

VIETNAM IN THE EUROPEAN UNION – VIETNAM FREE TRADE AGREEMENT’S LABOUR COMMITMENTS: REQUIREMENTS FOR LABOUR LAW REFORMS

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ABSTRACT: *The European-Vietnam Free Trade Agreement (EVFTA) is the European Union's (EU) second free trade agreement (FTA) with a member of the Association of Southeast Asian Nations (ASEAN), which also marks a key milestone in the EU's 30-year cooperative relationship with Vietnam. Prior to the ratification of the EVFTA, Vietnam began labour law reforms, most notably the adoption of the new Labour Code in 2019. Therefore, this study assesses the changes in Vietnamese labour law to fulfil EVFTA's labour commitments. Based on EU documents, assessments of the International Labour Organisation (ILO), and related research, we comprehensively evaluate the amendments and supplements, particularly the transformation of ILO core labour standards into Vietnamese law. Accordingly, the study highlights the reforms' positive aspects while also evaluating its unsolved limitations. Apart from this, proposals are made with the expectation that the labour law reforms relating to EVFTA labour obligations would be efficiently implemented.*

KEYWORD: *ILO; EVFTA; labour commitments; reforms; labour standards.*

JEL Code: *K31, K33*

1. INTRODUCTION

After initiating 1986's economic reforms, Vietnam has progressed from being one of the world's poorest countries to being a middle-income country (Nguyen & Ngo, 2020), while vigorously pursuing international economic integration. The faster the economic growth, the more it depends on international commerce and trading relations with countries around the world. In addition to the failure of multilateralism marked by the stagnation of the Doha rounds of negotiations conducted by the World Trade Organisation (WTO), Vietnam has shifted to bilateralism by signing FTAs with major trading partners akin to South Korea, the EU, Japan, and the Comprehensive and Progressive Agreement for

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Trans-Pacific Partnership (CPTPP) (Nguyen & Ngo, 2020). Accordingly, as of May 2023, Vietnam has launched 18 FTA negotiations (15 of which have already taken effect)¹. Vietnam's attempts to integrate economically with the rest of the world have turned it into the FTA hub of Southeast Asia, a strategic region in the world (Barai, Le & Nguyen, 2017), and a major EU partner in Asia. That paved the way for the EU to move towards the most comprehensive and ambitious FTA, signed with a developing country - Vietnam (Delegation of the European Union to Vietnam, 2019).

It might be claimed that the EVFTA indicates a substantial shift in the relationship with labour reforms compared to the FTAs that Vietnam has engaged in. To elaborate, this FTA covers not only economic and trade terms but also trade-labour linkages through labour commitments. Labour commitments here refer to the United Nations' sustainable development goals, the ILO Conventions in the 1998 Declaration (ILO Declaration Fundamental Principles and Rights at Work and its Follow-up), especially the ratification of the ILO Core Labour Standards (Tran, Bair & Werner, 2017) and amendments in internal law to meet these labour standards. As a member of the EVFTA as well as the ILO and the 1998 Declaration, Vietnam has ratified the fundamental ILO Conventions obedience to a roadmap, including Convention no. 98 on Collective Bargaining in June 2019, Convention no. 105 on the Abolition of Forced Labour in July 2020, and Convention no. 87 on Freedom of Association and the Protection of the Right to Organise, which is expected to be ratified in 2023, whilst passing the revised Labour Code in November 2019 (Marslev & Staritz, 2022). This is also why the appearance of the EVFTA, or the labour commitments in the EVFTA, has affected significant changes in Vietnam's labour law. As a result, it is necessary to study changes in the substance of national labour norms to ensure harmony with global labour standards as needed by the agreed labour terms. The research may then be utilised as a blueprint and instructional tool for the EU's ongoing FTA negotiations with developing ASEAN countries (Thailand, Malaysia).

This research primarily assesses the reforms of Vietnam's labour law as demanded by the EVFTA's labour commitments, with a special emphasis on the internalisation of fundamental labour norms into national law. In the first place, this research analyses the formation of the EVFTA and examines the criteria for transforming EVFTA labour commitments into national legislation. This will serve as the basis for explaining the reasons for the reforms of the Vietnamese labour law in the next section. In this second part, the research, on the one hand, discusses the evolution of Vietnam's labour law into three distinct periods; on the other hand, it examines the differences between the old and new versions of the Labour Code together with determines conformity with ILO's core labour standards. Before concluding with key observations and future lessons for other developing countries, the research provides suggestions for further realising the EVFTA's labour commitments in labour law in Vietnam.

¹ Vietnam's FTA as of May 2023, viewed 8 July 2023, Center for WTO and International Trade – VCCI, Hanoi, <<https://wtocenter.vn/thong-ke/13814-vietnams-ftas-summary-as-of-april-2019>>.

