to confiscate all or part of their assets.

2.2.4 Law on Prevention, Suppression against Trafficking in Persons of 2011

Article 3.2 of the Law on Prevention, Suppression against Trafficking in Persons of 2011 (the Anti-Trafficking Law) prohibits forced labour. Article 2.3 of the Law defines forced labour as:

“Forced labour” means the use of force or the threat of use of force, or other means to coerce persons to work against their will.

The Anti-Trafficking Law outlines the responsibilities of different authorities in preventing and addressing trafficking in persons, as well as the rights and obligations of victims and the principles for handling cases of trafficking. However, the Law does not establish penal sanctions for trafficking in persons. Criminal cases are therefore handled under the Penal Code.

Guiding principles on eliminating risks of forced labour in company operations

Preventing and responding to risks of forced labour in company operations requires due diligence by businesses. This chapter provides practical guidance on how to manage risks of forced labour associated with recruitment, employment and sourcing practices.

These guiding principles are drawn from national laws, as well as ILO Conventions, Protocols and Recommendations, ILO instruments such as the Declaration on Fundamental Principles and Rights at Work and its Follow-up and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Trafficking Protocol and the UN Guiding Principles on Business and Human Rights. The principles address business actors, and aim to provide clear and practical interpretation of international labour standards.¹⁴

The guiding principles introduced in this chapter can be used alongside the **Red Flags Checklist**, which is in Annex 1. of this guide. The Red Flags Checklist is designed to help in identifying abusive practices that could lead to allegations of forced labour. In order to ensure the effectiveness of risk mitigation strategies, companies may wish to take steps to assess and monitor compliance with the present guiding principles and the Red Flags Checklist by all business partners, including suppliers and subcontractors.

3.1 Guiding principles for eliminating risks of forced labour in recruitment practices

Forced labour may emerge as a consequence of deceptive or coercive recruitment practices. Additionally, recruitment through unaccredited third parties, such as informal labour brokers and recruitment agencies may increase workers' vulnerability to debt bondage through the charging of exorbitant recruitment fees, increasing also the risks of labour exploitation and forced labour.¹⁵

The below guidelines for employers describe some of the measures that might help in preventing abuses such as deception and coercion from occurring in recruitment practices.

¹⁴ Adapted from ILO: *Combating forced labour. Handbook for employers and business, Booklet 3: Guiding Principles to Combat Forced Labour*. (Geneva: 2015 – revised edition).

¹⁵ ILO: *The Cost of Coercion*, paras. 102, 104 and 112-116. (Geneva: 2009).

3.1.1 Fair recruitment practices

- ✓ Always provide comprehensive and truthful information about the nature of the job and conditions of work in job advertisements and in communication with job applicants. Do not try to attract workers through deceitful promises or misleading information about the job, as this could be perceived as deception in recruitment.
- ✓ Ensure that all workers enter into employment voluntarily and freely, without any kind of a threat of a penalty.¹⁶
- ✓ Hold periodic trainings for managers, supervisors and workers on good and bad practices relating to hiring.

3.1.2 Prohibition of charging recruitment fees and requiring deposits

- ✓ Do not charge any fees or costs for recruitment directly or indirectly to the worker.¹⁷ Costs associated with the processing of official documents or, in the case of foreign workers, work visas, shall also be borne by the employer. If companies benefit from the services of recruitment agencies, all related agency fees should be borne by the enterprise, not by the worker.
- ✓ Do not require employees to lodge a deposit when they begin employment.¹⁸

3.1.3 Hiring workers through recruitment or placement agencies

- ✓ If you are using recruitment or placement agencies to hire workers, take measures to ensure that the agency does not engage in fraudulent recruitment practices.¹⁹
- ✓ Take measures to ensure that the agency does not charge fees, and that no fees or costs related to recruitment are borne by the workers.²⁰
- ✓ Use recruitment agencies that operate to a high standard of ethics and are licensed and certified by the provincial labour management authority.²¹
- ✓ If you use contract labour provided by a placement agency, make sure the placement

¹⁶ Legal reference: ILO Forced Labour Convention, 1930 (No. 29).

¹⁷ Legal reference: ILO Private Employment Agencies Convention, 1997 (No. 181).

¹⁸ The practice of requiring deposits from workers is prohibited under Article 20 of the Labour Code.

¹⁹ Legal reference: ILO Private Employment Agencies Convention, 1997 (No. 181).

²⁰ Legal reference: ILO Private Employment Agencies Convention, 1997 (No. 181).

²¹ In accordance to Article 14 of the Labour Code, employment service enterprises are established and operated under the Enterprise Law and must have the license to conduct businesses in employment services granted by the provincial labour management authority.

agency complies with the law and relevant collective agreements, and provides the workers with fair wages and other terms and conditions of work equivalent to those of your direct employees.

- ✓ Before contracting a private employment agency, learn more about it and meet with representatives of the agency to discuss policies concerning recruitment fees and other employment practices.

3.1.4 Hiring foreign migrant workers

- ✓ Like any other workers, foreign migrant workers have the right to enter into employment voluntarily and freely, and to terminate employment with reasonable notice in accordance with national law, without the threat of a penalty.²²
- ✓ Before hiring foreign migrant workers, check their immigration status and work permits in order to determine whether such status imposes limitations with regard to employment, to the type or duration of the work to be performed, or to the number of weekly/daily hours of work allowed.

3.1.5 Transparent contracts

- ✓ Provide written contracts of employment to all workers. Contracts should be drafted using language and wording that workers can easily understand.
- ✓ Ensure that employment contracts clearly indicate the workers' wages, working hours, valid grounds for termination, and other terms and conditions of work.²³

3.2 Guiding principles for eliminating risks of forced labour associated with employment practices

Once workers have engaged in employment, forced labour may emerge, for example, if coercive or abusive practices are used to increase productivity; if workers are forced to work under substandard or unsafe conditions; or if workers' ability to terminate employment is limited. The below guidelines describe a number of steps that might help mitigating risks of forced labour emerging from employment practices that might be deemed exploitative.

²² Legal reference: ILO Forced Labour Convention, 1930 (No. 29), Migration for Employment Convention, 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

²³ For a complete list of legal requirements regarding employment contracts, see Article 23 of the Labour Code.

3.2.1 Compensation

- ✓ Always pay wages regularly and directly to the worker.²⁴ An employee who receives an hourly, daily or weekly wage shall be paid upon the completion of the hour, day or week of work, or paid in a lump sum as agreed by the two parties. An employee who receives a monthly wage shall be paid once a month or once every half of the month.
- ✓ Avoid non-payment or delayed payment of wages that may have the effect of binding workers to employment. When a delay is unavoidable, the delay should not be longer than one month and the delayed wage payment has to include an interest rate not lower than the one set by State Bank of Viet Nam.
- ✓ Comply with the local minimum wage requirements.²⁵ The national and regional minimum wages are set by the National Wage Council and are revised annually. The latest information can be found on the MOLISA website or the appropriate decree on minimum wages.
- ✓ Workers that earn wages calculated on a performance-related or piece-rate basis shall be paid at least the legally mandated minimum wage.
- ✓ Create a standardised pay slip and a payment system that provides clear and transparent information about the hours worked, wage rates, and legal deductions (if applicable) to prevent a miscalculation of wages.

3.2.2 Wage deductions and in-kind payments

- ✓ Deception in wage payment, wage advances and loans to employees shall not be used as a means to bind workers to employment.²⁶
- ✓ No deductions from wages shall be made with the aim of indebting a worker and binding him or her to employment. Only deductions authorized by national law or collective agreement can be made.²⁷
- ✓ Deductions for the loss of or damage to tools, material or equipment supplied by the employer should only be made if the worker concerned can be clearly shown to be responsible for the alleged damage.²⁸

²⁴ Legal reference: ILO Protection of Wages Convention, 1949 (No. 95).

²⁵ According to Article 91 of the Labour Code.

²⁶ Legal reference: ILO Forced Labour Convention, 1930 (No. 29).

²⁷ Article 101 of the Labour Code specifies that any monthly deduction must not exceed 30 per cent of the net monthly wage of the employee and the employee has the right to be informed of the reasons for the deductions.

²⁸ Legal reference: ILO Protection of Wages Convention, 1949 (No. 95) and the Protection of Wages Recommendation, 1949 (No. 85).

- ✓ Make sure that deductions from wages do not push workers' take home pay below the minimum wage.
- ✓ Payments-in-kind in the form of goods or services shall not be used to create a state of dependency of the worker to the employer. Payments in the form of vouchers or coupons should not be used.
- ✓ In-kind payments must be appropriate for the personal use of workers and the value attributed has to be fair and reasonable. Payment in liquor of high alcoholic content or noxious drugs is not permitted in any circumstances.²⁹
- ✓ Workers shall not be compelled to make use of company stores or services operated in connection with an undertaking.

3.2.3 Loans and advanced payments to employees

- ✓ Workers shall not be held in debt-bondage or forced to work to pay off an actually incurred or inherited debt.³⁰
- ✓ Be cautious about providing wage advances and loans to employees. If you do, make sure the amounts provided can be repaid within a reasonable amount of time. For example, provide smaller loans, use shorter instalment periods and lower your interest rates.

²⁹ Legal reference: ILO Protection of Wages Convention, 1949 (No. 95).

³⁰ Legal reference: ILO Forced Labour Convention, 1930 (No. 29).

Box 9

Employer-sponsored training and risks of forced labour

If a company requires an employee to work for a specific period of time to repay the costs associated with training, is this considered forced labour?

Companies sometimes make significant investments to improve the skills or knowledge of their staff, particularly when the training is only available overseas. They may then conclude an agreement with the trainee to work for the company for a certain period of time, so as to recoup the cost of investment.

Such agreement reduces the freedom of the worker to terminate the employment relationship, and could thus – in some specific cases – give rise to a situation of labour exploitation and, in the most extreme cases, forced labour. However, several factors should be taken into account to determine whether a situation amounts to forced labour, for example:

- If the worker-trainee has accepted the condition of staying with the company following the training, and if the period during which the worker-trainee must work to repay the costs of the training has been mutually agreed between the employer and the worker;
- The period needed to recoup the costs, and whether this is reasonable considering the duration and cost of training; and
- Whether the worker-trainee may resign if he or she reimburses part of the costs of the training.