2. ACCESSION TO THE EVFTA AND THE REQUIREMENTS OF TRANSPOSING LABOUR COMMITMENTS INTO DOMESTIC LAW

2.1. Paving the way for the EU towards a comprehensive free trade agreement with Vietnam

With a key role in the WTO negotiations, the EU has emerged as a crucial participant and a driving force of change in the global economy (Majchrowska, 2020). Strengthening the multilateral trade system, however, is not an easy task, and the deadlocked discussions inside the WTO framework do not appear to be able to keep up with the changes occurring in the worldwide economy (Majchrowsk, 2020). In that situation, considering the declining effectiveness of multilateral cooperation under the auspices of the WTO, from the EU's trade policy perspective, FTA have been regarded as the prominent alternative form of economic cooperation to preserve trade interests and increase access to new EU markets (Majchrowska, 2020). In terms of the EU, FTAs promote the multilateral trade system by taking a deeper and broader approach to fostering openness and integration, as well as resolving issues that are not ready for multilateral discussion (Commission of the European Communities, 2006). In this scenario, in parallel with Mercado Común del Sur (MERCOSUR)'s regional approach, in order to catch up with the US, Japan, and China's economic influence in the area (Nessel & Verhaeghe, 2021), the EU expresses its ambition to open up emerging markets, which is also the EU's third biggest trading partner (after the US and China) – ASEAN (Majchrowska, 2020). That is why ASEAN is the priority target of new-generation FTAs, given its massive market potential and the level of market protection for the EU's export benefits (Hoang, 2017).

Unfortunately, in light of the initial failure in negotiations, the EU has shifted its focus to bilateral negotiations with the majority of ASEAN's advanced economies (Nessel & Verhaeghe, 2021). There is no doubt that the FTA with Vietnam has the explicit expectation of serving as a platform towards an inter-regional FTA (Majchrowska, 2020), taking into account the following factors:

Firstly, the situation of international integration in Vietnam (Bui, 2021), at this time, Vietnam has achieved great strides in the process of trade liberalisation (Majchrowska, 2020) and diversifying international relations, as shown by the country's involvement in the ASEAN area (Bui, 2021) as well as fulfilling most of its obligations to the WTO (Majchrowska, 2020). In addition to this, Vietnam is now a member of 18 FTAs², the most important of which is the CPTPP.

Secondly, Vietnam's economic development context (Bui, 2021), Vietnam is portrayed as the “emerging market of the future” and “a booming, competitive and connected economy” (Nessel & Verhaeghe, 2021). With regard to the EU, Vietnam is the second-largest trading partner in ASEAN (Majchrowska, 2020), making it a major market for EU exporters and investors (Majchrowska, 2020). Hence, fortifying trade ties with the country's dynamic, growing economy is seen as a top priority (Nessel & Verhaeghe, 2021).

Thirdly, linking in terms of political institutions, in other words, the Vietnam - EU Partnership and Cooperation Agreement laid the foundation for collaboration between the

² Vietnam's FTA as of May 2023, viewed 8 July 2023, Center for WTO and International Trade – VCCI, Hanoi, <<https://wtocenter.vn/thong-ke/13814-vietnams-ftas-summary-as-of-april-2019>>.

EU and Vietnam, with the EU's assistance in reaching Vietnamese development goals. With this regard, an FTA that is institutionally tied to a political agreement would be a vehicle for the parties to realise development goals beyond trade and investment issues (Bui, 2021).

That has paved the way for the EU to move towards the EVFTA - the most comprehensive and ambitious FTA signed with a developing country (Delegation of the European Union to Vietnam, 2019). In terms of comprehensiveness, the EVFTA departs significantly from traditional FTAs, incorporating the following: (i) EVFTA deepens the substance already in conventional FTAs and WTO agreements; (ii) EVFTA adjusts some new issues compared to WTO agreements; and (iii) EVFTA contains comprehensive rules, including commitments to deal with matters beyond the WTO's mandate (Ha & Le, 2019), notably non-commercial standards and values, in which labour standards (Duong, 2021) are integrated into the notion of sustainable development. Therefore, in order for these provisions to be legitimate, the EVFTA demands the parties to commit to upholding, promoting, and effectively implementing the fundamental principles and rights at work, in conjunction with ILO member states' pledges and as per the 1998 Declaration, involving: (i) freedom of association and the effective recognition of collective bargaining rights (C087- Freedom of Association and Protection of the Right to Organise Convention, 1948, and C098 - Right to Organise and Collective Bargaining Convention, 1949); (ii) forced or compulsory labour elimination (C029- Forced Labour Convention, 1930, and C105 - Abolition of Forced Labour Convention, 1957); (iii) effective child labour abolition (C138 -Minimum Age Convention, 1973, and C182 - Worst Forms of Child Labour Convention, 1999); (iv) elimination of employment and occupation of discrimination (C100 - Equal Remuneration Convention, 1951, C111 – Discrimination (Employment and Occupation) Convention, 1958) (Nguyen, Nguyen & Nguyen, 2022). These labour-related obligations are part of a comprehensive agreement to enhance mutual assistance for trade, investment, and labour policy within the framework of Vietnam-EU trade relations (Nguyen & Ngo, 2020).

2.2. The transposition of labour commitments into Vietnamese law

Stemming from the *Pacta sunt servanda* principle on adherence to international treaties³, once Vietnam becomes a member of the EVFTA, it means that Vietnam has obligations to comply and must rigorously implement the recognised provisions of this agreement. It is vital to emphasise that the EVFTA, meanwhile, does not impose new labour regulations but rather refers to ILO Conventions and requires members to participate (Nguyen & Ngo, 2020). This participation manifests in a variety of responsibilities, which include: (i) promulgating and amending laws and policies in tune with internationally recognised standards; (ii) respecting, promoting, and effectively implementing basic principles and rights at work, consistent with the obligations of ILO's members together with the 1998 Declaration; (iii) making a consistent and continuing effort to ratify fundamental ILO agreements that have yet to be ratified along with considering ratifying further conventions; and (iv) effective fulfilment of ILO conventions

³ Art. 26 of the Vienna Convention on the Law of Treaties dated 23 May 1969 by United Nations, states that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

by its own laws and practices⁴. In addition to obligations arising from membership in the agreement, Vietnam, as a member of the ILO and the 1998 Declaration, is also bound to respect, adhere to, and implement core labour standards, whether or not it ratifies the eight conventions (Nguyen & Ngo, 2022). Nevertheless, basic international labour norms do not directly apply to Vietnamese territory, posing the challenge for Vietnam of receiving EVFTA's labour commitments into domestic law and translating them into native labour laws for effective execution (Nguyen & Ngo, 2020).

3. LABOUR LAW REFORMS IN THE LIGHT OF EVFTA'S LABOUR COMMITMENTS AND RECOMMENDATIONS

3.1. Vietnamese labour law under the conditions of reforms

Since the commencement of the renovation and transition to a socialist-oriented market economy in 1986, Vietnam's economic development model has centred on international integration (Marslev & Staritz, 2022). Following that, labour reform took place with the enactment of Vietnam's first Labour Code in 1994, paving the way for market principles to govern employment relations in this country (Nguyen et al., 2021). It is quite true that the opening to the global market, membership in ASEAN (1995), joining the WTO (2007), in addition to ratifying a number of ILO Conventions, namely C100 and C111 (1997), C182 (2000), and C029 (2007), inevitably impacted labour relations and intensified pressure to reform Vietnam's legal system (Sicurelli, 2021).

After amendments and supplements in 2002, 2006, and 2007, the approval of the new Labour Code in 2012 was a watershed moment. Even though most of what is in the Labour Code 2012 is in line with the basic labour standards, like getting rid of forced labour and ending child labour (Ministry of Justice & Minister of Labour - Invalids and Social Affairs, 2020), it was also the first time that dialogue, collective bargaining, and grassroots representation were recognised. But the legal basis for content on the freedom of association, the effective recognition of collective bargaining, and the addressing of all forms of discrimination in employment and occupation have not yet been fully guaranteed (Ministry of Justice & Minister of Labour - Invalids and Social Affairs, 2020). Aside from issues concerning incompatibility with ratified ILO Conventions and non-compliance with unratified Conventions, the most recent Labour Code 2012 did not actually prevent strikes from occurring in reality (Marslev & Staritz, 2022). Thereby, the demand for labour law reforms evolved in tandem with the advent of new generation FTAs, beginning with the Trans-Pacific Partnership Agreement (TPP) and most recently the CPTPP and EVFTA. During negotiations on the TPP prior to its cancellation, the United States and Vietnam signed a bilateral agreement detailing the legal and institutional changes that Vietnam needed to adopt prior to the TPP coming into effect (Buckley, 2021). Consequently, it can be said that the pressure preceding TPP adoption had built momentum as an essential leverage for Vietnam's labour legislation reforms (Marslev & Staritz, 2022). The main purpose of the reforms, however, actually came from the fact that the CPTPP and EVFTA both require signatories to pledge to uphold the Conventions on Fundamental Principles and Rights at Work established by the 1998 Declaration (Tran, 2019). On the CPTPP side, the CPTPP Agreement mandates that its member states make revisions to their indigenous

⁴ Art. 13.4 of the EU-Vietnam Free Trade Agreement.

law and institutions to uphold the core labour values as enshrined in ILO Conventions (Chapter 19) (Nguyen & Ngo, 2020). Regardless, labour law improvements would not be possible without external pressure from the EU (Marslev & Staritz, 2022). This means that the EU required Vietnam to ratify the outstanding core conventions of the ILO and/or amend its labour laws as a pre-condition for the EVFTA to be approved by the Parliament (Bronckers & Gruni, 2019). At this time, the EVFTA served as a catalyst for changes in Vietnamese labour legislation. More specifically, the EU consistently required a roadmap to ratify three basic ILO Conventions, a plan to implement the Trade and Sustainable Development commitments by document, and also a strong acceleration of the progress of the new Labour Code 2019 in the process of getting ready for ratification (Marslev & Staritz, 2022).