3.2.4 Working hours and rest time

- ✓ Do not require employees to work overtime above the limits permitted in national law and collective agreements. This implies not subjecting workers to threats or punishments (e.g. threats of dismissal) for refusal to work overtime above the said limits. According to the Labour Code, the following limits must be respected:³¹
 - The total normal working hours, including overtime working hours, shall not exceed 12 hours in one day (i.e. daily limit for overtime is four hours).
 - Number of overtime working hours shall not exceed 30 hours in one month or 200 hours in one year.
 - In some special cases, as regulated by the Government, the total number of overtime working hours shall not exceed 300 hours in one year.
- ✓ Do not set performance targets that result in an obligation to work beyond normal working hours to earn the minimum wage.
- ✓ Ensure that all your employees can earn minimum wages without working overtime.
- ✓ Negotiate overtime with your employees and do not make it compulsory. Get their consent to work overtime hours, and stay within the limits and conditions of the law and collective agreements.
- ✓ If periodic use of overtime is required to meet production deadlines, plan ahead, consult workers and give them reasonable notice. Address the root causes that can lead to persistent use of overtime. For example, consult with buyers on questions related to production requirements and deadlines.
- ✓ Discuss the issue of overtime with new employees and make sure they understand the law and relevant company policies.
- ✓ Make information about overtime available to human resources personnel, supervisory staff and workers, clarifying what is and is not allowed under the law. Distribute copies of company policies and make sure everyone concerned understands the relevant provisions. Identify and reward good practice.

³¹ Article 106 of the Labour Code.

3.2.5 Disciplinary measures

- ✓ Do not exact work or service from any person under the menace of any penalty, including use or threat of physical or sexual violence, harassment, abusive language or intimidation.
- ✓ Establish a strict policy on preventing violence, abuse and coercion, and train all relevant personnel on their respective roles and responsibilities under the policy.
- ✓ Do not impose disciplinary sanctions that might result in an obligation to work.³² Disciplinary sanctions involving an obligation to work (including overtime work) should not be imposed as a punishment for participation in strikes.³³

3.2.6 Employment of foreign migrant workers

- ✓ Do not threaten irregular foreign migrant workers with denunciation to the authorities or otherwise coerce such workers into taking up or maintaining employment (e.g. through abuse of vulnerability).³⁴

3.2.7 Personal freedom

- ✓ If you provide accommodation to your employees, make sure that their movement is not restricted outside working hours. Coercion shall not be used to confine or imprison workers to the workplace or related premises such as dormitories.
- ✓ Do not use locked doors to prevent workers from leaving the workplace or dormitories.³⁵

3.2.8 Personal documents

- ✓ Do not confiscate or force workers to hand over personal documents or other possessions.³⁶

³² Legal reference: ILO Abolition of Forced Labour Convention, 1957 (No. 105). Convention No. 105 establishes that forced or compulsory labour should not be imposed as a means of labour discipline.

³³ Legal reference: ILO Abolition of Forced Labour Convention, 1957 (No. 105). According to Convention No. 105, forced or compulsory labour shall not be imposed for participation in a strike. See also Better Work CAT – Vietnam, p. 7 (coercion). Available at <http://betterwork.org/vietnam/wp-content/uploads/Vietnam-CAT-for-posting-on-website.pdf> [22 July 2015].

³⁴ Legal reference: ILO Forced Labour Convention, 1930 (No. 29)

³⁵ Better Work: Legal brief underlying Better Work's compliance assessment tool: forced labour. 21 February 2013. Available at <http://betterwork.org/global/wp-content/uploads/Legal-brief-underlying-CAT-Forced-Labour-21-Feb-2013-FINAL-NORMES-CLEAN.pdf> [18 December 2014].

³⁶ Such practices are prohibited under Article 20 of the Labour Code..

- ✓ If requested by employees (e.g. for security or other reasons), provide a safe place to lodge personal documents, for example a locker or secure cabinet. Make sure your employees know where this is and that they can access it freely, upon request. Provide workers with photocopies of their documents, and nominate a "contact" person in your management or supervisory team. Develop policies and procedures for holding such documents that prevent the possibility of abuse.

3.2.9 Termination of employment relationships

- ✓ Do not impose restriction on workers' freedom to terminate employment of indefinite or long duration by means of notice of reasonable length.³⁷ Unless a collective agreement provides for more preferable conditions, workers on a definite term employment contract have the right to terminate their employment with a 30 days' notice, while those on an indefinite term employment contract have the right to terminate their employment with a 45 days' advance notice.³⁸
- ✓ Do not prevent workers from terminating their contracts unilaterally in situations of maltreatment and harassment. According to the Labour Code, an employee has the right to terminate the employment contract with three days' advance notice, if:
 - The employee is not assigned to the work or workplace, or not provided with the working conditions as agreed in the employment contract.
 - The employee is not paid in full or on time as agreed in the employment contract.
 - The employee is maltreated, sexually harassed or is subjected to forced labour.
 - The employee is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days.³⁹
- ✓ Make sure that workers on fixed duration contracts are not required to work beyond the expiration of their contracts without their consent.

³⁷ Legal reference: ILO Forced Labour Convention, 1930 (No. 29).

³⁸ Pursuant to Article 37 of the Labour Code 2012.

³⁹ Article 37 of the Labour Code 2012.