Despite the EU's stringent labour standards requirements in the EVFTA (Sicurelli, 2021), the EVFTA essentially refers to the principles and obligations derived from ILO membership, but with more emphasis on enforcement, tighter monitoring, and clearer commitment guarantees prior to FTA ratification (García, 2022). This conditional approach resulted in the breakthrough Labour Code 2019 on paper (Marslev & Staritz, 2022) which would better ensure workers' rights and tackle relational challenges in labour and compliance with EVFTA's labour commitments (Sicurelli, 2021). The actual consequences of these reforms, unfortunately, have not been defined, and implementation has been relatively slow thus far. As of February 2022, the Minister of Labour - Invalids and Social Affairs released 3 out of 4 decrees guiding the application of the new Labour Code, the other dealing with the workers' representative organisations, has not yet been published (Marslev & Staritz, 2022).

3.2. Amendments to Labour Code 2019 within the EVFTA's labour commitments

Legal responsibilities to freedom of association and the effective recognition of collective bargaining rights

It can be stated that the commitments on labour under the EVFTA require the parties to ensure the right to freedom of association in accordance with the spirit of C087 and the right to collective bargaining in fulfilment of the terms of C098. The following two factors guarantee this:

Examining the right to freedom of association, after Vietnam gained its independence, Ordinance no. 29/SL, issued March 12, 1947, stipulated the right to establish and operate representative workers' organisations. In the following years, the legal guarantees that served as the primary source of protection for workers' freedom to form and maintain representative bodies were the Constitution (1992, 2013), the Trade Union Law (1957, 2012), and the Labour Code (1994, 2012). At this point in time, Vietnamese law basically only acknowledged the trade union as the official and sole organisation that represents workers in Vietnam (Tran, 2016) without diversifying the types of representative organisations so that employees have the freedom to select an appropriate organisation on their own (Dao, 2019).

Simultaneously, under the pressure of international integration, Vietnam's labour law reforms is formally transformed from a single-representative labour relations system to a multi-representative labour relations system (Nguyen & Nguyen, 2021) through the recognition of the organisation of employees at the enterprise. It so happens that along

with the modification of the term “representative organisation of workers at the grassroots level” to “representative organisation of employees”, as well as introducing the definition of a representative organisation of workers at the grassroots level (Do, 2021), the new Labour Code, which for the first time explicitly grants employees the right to establish, join, and participate in their own organisations at enterprises beyond trade unions, requires such organisations to register with competent state agencies once they meet the requirements set forth in the law (art. 170, 172). Besides, the Code also stipulates two contents of protections for employee representative organisations at the grassroots level, including protection of employees and staff of the representative organisation from employer discrimination and protection of workers' representative organisations from interference and manipulation with employers (art. 175, 176 and 177) (Nguyen, Nguyen & Nguyen, 2022). It can be acknowledged that this significant step expands workers' freedom of association (Do, 2021) and cultivates conditions for more effective and substantive protection of the rights and interests of workers in enterprises (Tran & Do, 2021), especially foreign workers in Vietnam, since the law previously only recognised Vietnamese workers' right to set up, participate in, and run trade unions (Nguyen, Nguyen & Nguyen, 2022).

Obviously, the expansion of this right is compatible with C087, which addresses the right to freedom of association (Nguyen & Nguyen, 2021), notwithstanding, the Labour Code 2019's provisions do not seem to be specific and tend to limit the right to establish, join, and run workers' organisations in certain aspects (Nguyen, Nguyen & Nguyen, 2022). Indeed, there has not yet been a document that explains the provisions of the Labour Code 2019 related to the order and procedures for the establishment organisation of employees at enterprises. That is why the employee's organisation could not yet be established (Do, 2021). Apart from that, the scope of establishing an employee organisation is limited to the enterprise rather than the industry as a whole, between other units, and between employees who have established an employment relationship at an employer (agency or organisation) on an equal footing. This has resulted in the ILO's standards not being completely reflected in the new Code's provisions (Do, 2021).

Examining collective bargaining, it is important to highlight that the Labour Code 1994 lacked a chapter on collective bargaining, and the Labour Code 2012, in spite of having a number of basic provisions covering purposes, principles, subjects, content, and process, had not yet formulated the concept, in addition to the recognition of the Trade Union as the sole representative organisation for the labour collective in the employer unit, which is in conflict with international conventions (Do & Le, 2018).

Intending to overcome the limitations and also being in alignment with the viewpoint of recognising multi-organisations representing workers, the new Labour Code is reformed to set up a model of collective bargaining with multi-national workers' representative organisations (Nguyen & Nguyen, 2021), whereas also creating the necessary framework for these organisations to compete with one another in terms of representing and protecting the legitimate rights and interests of employees (Tran & Do, 2021). From this point of view, by referring to the provisions on collective bargaining in art. 2 of Convention no. 154, the new Code provides a uniform understanding of collective bargaining (art. 2) with a wide scope in the context of multi-organisations representing employees (Nguyen & Nguyen, 2021). More explicitly, the Labour Code 2019 supplements and clarifies “the right to request collective bargaining of the internal representative organisation of

employees” (art. 68) (Dao, 2021). This provision is considered to be the most important one on collective bargaining in the Labour Code 2019 (Nguyen & Nguyen, 2021), which clearly demonstrates development and is compatible with C087 and C098. In the sense that, through their representatives, the parties are permitted to express their will in self-determination of rights, duties, and interests following the law and the real circumstances of the business while avoiding State interference in labour relations (Tran & Do, 2021).