3.3 Guiding principles for eliminating risks of forced labour in sourcing practices

In addition to applying the above principles to monitoring recruitment and employment practices along their supply chains and subcontracting networks, companies may wish to take specific measures in order to mitigate risks of forced labour in their sourcing practices. To this end, companies may wish to consider the following principles:

- ✓ Closely monitor practices both in establishments that supply you with products (e.g. suppliers of raw materials, components, etc.) and among service and logistics providers (e.g. recruitment and placement agencies, security companies, catering and transportation services, etc.).
- ✓ If you source products or services from prisons or administrative detention centres, make sure the prisoners or detainees concerned have voluntarily agreed to perform such work.⁴⁰ Particular attention should be given to the following aspects:
 - Ensure that prisoners or detainees have provided their formal written consent to work. Ask to see employment contracts or standardised written consent forms signed by the prisoners or detainees. The contracts or consent forms should include clear and transparent information on wages and other conditions of work so that prisoners or detainees can give their informed consent to work.
 - Ensure that the prison provides prisoners with wages, social security and occupational health and safety standards that are comparable to those enjoyed by regular workers.
 - Ensure that the prison administration only makes legal deductions from prisoners' wages, for example for food and lodging.

⁴⁰ Legal reference: ILO Forced Labour Convention, 1930 (No. 29). While the use or exaction of prison labour is not, in itself, a violation of international labour standards, certain conditions must be observed in order to ensure compliance with ILO Conventions. In this regard, prison labour performed for the benefit of private institutions can only be carried out on a voluntary basis, with the consent of the individual concerned. Therefore, the ILO supervisory bodies have considered that, given the situation of captivity faced by inmates, in which most conditions are set unilaterally by State authorities, the most reliable indicator of the voluntariness of such work is the fact that inmates enjoy working and employment conditions approximating a free labour relationship.

How can employers take action against forced labour?

4.1 Company-level measures against forced labour

4.1.1 Developing a company policy against forced labour

An increasing number of companies have been developing and adopting corporate codes of conduct as tools to help ensure labour practices in their operations and those of their suppliers are legally compliant. These codes are formal statements of principles that govern the conduct of an enterprise with regard to labour standards (including the use of forced labour), as well as other issues, such as social and environmental compliance.

Compliance tools and due diligence policies are particularly common in export-intensive industries, such as textiles and garments. The majority of prominent apparel companies worldwide have formally (and voluntarily) committed to addressing forced labour by adopting codes of conduct. These often include specific provisions prohibiting exploitative practices, as well as targeted measures and guidelines to ensure that potential violations are remediated.

Developing a voluntary code of conduct or a corporate compliance policy does not have to be difficult. A number of initiatives provide free advice on the steps to take if a company decides to do so.⁴¹ For a **reasonably large company**, some of these steps might include:

- Conducting an assessment of the employment, recruitment and sourcing practices adopted by the company and business partners to determine the degree to which both adhere to national laws and are consistent with industry good practice;
- Establishing a working group composed of strategic members of the staff (e.g. human resources, senior management, supply chain management, communications) to develop a draft code or policy that expresses the company's commitment to prohibit forced labour and trafficking in persons, among commitments to other labour standards;

⁴¹ For further information on developing company guidelines, companies may wish to contact the ILO's Special Action Programme to combat Forced Labour (SAP-FL); the Global Reporting Initiative; Social Accountability International, among others. Companies may also wish to consult tools such as the Handbook on Measure and Improve your Labour Standard Performance of the International Finance Corporation (available at http://www.ifc.org/wps/wcm/connect/177c370048865808b3def36a6515bb18/SAL_IFC_LaborHandbook.pdf?MOD=AJPERES [23 July 2015]).

- Organising internal consultations on the draft (including with workers) and subsequently consulting with appropriate external partners and stakeholders; and
- Revising and finalizing the code or policy and communicating it to all relevant business partners (including suppliers and subcontractors), business associations, employers' organizations, the media, and other stakeholders, including workers and their representatives. Train human resources personnel and supervisors on this policy.

In **small and medium-sized enterprises** (SMEs), several of these steps can be combined and the process might be simplified in order to match the financial and human resources available. In the case of SMEs supplying to larger companies, due consideration should be given to the requirements established in policies adopted by buyers and potential buyers.

The principles presented in **Chapter 3** of this guide for employers and the **Red Flags Checklist** can provide the basis for discussions on the forced labour provisions of a code of conduct or corporate compliance policy to be developed. Companies may also wish to contact VCCI or the Better Work Viet Nam programme⁴² for further advice.

4.1.2 Implementing the policy

Whether a company has developed their own policy, or received a code of conduct from their buyers, having a policy is just the first step in ensuring corporate compliance with international standards and national legislation. This section provides guidance on measures that might contribute to the effective implementation of voluntary compliance policies and tools:

4.1.2.1 Internal audit

Internal audits can help in assessing the level of compliance with company policies - such as codes of conduct - within company operations. Audits might be conducted by internal staff or specialized third parties.

Internal audits might also help identifying potential violations, which could lead to risks of forced labour. The early detection of potential abuses that could lead to allegations of forced labour will enable companies to address them promptly, decreasing risks of judicial action, reputational damage and divestment. By effectively addressing violations, companies are also likely to preserve their image and, consequently, their competitiveness in the market.

⁴² Better Work is a partnership programme between the ILO and the International Finance Corporation (IFC) launched in 2007 to improve working conditions in garment. It has established programmes in seven countries: Cambodia, Haiti, Jordan, Lesotho, Indonesia, Vietnam and Nicaragua. By 2017, Better Work will have improved the lives of at least 3 million workers and millions more of their family members.

4.1.2.2 Staff training

Companies may wish to provide training to managers, supervisors and workers on how to identify, report and address forced labour. This would have the broad aim of ensuring more effective implementation of the company's policy or code of conduct, as well as more consistent levels of compliance across the company. In particular, the training would build the capacity of key personnel to identify and prevent forced labour, and take corrective action, where necessary.

Training on the identification and prevention of forced labour and trafficking in persons might be conducted alone or can be integrated into other programmes. You may wish to contact VCCI or the Better Work Viet Nam for assistance in planning and delivering training activities.

4.1.2.3 Communicating with stakeholders

Having invested in the relevant measures to address and prevent forced labour, companies might also want to communicate their efforts to stakeholders and the general public. This can be done through the company's website, newsletters or as an attachment to the company's annual report. With regard to the elimination of forced labour, the report should indicate the operations that are more prone to the incidence of labour exploitation and forced labour, and what measures have been taken to prevent and remediate such abuses.

4.1.3 Handling forced labour related complaints

Employers should establish internal procedures for dealing with employee grievances and complaints, including those relating to cases of forced labour. An effective internal mechanism through which workers can confidentially report abuses and voice concerns allows for a prompt response, and can play an important part in cultivating good management-worker relations.

For example, complaints related to overtime and withholding of wages, which could lead to allegations of forced labour, can be promptly solved by addressing irregular policies or practices at the workplace level. Disregarding employee complaints until they are taken to court is risky, and could result in reputational damage and potential criminal prosecution, or administrative penalties.

Steps for developing a grievance procedure include:

- ✓ Prepare the grievance procedure in written form. It can be prepared separately or as part of the forced labour policy or code of conduct.

- ✓ State the company's commitment to resolving any grievance in a fair, confidential, efficient and thorough manner.
- ✓ Commit to treating all grievances seriously, and to conducting proper investigations in each case.
- ✓ Guarantee protection from harassment, prosecution or any other form of reprisal or retaliation to complainants, victims and other persons associated with the submission of a complaint. The designated person to handle complaints has to be trained in confidentiality as well as knowing what to do once a complaint is received.
- ✓ Define the steps for bringing a complaint. These should be simple and accessible to all employees.
- ✓ Define the timeframe for considering the case and providing a resolution.
- ✓ Provide a channel through which employees may bring complaints to the next level of management if he or she is not satisfied with the initial response.

The procedure should be presented and explained to all employees, and line managers should be trained in applying it in practice. Employers should also ensure that line managers and supervisors understand both the importance of the grievance process and their personal role in maintaining core labour standards in the workplace.

4.1.4 Monitoring and remedying labour standards performance in supply chains

In addition to company-level implementation, if resources allow, company codes of conduct should be applicable throughout supply chains. Suggested steps to address risks of forced labour in the supply chain include:

4.1.4.1 Screening prospective suppliers

Companies should seek suppliers who understand and share similar values concerning the problems of forced labour. The initial screening might involve checking working conditions and recruitment and employment practices adopted by a potential supplier. Where enterprises have large numbers of suppliers, they usually have an acceptance procedure with specific requirements that need to be met before a business partnership can be initiated.

4.1.4.2 Communicating company requirements to suppliers

New and existing suppliers are to be made aware that forced labour will not be tolerated. Clear statements, delivered orally and in writing, and up-front discussion will ensure that there is no misunderstanding. Companies might wish to inform the following aspects to suppliers:

- The national legal framework and penalty for forced labour and trafficking in persons.
- Requirements of the company's Code of Conduct or other company policies, if these are higher than the national legal standards.
- Monitoring procedures to be undertaken.
- Consequences for non-compliance.

Chapters 2 and 3 of this guide for employers and the **Red Flags Checklist** contain information on the national legal framework on forced labour and present guidelines to eliminate risks of forced labour in company operations. These can be used as a useful reference when communicating the above points to your suppliers.

4.1.4.3 Supplier contracts

Contracts with suppliers can set out the basic labour conditions, including the prohibition of forced labour and trafficking in persons. The consequences of breaching these conditions, including the possible termination of the contract, can be stated clearly to avoid confusion.

While some buyers will terminate contracts with suppliers immediately when found in breach, most opt for a constructive, collaborative approach so that an effective programme of reform can be developed and put in place.

4.1.4.4 Understanding suppliers

It is important for companies to look at how their own actions might impact on the working conditions in their supply chains. For example, if companies make last minute changes to orders or force suppliers to meet unrealistic deadlines, this will likely result in suppliers forcing their workers to work excessive hours.

By undertaking an assessment of a factory's capacity, companies can ensure that the supplier will be able to meet demands and deadlines without having to resort to forced overtime. A good practice might be to incorporate labour standards as a large part of the assessment process when deciding which suppliers to source from.⁴³

4.1.4.5 Working with suppliers to improve conditions

If forced labour is detected, it is not necessary to immediately abandon the supplier. Instead, the supplier can be given time and support to address the violations that might result in forced labour and to provide workers with working conditions in compliance with national and international labour standards.