In fact, Vietnam officially ratified C098 on July 5, 2019⁵. According to Vietnam's Explanatory Report (Ho, 2019) for joining the Convention, the current Vietnamese law, which contains only a few provisions on the content of ensuring voluntariness in collective bargaining, is not entirely compatible with C098 and must be amended so as to comply with this Convention. For example, regarding the levels of collective bargaining, contrary to the principle under international law that the parties are free to choose the level of negotiation they desire, whether it is national, regional, sectoral, or any other level, and regulation should not stipulate that collective bargaining can only be done at a certain number of specific levels (Le, 2019), the Labour Code, meanwhile, sets forth that collective bargaining can only be conducted at the enterprise or industry level (art. 72). As far as the representation ratio is concerned, depending on the minimal membership percentage compared to the total number of workers the organisation represents in the enterprise, the employee representative organisation has the right to propose negotiation or not (art. 68). In this case, there is still no justification for this rate.

Legal responsibilities to abolish all types of forced or compulsory labour

When it comes to ending forced work, Vietnam's labour regulatory system mostly complies with ILO agreements (Phan, 2011). Without a doubt, all forms of forced labour are illegal under Ordinance no. 29/SL, and the Labour Code 1994 and 2012 prohibit forced labour in any form. Moreover, the State's decision to repeal the Ordinance on Public Service Obligations, the prohibition on employers keeping originals of diplomas, certificates, and personal papers of employees, and even the ban on requiring workers to take measures to ensure the execution of labour contracts are all signs that Vietnam's efforts to fully internalise the international principles (Le, 2012). Even so, prior to the reforms, the labour law's ambit was limited to the elimination of forced labour in employment and labour relations (Nguyen, 2020).

As it can be seen, in an effort to broaden the Forced Labour Convention's scope and end the practice entirely in the informal economy, the Labour Code 2019 redefines forced labour as “*forced labour is the use of force, the threat of force, or other tricks to force employees to work against their will*”. Similarly, the Labour Code has clauses that explicitly prohibit forced labour or being entitled to protest in such instances (art. 3, 8, 35, and 165) (Dao & Mai, 2015). The Code also prohibits a variety of forbidden activities in contracting and performing, most notably in the areas of labour recruiting, wage payment, and employee overtime labour (art. 8, 17, 91, 97, 98 and 101) (International Labour Organisation & Vietnam Chamber of Commerce and Industry, 2016).

⁵ Vietnam ratifies the Collective Bargaining Convention 2019, viewed 8 July 2023, International Labour Organization, <https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_713933/lang--en/index.htm>.

Besides the positive aspects, the criteria for forced labour under ILO C029 are not entirely met by the notion of forced labour provided in the new Code, as shown by the following features: (i) focuses mostly on the involuntary element resulting from the use of force or the threat of force, not to mention other possible forms of forced labour behaviour (Nguyen, 2016); (ii) “other tricks” is a vague concept that has not been defined (Ngo & Le, 2016); (iii) this concept is only identifying the way which the employer forces the employee to perform certain work against their will, resulting in forced labour without regard to considering that workers fall into forced labour from third-party pressure (Trinh, 2020). It is clear that the other eleven of the ILO's indicators for detection have neither been stated by Vietnamese legislation nor systematised in a general regulation as the foundation for identifying this behaviour in practice (Dao & Mai, 2015).

At the same time, in the Observational Adoption Report 2020⁶, the Committee of Experts on the Implementation of ILO Conventions and Recommendations (CEACR) referred to art. 108 of the Labour Code 2019, which states that employers can demand employees to work overtime on any day and that employees cannot refuse such requests if the work is: (i) performing a duty required for the purposes of national security or national defence in the circumstances urgent; (ii) performing duties to protect human life or property of agencies, organisations or individuals; as well as (iii) prevention and recovery from natural disasters, fires, and dangerous diseases and disasters. Whereby, the scope of labour (which is considered the exception of forced labour) in this case, is too broad compared to the scope of art. 2.2.d of C029, which only allows compulsory labour in emergencies during special time periods such as war or natural disasters or the danger of natural disasters and in cases where the safety of a part or all of humanity is dangerous.

Legal responsibilities to the entire eradication of child labour

Looking back at the enforcement of C138 and C182, Vietnam's first Labour Code stipulated a minimum age of 15 and only allowed children under 15 years of age to work in certain occupations and jobs with strict conditions, together with the ban on employing underage workers in heavy and dangerous jobs, exposed to harmful substances, or adversely affecting personality (Nguyen, 2010). In conjunction with the Labour Code 2012, it stipulated a separate section with five articles on the labour regime for minors. The application indicated that the legal system still did not cover all children who were engaged in labour. This also implies that the legal framework for employers and child workers in the informal sector has not yet been established (Nguyen, 2010).