⁴³ Experts in Responsible Investment Solutions (EIRIS). 2009. A risky business? Managing core labour standards in company supply chains (London).

Companies should consider developing and implementing a corrective plan with suppliers, taking into consideration workers rights in light of national and international standards. Other organizations, such as VCCI and the Better Work Viet Nam programme, may be brought in to help with the transition.

4.1.4.6 Warnings and dropping suppliers that fail to implement reform

A supplier needs to know that you are serious about prohibiting the use of forced labour. It can be made clear that if concrete steps are not taken to eliminate the problem, contracts will be terminated and no new contracts will be issued. For example, if the corrective plan is not implemented in the agreed timeframe or if there are repeated violations, the company might wish to terminate all business with the supplier.

4.1.5 Working with others

Many companies seek to engage with different stakeholders to address forced labour and trafficking. For example, a company may choose to participate in a collective policy statement by an employers' organization or a group of companies. In many cases, this is a group operating in the same sector or industry that jointly develops a code of conduct and related social auditing programme. This gives companies the opportunity to exchange information and develop good practice together.

A company may also wish to work directly with workers' organizations or civil society groups. This can take the form of negotiating an agreement or statement of principle, or involve a joint engagement in the implementation of a company code of conduct.

In the case of SMEs and home workers, cooperatives might also play an important role in establishing standards, monitoring compliance and preventing abuses.

Within the national context, companies can:

- Participate in national and international programmes, including media campaigns, and coordinate with local and national authorities, workers' organizations and other stakeholders.
 - Encourage national and international events among business actors, identifying potential problem areas and sharing good practice.
 - Find innovative means to reward good practice, in conjunction with the media.
- Talk to other companies in your industry, create networks, and use those networks to exchange information and develop an industry-wide approach to forced labour. Take advantage of the services provided by VCCI or the Better Work Viet Nam programme.

- Where possible, participate in prevention and reintegration programmes for former victims of trafficking and forced labour by providing skills development and job training opportunities.

Box 10

Ten principles for business leaders to combat forced labour and trafficking

1. Have a clear and transparent company policy, setting out the measures taken to prevent forced labour and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains;
2. Train auditors, human resource and compliance officers in means to identify forced labour in practice, and seek appropriate remedies;
3. Provide regular information to shareholders and potential investors, attracting them to products and services where there is a clear and sustainable commitment to ethical business practice including prevention of forced labour;
4. Promote agreements and codes of conduct by industrial sector (as in agriculture, construction and textiles), identifying the areas where there is risk of forced labour, and take appropriate remedial measures;
5. Treat foreign migrant workers in the same manner as other workers and in accordance with the law. Monitor carefully the agencies that provide contract labour, especially across borders, blacklisting those known to have used abusive practices and forced labour;
6. Ensure that all workers have written employment contracts, in a language that they can easily understand, specifying their responsibilities and rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour;
7. Encourage national and international events among business actors, identifying potential problem areas and sharing good practice;
8. Contribute to programmes and projects to assist, through vocational training and other appropriate measures, the victims of forced labour and trafficking;
9. Build bridges between governments, workers, law enforcement agencies and labour inspectorates, promoting cooperation in action against forced labour and trafficking;
10. Find innovative means to reward good practice, in conjunction with the media.

Source: ILO. 2008. *Factsheet: Strengthening employers' activities against forced labour* (Geneva).

4.2 Action by employers' organizations and industry associations against forced labour

4.2.1 Developing a strategy or action plan

Employers' organizations and industry associations can play a key role in preventing and addressing forced labour and trafficking in persons. A key first step for employers' organizations and industry associations is to develop a strategy or action plan to address forced labour and trafficking in persons in a systematic and sustainable way, and encourage strategic thinking on tackling the problem. Detailed contents of the strategy need to be determined by the organization itself depending on the expertise it has on social issues; the nature of the services it already provides to its members; and the unique position employers have as key labour market actors.

The two key areas of action by employers' organizations and industry associations are providing advice to members and raising awareness; and social dialogue and engaging with others in taking action.

4.2.2 Providing advice to members and raising awareness

Providing advice and raising awareness is one of the key functions of employers' organizations. Forced labour and human trafficking can be complex and confusing topics for employers, and they may be misunderstood or confused with other concepts. For example, a manager may simply not know what debt bondage or coercion refer to. For this reason, a key starting point for any employers' organization is to provide information and advice to its members

As part of the overall strategy, an employers' organization might choose to designate a member of its staff as a focal point on forced labour. The key here is that the members have a single person within the organization to whom they can go should they have inquiries or require assistance.

One of the duties of a Focal Point is to disseminate information to your members. At a basic level, enterprises will want to know about the law and relevant provisions in the labour and criminal codes. You may also want to consider providing information about international buyers and corporate social responsibility.

Employers' organizations may also wish to offer their members advice on combating forced labour. This can be done person-to-person through the focal point; or the organization can facilitate the exchange of ideas between members. Companies can learn a great deal from

each other and your organization may want to play a role in documenting and disseminating examples of good practice.

4.2.3 Social dialogue and engaging with others in taking action

The key role of an employers' organization is engaging government in legislative reforms and policy development. Employers' organizations can be fully included in development of state policies with regard to forced labour, and should receive the support needed in fulfilling expectations placed on business. This means that for instance national action plans against forced labour and trafficking in persons should be elaborated in consultation with employers' organizations.⁴⁴ Participation in legislative reforms and policy development ensures that employers' perspectives are represented throughout negotiations.