As part of the fundamental changes, the separate provisions for child labour in the new law are developed in a way that both respects and enhances comprehensive protection for this group of workers (Nguyen, Nguyen & Nguyen, 2022). On the one hand, juvenile workers are protected even if they do not engage in labour relations (Tran & Do, 2021), and the role of parents and guardians, as state agencies, is enhanced in supervising and protecting group workers under 13 years old (art. 144) (Nguyen, Nguyen & Nguyen, 2022). On the other side, the law still respects children's right to participate in labour and concretises labour conditions such as different jobs, workplaces, and working hours for three separate age groups of employees under 18 years old (art. 143) (Nguyen, Nguyen & Nguyen, 2022).

⁶ Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021) - Viet Nam (Ratification: 2007), viewed 8 July 2023, International Labour Organization, < Comments (ilo.org)>.

It is crucial to note that while the terms "juvenile labour" and "child labour" overlap when referring to those under the age of 18 who are employed, they do not mean the same thing. Unlike child labour, which is negative and forbidden by international and national laws, juvenile labour is only negative and illegal when it breaches the severe regulations governing the age and working conditions of employees under the age of 18 (Vu & Nguyen, 2017). This results in a lack of clarity on the concept of child employment in Vietnam, leading to discrepancies with international documents of the ILO (Nguyen, Nguyen & Nguyen, 2022). Whereas, except for child labour for heavy, hazardous, and dangerous work, be concretised in the Labour Code, the bulk of the worst kinds of child labour are not classified by the Vietnamese legal system's definition or in-depth criteria, in keeping with ILO Convention C182 (Vu & Nguyen, 2017).

Legal responsibilities to end discrimination in employment and the workplace

It should be noted that before ratifying C111 and C100, Vietnam conducted activities aimed at reviewing the country's legal documents and completing relevant legal documents to be compatible with the substance of this Convention (Tran, 2011). Vietnam internalised the Convention after ratifying it, with provisions similarly ensuring favourable working conditions for women and supplementing the principle of equal pay for work of equal value. It so happens that the act of discriminating against occupation and employment at this time was only sporadically regulated in a number of terms as a prohibited act without defining the concept of the act (Vo, 2020). Furthermore, the structure of the Labour Code 2012 also failed to safeguard the rights of males that need to be protected in the workplace (Ha, 2018).

As a result of the above factors, the first amendment to the Labour Code 2019 is to codify almost directly the criteria of discrimination under the ILO Convention. Typically, the Code provides a precise definition of the concept of discrimination in the workplace, which includes three acts: (i) discrimination; (ii) exclusion; and (iii) prioritisation, as well as adding six prohibited discriminatory factors in the same way as race, national origin, social origin, age, maternity status, political opinion, and family responsibilities, and also providing for exclusions that are not considered discriminatory (art. 3) (Nguyen, Nguyen & Nguyen, 2022).

Another difference is that, rather than prioritising the protection of female workers via separate legislation, the new Code adjusts the approach in terms of rights and concern for both men and women (Tran & Do, 2021). In this way, chapter X of the Code is renamed from "Separate provisions for female employees" to "Specific provisions for female workers and to ensure gender equality", whilst a number of provisions are altered to apply equally to both male and female employees (Tran & Do, 2021). This is reflected by changing the approach from protecting female workers with prohibitions to regulations empowering them to decide on issues such as doing or not doing work that adversely affects reproductive function and raising small children (art. 142); or whether to work at night, work overtime, or go away on business when breastfeeding a kid under the age of 12 months (art. 137); and additional improved maternal safety measures (art. 137) are amendments and a very active addition to the new Code. It is worthy to note that the new Code also completes the legal framework for the prevention of sexual harassment in the workplace through regulations on the definition of sexual harassment in the workplace and the responsibility of employers in developing and implementing measures to prevent and combat sexual harassment in the workplace (art. 3, 6) (Nguyen, Nguyen & Nguyen, 2022).

Moreover, the adjustment of the retirement age schedule between male and female workers (art. 169) is narrowed and could proceed to eliminate the gender gap in the future.

Despite the fact that the Labour Code 2019 generally expresses the majority of the ILO Conventions' criterias on the issue of anti-discrimination in the workplace, there are still a number of deficiencies, as follows: (i) there is no formal legal instrument that guarantees the understanding of "politics" and "national origin" (art. 3), with "political opinion" and "national extraction" defined in C111⁷; (ii) the Labour Code, which views "gender" as a discriminating element, does not accurately portray what "sex" means in a way that is consistent with ILO guidelines and global customs (ILO, 2007). In the next examined area of the principle of equal pay between male and female workers for a job of equal value, CEACR also makes a number of requests to clarify the definition and assessment methods of "work of equal value", as stated in art. 90.3 of the Labour Code 2019⁸, in order to substantively enforce C100.

In sum, the EVFTA's commitments have been considered to have tangible impacts on Vietnam's legal institutions, with ripple effects seen throughout the operation of state agencies, the trade union system, and even corporations. Whilst institutional changes have been adopted progressively, they have not kept pace with the needs of commitment execution, and there is still a gap in the complete execution of international labour standards (Tong, 2020).