Employers' organizations also represent their members in dialogue with other actors such as workers organizations, non-governmental organizations, educational institutions and the media. For example, employers' organizations and workers' organizations may want to work together at the sector level to develop a joint statement or implement programmes addressing forced labour and trafficking in persons. Employers' organizations may also wish to participate in programmes that take preventive and protective action against forced labour and trafficking, or seek to rehabilitate and reintegrate former victims of forced labour and human trafficking.

4.3 Who to contact for support in Viet Nam

- Vietnam Chamber of Commerce and Industry (VCCI): <http://www.vcci.com.vn/>
- Better Work Viet Nam: <http://betterwork.com/vietnam/>
- Ministry of Labour, Invalids and Social Affairs (MOLISA):
<http://www.molisa.gov.vn/en/Pages/Home.aspx>
- Vietnam General Confederation of Labour (VGCL):
<http://www.congdoanvn.org.vn>
- ILO Country Office for Viet Nam: <http://www.ilo.org/hanoi/lang--en/index.htm>
- The United Nations in Viet Nam: <http://www.un.org.vn/>

⁴⁴ IOE and ILO. 2015. *IOE-ILO Guidance Note on the 2014 Protocol to the Forced Labour Convention, 1930* (Geneva).

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ANNEX 1.

Red flags checklist for compliance assessment

Checklist

The below **Red flags checklist** is designed to help companies in the textile and garment sector in Viet Nam to assess risks of forced labour in their operations, supply chains and subcontracting networks.

The questions below are not intended to serve as an exhaustive list, according to which a situation will or will not be considered to be forced labour. However, a YES or DON'T KNOW answer to any of the questions indicate that the issue should be given further consideration, or will need to be addressed in order to prevent potential allegations of forced labour.

A. RECRUITMENT PRACTICES				
A.1. FAIR RECRUITMENT	YES	NO	DON'T KNOW	COMMENTS
1. Could the information provided by the company or recruiter during recruitment and in job advertisements be perceived as misleading, particularly with respect to the nature of the job nature and the proposed working conditions?				
2. Is there any evidence that workers have been deceived or coerced into employment, for example, through threats of punishment or false promises during recruitment?				

A.2. RECRUITMENT FEES AND DEPOSITS	YES	NO	DON'T KNOW	COMMENTS
3. Are workers required to pay fees to the employer or a recruiting agent in order to get a job?				
4. Has the company or recruiter failed to disclose recruitment fees in job adverts or in communications with workers?				
5. Have workers been required to lodge a deposit before starting employment?				
6. If workers have been required to pay recruitment fees or to lodge a deposit, are there any restrictions on their ability to terminate employment (upon reasonable notice) related to the repayment of the amount due?				
A.3. RECRUITMENT AGENCIES AND LABOUR DISPATCH AGENCIES	YES	NO	DON'T KNOW	COMMENTS
7. In case of recruitment through third parties, are any of the agencies or recruiters used uncertified or lacking accreditation by the competent national authorities?				
8. Does the company recruit employees through employment agencies or recruiters without monitoring their practices?				
9. In case of hiring workers through labour dispatch agencies, is there any evidence that the dispatch agencies fail to provide workers conditions of work that comply with national law and relevant collective agreements?				

A.4. RECRUITMENT OF FOREIGN MIGRANT WORKERS	YES	NO	DON'T KNOW	COMMENTS
10. During recruitment of foreign migrant workers, does the company sometimes fail to check permits and immigration status of the workers (e.g. failure to assess whether there are legal constraints regarding employment and the type or duration of work to be performed)?				
11. If foreign migrant workers have been recruited, is there any evidence that they have been deceived or coerced into employment, for example, through threats of denunciation to authorities or false promises?				
A. 5. EMPLOYMENT CONTRACTS	YES	NO	DON'T KNOW	COMMENTS
12. Does the company sometimes fail to provide workers with a written employment contract, drafted and presented in a way they can easily understand, prior to starting employment?				
13. Do any of the employment contracts provided by the company lack proper specification regarding workers' wages, working hours, valid grounds for termination, and other terms and conditions required by national law?				

B. EMPLOYMENT PRACTICES

B.1. COMPENSATION	YES	NO	DON'T KNOW	COMMENTS
14. Does the company sometimes fail to pay wages directly to workers?	[Red]	[Green]	[Yellow]	
15. Have there been delays in the payment of workers' wages?	[Red]	[Green]	[Yellow]	
16. Are any of the workers paid wages below the national minimum (including in case of performance-based payment and payment per piece)?	[Red]	[Green]	[Yellow]	
B.2. WAGE DEDUCTIONS AND IN-KIND PAYMENTS	YES	NO	DON'T KNOW	COMMENTS
17. Does the company sometimes pay wages in the form of goods (in-kind) instead of in cash or via bank transfer?	[Red]	[Green]	[Yellow]	
18. Is there any evidence that workers have faced wage deductions beyond the limits permitted by national law or collective agreements?	[Red]	[Green]	[Yellow]	
19. Have wage deductions been made for the loss of or damage to tools, material or equipment in cases where the responsibility of the worker concerned has not been clearly proven?	[Red]	[Green]	[Yellow]	
20. Are any of the payroll records missing?	[Red]	[Green]	[Yellow]	

B.3. LOANS AND ADVANCED PAYMENTS	YES	NO	DON'T KNOW	COMMENTS
21. Does the company require workers to lodge deposits during employment (e.g. for the use of tools, housing, food, etc)?	[Red]	[Green]	[Yellow]	
22. Does the company provide workers to with loans or payment advances during employment?	[Red]	[Green]	[Yellow]	
23. If workers have been required to lodge a deposit or have been provided with loans or payment advances, are there any restrictions on their ability to terminate employment (upon reasonable notice) related to the repayment of the amount due?	[Red]	[Green]	[Yellow]	
24. Is there any evidence that the interest rates and the repayment plan provided the company could limit workers' ability to pay off their debts within a reasonable period of time (i.e. leading to forced indebtedness)?	[Red]	[Green]	[Yellow]	
B.4. WORKING HOURS	YES	NO	DON'T KNOW	COMMENTS
25. Do performance targets require workers to work beyond normal hours in order to earn the minimum wage?	[Red]	[Green]	[Yellow]	
26. Are any of the workers paid incorrectly for overtime work performed?	[Red]	[Green]	[Yellow]	
27. Is there any evidence that workers are required to perform overtime beyond the limits established by national law, without their consent?	[Red]	[Green]	[Yellow]	

28. Is there any evidence that workers may face threats of punishment, such as threats of dismissal and loss of privileges in case of refusal to perform overtime beyond the limits established by national law?				
B.5. DISCIPLINARY MEASURES	YES	NO	DON'T KNOW	COMMENTS
29. Could disciplinary sanctions imposed by the company result in an obligation to work or to perform overtime work?				
30. Have workers ever been forced to work or to perform overtime work for participating in strikes?				
B.6. EMPLOYMENT OF FOREIGN MIGRANT WORKERS	YES	NO	DON'T KNOW	COMMENTS
31. Is there any evidence that foreign migrant workers receive less favourable conditions than those available to their national co-workers?				
B.7. FREEDOM OF MOVEMENT	YES	NO	DON'T KNOW	COMMENTS
32. Is there any evidence that workers are confined to the workplace or dormitories through the use of locked doors and windows, or through constant surveillance by security guards or cameras (i.e. beyond reasonable limitations related to workplace rules)?				

B.8. PERSONAL DOCUMENTS AND POSSESSIONS	YES	NO	DON'T KNOW	COMMENTS
33. Is there any evidence that workers' personal documents or possessions have been confiscated in order to prevent them from leaving employment?				
34. In case workers have voluntarily requested to have their personal documents or possessions safeguarded by the employer, are there any restrictions on their ability to access such documents and possessions freely, upon request?				
B.9 FREEDOM TO TERMINATE EMPLOYMENT	YES	NO	DON'T KNOW	COMMENTS
35. Is there any evidence that workers' freedom to terminate employment, with reasonable notice, and to leave the job when their contracts expire has been restricted at any time?				

C. SOURCING PRACTICES				
C.1. MONITORING SUPPLIERS	YES	NO	DON'T KNOW	COMMENTS
36. Does the company sometimes fail to monitor employment and recruitment practices to control above "Red Flags" in establishments that supply it with products, including raw materials and components?				

37. Does the company sometimes fail to monitor employment and recruitment practices to control the above “Red Flags” in establishments that supply it with services, including recruitment and placement agencies, security companies, catering and transportation services, etc.?				
C.2. USING PRISON LABOUR	YES	NO	DON'T KNOW	COMMENTS
38. If the company is sourcing products or labour from a prison, is there any evidence that prisoners are presented with conditions of work that are less favourable than those available to workers in freedom (i.e. in terms of wages, benefits, hours of work, etc.)?				

Taking action

A YES or DON'T KNOW answer to any of the questions presented in this **Red flags checklist** indicates that it would be prudent for companies to look at the issue into more detail. However, the questions are not intended to serve as an exhaustive list, according to which a situation will or will not be considered to be forced labour. Instead, the checklist is designed to raise awareness of practices that could potentially deteriorate into forced labour and that might require additional attention. Clarity about practices that need attention will in turn help prioritizing issues and optimizing costs in the development of an effective risk mitigation strategy.

For further guidance on how employers, companies, employers' organisations and industry associations can take action against forced labour, please check **Chapter 4** of the present Guide for employers. For clarification on key concepts, indicators of forced labour and the relevant national and international legal framework, please check **Chapters 1, 2 and 3** of the present Guide for employers.

Preventing forced labour in the textile and garment supply chains in Viet Nam: Guide for employers

This guide for employers is intended to help members of the Viet Nam Chamber of Commerce and Industry (VCCI) and other businesses in Viet Nam to assess, identify and mitigate risks of forced labour in their company operations and supply chains. It was jointly developed and issued by the VCCI and the ILO to serve as a reference guide for company managers and staff responsible for human resources management and social and legal compliance issues in Vietnamese textile and garment enterprises. The guide for employers also includes a red flags checklist for compliance assessment.

This guide for employers is supplemented by a guide for trainers, which is designed to support its implementation.

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ISBN: 978-92-2-130747-1 (print)
ISBN: 978-92-2-130748-8 (web pdf)