3.3. Recommendations for Vietnamese labour law reforms

Given that critical changes have been made to Vietnamese labour law to bring it into compatibility with the eight basic ILO Conventions and in accordance with the requirements of the EVFTA, it is actually necessary for Vietnamese law to quickly address its limitations in the near future in order for the labour commitments under the EVFTA to be implemented:

The first, commit to freedom of association and effective recognition of collective bargaining rights embodied within C087 and C098

As it follows from the Labour Code 2019, workers have the option to create, join, and run a representative worker organisation through the grassroots trade union or organisation of the employee that is registered with the competent state agency. In contrast, it is impossible to form a worker's organisation owing to the absence of precise and stringent instructions on the order and procedures for the establishment of employee representative organisations at enterprises. And we should all be aware that workers' organisations are only established at the enterprise level and operate within the scope of the establishment's labour relations (Nguyen & Nguyen, 2021). Despite substantial updates, the Labour Code is still not entirely in conformity with international labour norms concerning freedom of association due to its limited scope of employees' rights to establish, join, and run organisations. For that reason, Vietnam will soon need to provide guidelines directing the organisation of employees at enterprises (Do, 2021) and ensure both concretization and

⁷ Observation (CEACR) – adopted 2021, published 110th ILC session (2022) - Discrimination (Employment and Occupation), Convention, 1958 (No.111) - Viet Nam (Ratification: 1997), viewed 8 July 2023, International Labour Organization, < Comments (ilo.org)>.

⁸ Direct Request (CEACR) – adopted 2021, published 110th ILC session (2022) - Equal Remuneration Convention, 1951 (No.100) – Vietnam (Ratification: 1997), viewed 8 July 2023, International Labour Organization, < Comments (ilo.org)>.

expansion of the scope of exercise of rights founding, joining, and operating a representative organisation of workers (Nguyen, Nguyen & Nguyen, 2022).

To this end, there is no more crucial task than modifying the scope of collective bargaining so that employees can negotiate at any level they want, not just at the enterprise or industry level (Le, 2019). This would ensure that the right to collective bargaining is meaningfully recognised. With the hope that the employee representative organisation at the grass-roots level would be able to propose collective bargaining, the labour law should explicitly define the ratio of the minimum number of members to the total number of workers (Ha, 2022).

The second, commit to forced/compulsory labour elimination embodied within C029 and C105

A first, the Vietnamese legislation should finalise the concept alongside concretise the means to identify forced labour, ensuring consistency in awareness and action in alignment with the spirit of the ILO's international conventions in this area. Since the Labour Code 2019 keeps defining forced labour on the basis of the factor "force" or "threat of use of force", similar to the issue of workplace violence, and thus the generalisation, the level of danger, as well as the variety of this behaviour, are not guaranteed in practice (Ngo & Le, 2016), and are not truly consistent with the International Convention. In such a situation, we propose the concept of "forced labour is a situation in which a person is forced by another person to perform a job under the threat of possible adverse consequences for himself/herself or his/her relatives" (Nguyen, 2016). And it is necessary to introduce some types of behaviour with typical signs of forced labour identification based on 11 forced labour indicators in the guiding document related to forced labour law in particular, and labour law in general, specifically: (i) employers take advantage of their employees' vulnerability; (ii) employers deceive their employees into joining and/or performing contractual relationships with them; (iii) employees are isolated and in a restricted movement; (iv) employees are threatened by their employers; (v) employers put their employees in a position of subordination and make them do required tasks by withholding their ID or wages or using indirect methods; (vi) employees are regularly and constantly forced to work excessive overtime; (vii) employees suffer physical and sexual violence by their employers (Nguyen & Nguyen, 2023).

A second, Vietnam's labour legislation should be revised in the direction of reducing the exclusions for forced labour. As previously discussed, art. 108 of the Labour Code 2019 is incompatible with C029 in terms of scope. Hence, this rule should be changed to prioritise emergencies within a defined window of time in times of war, natural disasters, or the threat of natural disasters, and whenever the security of some or all of humanity is at stake (Nguyen & Vu, 2018).

The third, commit to effective child labour abolition embodied within C138 and C182

As was previously explored among the heterogeneity of approaches in the legal science of child and juvenile labour, the legal age in relation to children and juvenile workers is also unclear. There is a uniform provision between Vietnamese legal documents and Vietnamese labour law that does not define "child labour" or the age at which child labour is determined (Nguyen, Nguyen & Nguyen, 2022). Therefore, to be in line with international law, to unify the provisions of national law, and to ensure uniformity in practical application, the labour law should incorporate the concept of "child labour" (Do, 2012). Also, pursuant to Art. 2 of the C182, the legal age of children is below 18 years old.

Beyond that, it is necessary to continue upgrading and supplementing Labour Code provisions pertaining to the definition and/or criteria for identifying the worst categories of prohibited forms of child labour in order to satisfy the definition of C182 encompasses: (i) all kinds of slavery, involving the selling and transporting of children, debt bondage, slave and forced labour, and the forced recruitment of children to fight in wars and armed raids; (ii) jobs whose nature or conditions could hurt a child's health, safety, or morals; (iii) using, luring, or enticing children to do prostitution, make pornographic goods, or perform sexual acts; (iv) using, luring, or engaging children children in illegal activities, especially for the purpose of making and shipping drugs as outlined in international agreements (Le, 2019).

The fourth, commit to elimination of employment and occupational discrimination embodied within C100 and C111

At the same time as C111 of the ILO indicates the principle of equality and anti-discrimination with respect to employment and occupation on at least seven grounds (race, colour, sex, religion, political opinion, national extraction or social origin) (art. 1.1.a), it also highlights the extension of protective measures based on additional grounds (art. 1.1.b) (International Labour Organisation, 2018). Nowadays, a number of ILO documents, namely the Private Employment Agency Convention, 1997 (no. 181) and the HIV and AIDS Recommendation, 2010 (no. 200), explicitly address the prohibition and prevention of discrimination on the basis of “sexual orientation” (Nguyen, Nguyen & Nguyen, 2022). In particular, the United Nations stated in its General Comment No. E/C.12/GC/20 – Non-discrimination in Economic, Social and Cultural Rights (2009) that “States parties should ensure that a person’s sexual orientation is not a barrier to realising Covenant rights” (Hoang & Trinh, 2021).

It is thus necessary to resolve the following issues in the future: (i) guidance and clarification on the terms “politics” and “national origin”⁹ to ensure homogeneity in legal meaning with the “political opinion” and “national extraction” specified in the Convention; (ii) supplement the fundamental premise of the eliminating discrimination in employment and occupation principle stemming from “sexual orientation” (Nguyen, Nguyen & Nguyen, 2022). The adoption of this clause would provide more legal instruments to defend workers' rights in cases related to sexual orientation, gender identity, and gender expression discrimination (Ha, 2022).

In terms of the principle of equal pay, it is fair to say that Vietnam is directly integrating international law, especially C100, into national law. Otherwise, the modifications and adjustments to the Labour Code 2019 have inadvertently established a barrier to the institutionalisation of the Convention's requirements. To clarify, while the evaluation of “work of equal value” is still dependent on the pay scale, payrolls, and labour productivity norms, these criteria are now assigned to employers without consistency, as opposed to the previous Labour Code. In light of this, there must now be a Decree outlining: (i) the criteria for determining the wage scale in order to achieve equal pay for men and women in occupations of equal value; and (ii) the method used in the evaluation of work of equal

⁹ Observation (CEACR) – adopted 2021, published 110th ILC session (2022) - Discrimination (Employment and Occupation), Convention, 1958 (No.111) - Viet Nam (Ratification: 1997), viewed 8 July 2023, International Labour Organization, <Comments (ilo.org)>.

value¹⁰. By satisfying both of these tasks, Vietnamese law could tackle the issue of non-discriminatory salaries¹¹, meanwhile also implementing the ILO Conventions and labour obligations under the EVFTA.

Last but not least, throughout the implementation process, there should be regular participation in dialogue between state agencies and non-state entities at all levels. It is feasible to refer to the paradigm of establishing cooperative mechanisms for labour protection under four aspects: (i) labour standards (ratification of basic ILO conventions and improved enforcement); (ii) promoting corporate accountability; (iii) working conditions (occupational health and safety, wages); (iv) social dialogue (Do & Tran, 2020).

4. CONCLUSION

As a conclusion of the whole work, the article takes a deep dive into the reform of Vietnam's labour law and the impact of labour commitments in the EVFTA. Specifically, the research develops and proves the hypothesis that the labour commitments, particularly the core ILO Conventions, have had a meaningful impact on indigenous law. It can be seen that the ratification of international treaties has created the impetus for the adoption and amendment of domestic labour law to make it conform to pledged labour provisions. Pursuant to these labour commitments, Vietnam has ratified 7/8 basic ILO Conventions while also amending the Labour Code 2019 with various positive content breakthroughs that almost compatible with the provisions of the relevant Conventions. Parallel to the extraordinary advances in socio-economic development in recent years have been the execution of labour commitments and the ratification of core ILO Conventions. These positive effects, however, can only turn into long-term effects if the legal gaps between national legislation and ILO Conventions continue to be further studied and subsequently resolved. The expectation is that the binding labour law reforms under international obligations would bring Vietnam closer to global labour standards and serve as a learning lesson for ASEAN countries while potentially negotiating FTAs with the EU. Consequently, it is not too much of an exaggeration to argue that Vietnam's labour law is on the upswing and moving in the right direction. As the time draws near for Vietnam to ratify C087, more research is necessary to evaluate Vietnam's amendments in the future.

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¹⁰ Direct Request (CEACR) – adopted 2021, published 110th ILC session (2022) - Equal Remuneration Convention, 1951 (No.100) – Vietnam (Ratification: 1997), viewed 8 July 2023, International Labour Organization, <Comments (ilo.org)>.

¹¹ Direct Request (CEACR) – adopted 2021, published 110th ILC session (2022) - Equal Remuneration Convention, 1951 (No.100) – Vietnam (Ratification: 1997), viewed 8 July 2023, International Labour Organization, <Comments (ilo.org)>.

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